

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 23rd August, 2007

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

Mr. Speaker: Hon Members, I have a communication to make, but I will do it at a later stage.

ORAL ANSWERS TO QUESTIONS

Question No.077

NUMBER OF KENYANS DISPLACED BY ETHNIC/LAND CLASHES

Prof. Olweny asked the Minister of State, Administration and National Security:-

(a) how many Kenyans have been displaced as a result of ethnic/land clashes within Kenya in the last fifteen years;

(b) whether he could indicate the number of such victims in Muhoroni Constituency; and,

(c) whether he could specify the parcels of land from which the victims in Muhoroni were evicted and the person(s) occupying the land now.

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

(a) A total of 9,258 families have been displaced as a result of ethnic/land clashes within Kenya in the last 15 years.

(b) The Government appointed a task force in November, 2004 to establish genuine displaces, and it found out that 4,750 persons were affected in Muhoroni Constituency.

(c) There were 51 registered parcels of land, whose owners were evicted. Out of these, 43 have since returned to their parcels and the remaining eight are in the process of returning. The parcels belonging to those who have not returned are currently unoccupied.

Prof. Olweny: Mr. Speaker, Sir, the Assistant Minister says that some people have returned, or are returning, to the land from which they were evicted. First, it is very unfortunate that half of the number of Kenyans who were affected were in Muhoroni. As regards the people returning to the land from which they were evicted, there is a parcel of land which is at the boundary of Kericho District and Nyando District, to the Southwest of Muhoroni Town, from which people were evicted. The people who were evicted from that land are living in a slum area called "Buru" in Muhoroni Town. That land is not occupied since those people were evicted from it. When will the Government allow them, or whoever is claiming ownership of that land, to return

to it, so that they can use their land?

Mr. Kingi: Mr. Speaker, Sir, I think, as I have said, a number of families have already returned, but there are a few that have not. We are in the process of organising for those who have not returned to do so. However, where we have a specific case, like the one the hon. Member is taking about, we could consult with a view to assisting those families to return to their places.

Dr. Manduku: Mr. Speaker, Sir, during the clashes of 1992, very many people, I want to say from Kisii, who were evicted from the Rift Valley are still not able to return, because the people of that area went and occupied that land. When they get there, they are chased away yet they had title deeds. What is the Assistant Minister going to do to make sure that these people are protected and return to the land for which they even have title deeds?

Mr. Kingi: Mr. Speaker, Sir, the task force that we set up made a list of all those persons who have title deeds and were evicted from their land. As I have already said, some of them have returned, or have been assisted to return, but there are few who have not. We are still in the process of helping them to return to their homes.

(Noise from air-conditioning system)

The Assistant Minister, Office of the President (Mr. Wario): Jambo la nidhamu, Bw. Spika. Kuna sauti inayokera!

Mr. Speaker: Yes, we have a stranger in the form of a voice. It is a sound! I think it is something to do with the air-conditioning. Will they put it off? It is cold already, anyway! Do it quickly and remove that sound!

Who was on the Floor?

An hon. Member: Nobody!

Mr. Speaker: I will now finish with that Question. Prof. Olweny!

Prof. Olweny: Mr. Speaker, Sir, the Assistant Minister seems to be very sympathetic to the situation in Muhoroni, and he has told me that I can discuss it with him after this. So, I will reserve what I should ask, so that I can follow it up with him later.

Thank you.

Mr. Speaker: Mr. Kingi, do you want to respond?

Mr. Kingi: Mr. Speaker, Sir, not really, except that like I have promised, I will consult with him, so that we can assist those families that have not returned to their places to do so.

Mr. Speaker: Very well!

The Assistant Minister for Agriculture (Mr. Muiruri): On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister here to promise to settle such a serious issue only for Muhoroni when he has admitted in this House that there are over 9,500 displaced families in the entire country? Is it that every hon. Member will have to go to him personally to discuss such issues? Is that in order?

(Applause)

Mr. Speaker: Order, hon. Members! Mr. Muiruri, make up your mind whether you are in the Government or not!

Hon. Members: Yes!

Mr. Speaker: I think the earlier you do that the better! If you cannot behave like the Government, get out of it!

Capt. Nakitare: On a point of order, Mr. Speaker, Sir. Am I in order to say that this

Question is a national one, and whether we are in the Government or not, people are languishing out there? Can we not air our views?

Mr. Speaker: Order, Capt. Nakitare! You are trying to overrule the Chair, and you know you have no capacity, or mandate, to do that! Do you?

Capt. Nakitare: No!

Mr. Speaker: You had better just sit there and relax! My friend, every Question that is before this House has some national importance.

(Capt. Nakitare consulted loudly)

Order, Capt. Nakitare! Please, do not go beyond that!
Next Question by Mr. C. Kilonzo!

Question No.132

NUMBER OF NURSES RECRUITED BY
GOVERNMENT SINCE 2006

Eng. Nyamunga, on behalf of **Mr. C. Kilonzo**, asked the Minister for Health:-

- (a) how many nurses have been recruited by the Government since 2006;
- (b) whether she could table the number of nurses posted per district and constituency to date;
- (c) whether she is aware that many dispensaries built through the Constituencies Development Fund (CDF) are not operational due to lack of medical staff; and,
- (d) whether she is further aware that many operational dispensaries do not have laboratory technicians.

I would also like to say that I have not received the written reply.

The Assistant Minister for Health (Dr. Kibunguchy): Mr. Speaker, Sir, about two weeks ago, we answered this Question substantially up to the end. The only thing that was remaining was for us to get the number of nurses, who have been posted to the constituencies. We are having a bit of a problem with this because we post our nurses to districts and not to constituencies.

Mr. Speaker: What are you suggesting? To every problem there must be a solution, and you and I are part of that solution!

Dr. Kibunguchy: Mr. Speaker, Sir, what I am suggesting is this: As a Government, we do not recognise constituencies as units of operation. What I was going to ask the hon. Member is for him to accept the information that was given for districts; we provided it last time.

Mr. Speaker: What is your reaction?

Eng. Nyamunga: Mr. Speaker, Sir, the Assistant Minister is not being fair to the House. First of all, at the district level, it is known in which constituencies dispensaries are located. So, if they ask for this information from the district, they will get it very quickly. His staff at the district know where every dispensary, health centre and hospital is located.

Mr. Speaker: Order, Eng. Nyamunga! I think I can understand the predicament of the Assistant Minister. If it was restricted to Yatta Constituency, it would, therefore, mean one district, and it would be easier to compile that list. But if you have to do it Kenya-wide, then it is not easy. I tend to agree with the Assistant Minister. Do you have a better alternative? Would you like to restrict it to Yatta? Maybe the hon. Member has a problem in the distribution of nurses in his

constituency. If that be the case, I am quite prepared to give the hon. Member that opportunity. Could we narrow it to that?

Eng. Nyamunga: Mr. Speaker, Sir, how many nurses were taken to Yatta District?

Dr. Kibunguchy: Mr. Speaker, Sir, actually the other problems that we have in the Ministry--- We have pointed out one; the second one is that nurses are posted to districts. So, it the responsibility of the Medical Officer of Health to distribute the nurses to the various health facilities within his or her district.

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

Mr. Speaker: Order, hon. Members! I am trying to sort out this issue. I think the hon. Member, through his emissary, if I may call him that--- I think it is below the dignity of an hon. Member for me to call him an emissary. Anyway, he is asking on behalf of the hon. Member for Yatta and he has given some ground. I think you must also give some ground. It is not too difficult for you to find out how many nurses, as of now, are in Yatta.

Dr. Kibunguchy: Mr. Speaker, Sir, I think, for Yatta, we can do that. We can actually send somebody to count them one by one and find out. I think you need to give us time. Give me until next week and I can bring that information.

Mr. Speaker: Very well. Would you prefer Thursday next week?

Dr. Kibunguchy: Yes, Mr. Speaker, Sir.

Mr. Speaker: Only for that aspect. The Question will come for only that aspect.

Dr. Kibunguchy: Thank you, Mr. Speaker, Sir.

Mr. Kosgey: Mr. Speaker, Sir---

Mr. Speaker: Have I not deferred this Question, Mr. Kosgey?

Mr. Kosgey: Mr. Speaker, Sir, with your permission, you know that one of the biggest problems that we have in this country is lack of equitable distribution of resources, including personnel. This Question would have helped many of us to know exactly what has been done, or what is being done in various constituencies because 210 constituencies is not a very large number. The Assistant Minister is actually refusing to do his job! He has got time to ask his Medical Officers of Health (MOHs). It is not a very difficult job! It can be done within two days! It is the information that is provided in this House that helps some of us not to ask the same Questions. Would I be in order to ask the Assistant Minister to give a comprehensive answer to this House?

Mr. Speaker: Order! Order! We cannot keep on doing what we have already done! I have already, in fact, directed the Assistant Minister on what to do. But, Mr. Kosgey, you are also at liberty, in fact, to ask a Question on how they are distributed on district basis. As the Assistant Minister has said, that is where they post nurses. I think it also makes sense. Once a nurse is posted to a constituency, he or she does not stay there forever. They keep on being transferred elsewhere. So, maybe, you can do that. But for the time being, you will do for Yatta on Tuesday.

(Question deferred)

Okay! Very well! Next Question by the hon. Member for Mumias.

Question No.420

CERTIFICATES FOR PERSONS MARRYING
UNDER CUSTOMARY LAW

Mr. Osundwa asked the Attorney-General:-

(a) whether he is aware that spouses that solemnize their marriages under the customary law face major challenges particularly on succession matters as they do not possess documentary proof of such marriages; and,

(b) when he will develop certificates to be given to persons performing marriages under the customary law, which could be issued by chiefs.

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

(a) Yes, I am aware.

(b) For certificates to be granted to such customary law marriages, they require an Act of Parliament. The Attorney-General initiated the process by appointing a task force to review laws relating to women. That task force recommended a Marriage Bill that will enable certificates to be granted to customary law marriages. Thereafter, the Attorney-General directed the Kenya Law Reform Commission to draft the Marriage Bill.

The Attorney-General is pleased to inform this august House that the Kenya Law Reform Commission has finalised drafting the Marriage Bill. That draft was subjected to a validation workshop of all the stakeholders, which was held last week on 13th and 14th August 2007. There will be further consultations on the issues raised at that workshop. The Bill will be refined, submitted to the Cabinet, then this National Assembly for debate and enactment. The Marriage Bill should be ready for publication before the end of the year.

Mr. Osundwa: Mr. Speaker, Sir, I thank the Attorney-General. But, indeed, there are thousands of succession cases pending before our courts, including the Kadhi Courts. Could the Attorney-General hasten that process, so that this Ninth Parliament enacts the Marriage Bill, before we go away?

Hon. Members: Go where! Go where!

Mr. Wako: Mr. Speaker, Sir, I will hasten the process. That is why I have told this House that I hope it will be possible. But I will definitely publish the Bill before the end of the year.

Ms. Ndung'u: Mr. Speaker, Sir, the Attorney-General is saying that he is unable to issue certificates for customary marriages unless there is an Act of Parliament. At the same time, we recognise that customary marriages are legal and yet, there is no Act of Parliament that currently recognises them. So, would I be in order to ask the Attorney-General to recognise those legal unions by instructing the Registrar of Marriages to issue those certificates?

Mr. Speaker: Just as a matter of law, what about the Judicature Act?

Ms. Ndung'u: I am sorry, Mr. Speaker, Sir. What I was saying is that the Attorney-General has said that he can only issue the certificates if there is an Act of Parliament, but customary marriages are not provided for under an Act of Parliament! So, are we saying that the unions are legal, but to give proof of the unions cannot be done?

Mr. Speaker: Mr. Attorney-General, what about the Judicature Act? Could it be a basis for it?

Mr. Wako: First of all, let me state that customary law marriages are recognised under our laws. In fact, maybe, I would prefer to be married under the customary law because it may permit me to--- That is because that marriage would be potentially polygamous. Many Members of Parliament here, I think, would prefer such a marriage, which is potentially polygamous.

(Laughter)

But, Mr. Speaker, Sir, having said that, the Attorney-General is the Principal Legal Advisor to the Government. He can only issue a directive when the law now states that the certificates can

be issued. Right now, the Judicature is there. In any dispute between a man and wife as to whether or not a marriage exists, the courts could make the necessary decision after evidence has been adduced.

Mr. Angwenyi: Thank you, Mr. Speaker, Sir. I am glad that Attorney-General has said that those marriages are legal. Some of us have been born out of those types of marriages. So, we presume that they are legal. But, Mr. Speaker, Sir, we have ongoing cases out of customary marriages, including that of Bishop Margaret Wanjiru. How is it going to be determined to assist her get a marriage---

Mr. Speaker: Order, Mr. Angwenyi! You already know, that matter is before the court for adjudication very soon!

Mr. Angwenyi: I wish to withdraw.

Mr. Speaker: Very well!

Mr. Angwenyi: Mr. Speaker, Sir, when that Bill is brought before this House and enacted, would it have a retro-active effect to encompass those marriages which were consummated before the Act was enacted?

Mr. Wako: Mr. Speaker, Sir, that is one of the issues in the Bill. In fact, the recommendation is: There will be a period within which those who are already married can come within the ambit of the Act, when it comes into force.

Prof. Mango: Mr. Speaker, Sir, if the customary marriages are legal, there is need to protect the spouse and the children after the demise of the husband. Could the Attorney-General give some authority of some letters to the chief, so that the wives and widows who have been married through customary marriages can be protected? That is because they are always thrown out of homes and properties and rendered destitutes.

Mr. Wako: Mr. Speaker, Sir, it is not up to the Attorney-General to give directives to the administrative officials. It is up to the spouse concerned to adduce evidence before such an official that, indeed, there was a customary law marriage. On adducing the facts and proving that there was a customary law marriage, I am quite sure the officials will make the appropriate decision. If the official does not make any appropriate decision, there are always other avenues of appeal.

Mr. Muite: Mr. Speaker, Sir---

Mr. Speaker: The Member for now new Kikuyu--- Kabete! Which one?

An hon. Member: Both!

Mr. Speaker: Kikuyu/Kabete?

Mr. Muite: Mr. Speaker, Sir, it is Kikuyu Constituency. I understand the sentiments raised by hon. Members. The Attorney-General is aware of the difficulties in courts in proving customary marriages. He is aware of a case that I had to do all the way to the Court of Appeal; Hotensia Wanjiku Yahwe; very difficult! What Members are asking is: What can you do to ease the lot of those Kenyans who are married under customary law, which is recognised, so that they do not have to go through the problems of going to court to prove that they are married?

Mr. Wako: Mr. Speaker, Sir, indeed, I confirm that the hon. Member was, indeed, an expert.

Mr. Speaker: Just a minute! There is some irritating noise. What is going on? *Bwana* Clerk, do I not have engineers in this Parliament? That thing must stop now! Whoever is in charge of those machines, it has to stop!

Proceed, Mr. Attorney-General!

Mr. Wako: Mr. Speaker, Sir, indeed, I can confirm that if there is one area in which the hon. Member of Parliament - he is a Senior Counsel like me - is expert in, it is the area of customary law marriages. He is really an expert there. So, I would advise all those who have

problems over it to consult the hon. Member of Parliament. He would know how to expedite the process through the judicial system. As for the other Members of Parliament, what I can tell them is that, I will bring the Bill. Pass it quickly in a day.

Mr. Speaker: Very well! Last question!

Mr. Osundwa: Could the Attorney-General assure this House that when the Marriage Bill is brought here, it will apply retrogressively, given the number of cases in court?

Mr. Wako: Mr. Speaker, Sir, I have already replied to that question. I would say that there is a provision in the proposed draft Bill--- I presume it is going to be there. Once the Act comes into force, it will give the opportunity to those who are already married to come within the ambit of the Act.

Mr. Speaker: Very well. Next Question by the hon. Member for Kilome!

Question No.423

NUMBER OF DEOS POSTED TO
MAKUENI FROM 2002 TO 2007

Mr. Khamasi, on behalf of **Mr. J.M. Mutiso**, asked the Minister for Education:-

(a) how many District Education Officers were posted to Makueni District between January 2002 and July, 2007;

(b) what has been the mean scores for both KCPE and KCSE in the District from 2002 to 2006; and,

(c) what measures he is taking to stabilise education management in the district.

The Assistant Minister for Education (Mrs. Mugo): Mr. Speaker, Sir, I beg to reply.

(a) The following four District Education Officers have served in Makueni District between January 2002 and July 2007:-

<u>NAME</u>	<u>FROM</u>	<u>TO</u>
Mr. Mutangili	20/4/2002	3/2/2004
Mr. J.A.O. Muyesu	23/2/2004	29/8/2005
Mr. A.G. Njeru	28/8/2005	10/7/2007
Mr. I.M. Indiatsi	10/7/2007	to date
Mr. Muyesu retired.		

(b) The district mean scores in KCPE and KCSE examinations between 2002 and 2006 were as follows:-

KCPE

<u>YEAR</u>	<u>ENTRY</u>	<u>MEAN SCORE</u>	<u>IMP.</u>	<u>INDEX</u>
2002	19,653	269.23		-4.05
2003	21,736	266.27		-2.96
2004	25,738	261.61		-4.66
2005	26,319	260.78		-0.83
2006	24,348	257.80		-2.98

KCSE

<u>YEAR</u>	<u>ENTRY</u>	<u>MEAN SCORE</u>	<u>IMP.</u>	<u>INDEX</u>
2002	6,548	4.6880		+3.404

2003	6,747	4.8605	+0.5197
2004	7,593	5.3802	+0.5197
2005	9,187	5.3345	-0.0559
2006	8,762	5.1693	-0.1652

(c) The Ministry has undertaken the following measures, among others, to stabilise education management in Makueni and other districts throughout the country:-

(a) Implementations of Free Primary Education.

(b) Introduction of school feeding programme.

(c) Holding of regular education stakeholders forums.

(d) Capacity building for school management committees and BOGs, education managers and teachers.

(e) Provision of teaching and learning materials.

(f) Development and rehabilitation of physical facilities.

(g) Provision of laboratory equipment.

(h) Provision of bursaries to the needy.

Mr. Speaker, Sir, in the case of Makueni, the Ministry has conducted skilled upgrading courses for 250 teachers to address the declining performance in primary schools. The Ministry has also carried out a standard assessment in Makueni District and appropriate advice given to the stakeholders. A total of 152 primary schools have been assessed since January, 2006. We also have conducted special courses for 313 teachers in the district.

Mr. Khamasi: Mr. Speaker, Sir, the statistics given by the Minister are very accurate. Makueni District is one of the districts with the largest number of primary and secondary schools in the country. Primary schools are more than 1,200 and secondary schools are more than 800.

Mr. Speaker, Sir, you can see the frequency of removing District Education Officers (DEOs) from Makueni. Four have served in just about five years. That has got an effect. Even the Assistant Minister has correctly said that primary schools have been posting negative results for the last five years. The secondary schools have been posting negative results for the last two years. Now, what mitigating steps is the Ministry going to take to make sure that we do not have that high turnover of DEOs in that district?

Mrs. Mugo: Mr. Speaker, Sir, one of the officers was retired normally. That leaves the other three. One of them stayed for two years. It is only one who stayed for a very short time. I would like to assure the hon. Member that we have taken note of that and we will make sure that there is continuity.

Mr. Ojaamong: Mr. Speaker, Sir, in part (c) of the Question, the hon. Member asked what measures the Assistant Minister is taking to stabilise education management in the district. I think she has tried. In Teso, for instance, for the last five years I have been a Member of Parliament, we have had five DEOs. We have been unable to stabilize because of that. We have complained to the Ministry and the Provincial Director of Education (PDE), but corrective measures have not been taken. What policy do you have with regard to the transfer of DEOs in the districts? It would be better if they stayed for even four years. That is because they are the managers of education in the districts.

Mrs. Mugo: Mr. Speaker, Sir, the policy that we have is that DEOs are supposed to stay their full term, unless there are other reasons that come into play and one must be transferred. What I can assure the hon. Member is that we have taken note. There was a time when we had to make many reshuffles to stabilize the situation. There were many complaints from some areas that some DEOs had over-stayed in some areas and were getting localized. Maybe, that is where some of them were caught up and reshuffled very quickly. But I have taken note of that. But now, I believe we have stabilized quite a bit. It will not recur again.

Mr. Arungah: Mr. Speaker, Sir, the Assistant Minister has referred to DEOs staying for a full term. How many years does she have in mind? Secondly, how long does it take for the Ministry, for example, to force a DEO--- Because we have a case in Butere where, for the last four months, we have not had a DEO. When is she going to make sure that we have a DEO to implement education programmes?

Mrs. Mugo: Mr. Speaker, Sir, maybe, the use of the words "full term" was not correct. I should not have said that. There is no any set term that a DEO must be in a specific area. But we try to see that it is within a reasonable duration, so that we do not disrupt the services frequently. As far as Butere is concerned, we cannot generalize. I advise my hon. colleagues who have such a problem to make it known to the Ministry. Let me know. We will see how we can correct the situation. Now, I have taken note of that. We will make sure that a DEO is sent to Butere.

Thank you.

Mr. Speaker: Last question, Mr. Khamasi!

Mr. Khamasi: Thank you, Mr. Speaker, Sir. I think it is very important for the Assistant Minister to appreciate that it is necessary for an officer in any station to stabilize, so that he or she could implement education programmes and policies. That is an example where frequency in the transfer of DEOs has affected the performance of that district. Could the Assistant Minister confirm that the Ministry will come up with a policy to say that a performing officer in a station will stay for a certain period of time before he or she is transferred?

Mrs. Mugo: Mr. Speaker, Sir, we will look into that. I do not believe it is possible to specify a certain time because issues may arise that can force the transfer of a DEO or any officer. But I would like to assure the hon. Member that we will take his request into consideration and make sure that the situation stabilizes. No one will be moved, unless he or she has to be moved before time.

Mr. Speaker: Next Question by the hon. Member for Butere!

Question No.439

IRREGULAR COLLECTION OF REVENUE
FROM BUKURA MARKET BY
KAKAMEGA MUNICIPALITY

Mr. Oparanya asked the Minister for Local Government:-

(a) whether he is aware that plot No.Inaya/Marama/593 in Butere Constituency belongs to Butere/Mumias County Council;

(b) whether he is further aware that Bukura Market in Butere/Mumias County Council is located on the plot but the revenue from the market goes to Kakamega County Council; and,

(c) what he is doing to correct that anomaly so that the revenue from the market goes to Butere/Mumias County Council.

The Assistant Minister for Local Government (Mr. Muchiri): Thank you, Mr. Speaker, Sir.

I beg to reply.

(a) The alleged plot, Plot No.Inaya/Marama/593 belongs to Butere/Mumias County Council. The plot size is approximately four acres.

(b) I am aware that Bukura Market in Butere/Mumias County Council is located on the same plot. However, the market is on the boundary of Butere/Mumias and Kakamega County Council. Therefore, the two councils are sharing the revenues from the same market.

(c) The Local Government Commission of Inquiry has already been appointed by the Minister for Local Government, Mr. Musikari Kombo. It is chaired by myself and my colleague, Mr. Shaaban. We would like to ask the two councils to give us their memoranda stating why each of them would like to control the market, before 31st August, 2007. We shall resolve the issue.

Thank you.

Mr. Speaker: If you are going to chair this matter which will decide on specifically this Question, is it right that we continue with it before you have made up your mind?

Mr. Muchiri: Mr. Speaker, Sir, the issue had not come up earlier and, therefore, it was not in our schedule. But we can accommodate it given the fact that this Question has been asked.

Mr. Speaker, Sir, we have two teams. Hon. Shaaban is chairing matters relating to Nyanza, Western, North Rift and part of Coast Province. I am chairing matters regarding Central and Eastern Provinces, southern and part of Rift Valley Province and part of Coast Province. Nairobi Province will be chaired by the Minister. So, these matters are now happening. I want to take this opportunity to ask all local authorities and Members of Parliament, in general, where they have reasons to seek the decision of the Minister for Local Government on this issue, that they should now address the matter in accordance with Sections 5, 6 and 9 of the Local Government Act, Cap.265.

Mr. Oparanya: Mr. Speaker, Sir, Butere County Council and Kakamega Municipal Council were separated way back in 1997, that is, ten years ago. This Question came up last week and the Minister for Local Government requested that he needed more time to come with an appropriate answer. He clearly states, in his answer to part "a" that the plot belongs to Butere County Council. If he is aware that the plot belongs to Butere County Council, why has he allowed Kakamega Municipal Council to collect revenue from the market? The plot is not situated on the boundary, because he is already aware that it belongs to Butere County Council.

In his answer to part "c", he says that a memorandum should come--- Why do we have to wait for a memorandum if he is aware that the plot belongs to Butere County Council?

The Minister for Labour and Human Resource Development (Dr. Kulundu): On a point of order, Mr. Speaker, Sir. I must declare my interest in this Question. The market in question is in my constituency. The people there vote in

Lurambi Constituency. The boundary between the new Butere District and Kakamega District lies a kilometre away from this market; in fact, behind the market. The people there mix freely. If we now say that this market belongs to Marama, I fear that it will bring disharmony.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order, all of you! Let me hear the Minister! You know, this is a very strange thing!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Speaker, Sir, I concur with the Assistant Minister for Local Government that a task force should be set up to hear from both sides of the boundary.

Mr. Arungah: On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead the House that the said market is in Kakamega when the Assistant Minister who is concerned has clearly stated that it is actually in Butere/Mumias District?

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! While we have village wars, now I am hearing of market wars! I am not properly trained and suited to sort out village wars. I think the hon. Muchiri and hon. Kombo are better suited to do that, while Mr. Kivuitu is better suited to determine the boundaries of constituencies.

So, I will defer this Question pending the outcome of the Commission set by the Minister for Local Government.

(Question deferred)

Mr. Oparanya: On a point of order, Mr. Speaker, Sir. You have deferred the Question until the Commission comes up with an answer. As we know how commissions work, it might take ten years to finish its work. Why can we not ask the substantive Minister to come here and answer this Question next week?

Mr. Speaker: As I said, I really do not think that this House has the time and patience to adjudicate on villages. I think that is the business of the Ministry of Local Government. This is a very local issue. I think that the Ministry of Local Government should go and sort it out.

As Mr. Muchiri has said, that Commission has been set up and they have requested the relevant councils to give proposals to the Ministry on or before 31st August, 2007, which is not a long way from now. So, I think I will stand by that.

Mr. Khamisi: Mr. Speaker, Sir, I rise on a point of order to ask for a Ministerial Statement---

Mr. Speaker: Wait a moment! Hold your horse!

COMMUNICATIONS FROM THE CHAIR

PROCEDURE FOR RECONSIDERATION OF PRESIDENTIAL MEMORANDUM ON MEDIA BILL

Mr. Speaker: Hon. Members, I have two Communications to make.

You will recall that on 2nd August, 2007, this House passed the Media Bill 2007. Upon presentation to His Excellency the President for his assent, he declined to assent to it. Pursuant to Section 46(3)(4) of the Constitution, His Excellency the President has recommended that the Bill be amended in Clause 35 by deleting Subclause 4. The Subclause 4 in question, and which was passed by the National Assembly, reads as follows:-

"When a story includes unnamed parties who are not disclosed and the same becomes the subject of a legal tussle as to who is meant, then the editor shall be

obligated to disclose the identity of the party or parties referred."

Hon. Members, His Excellency the President has stated in his Memorandum:

"This provision is ambiguous and is likely to cause problems in its interpretation. The meaning of the expression "unnamed parties" has not been qualified or restricted, and can be construed to include subjects of a story as well as sources of information, thereby inhibiting freedom of the Press and undermining democracy in Kenya."

I have accordingly ordered the copies of the Memorandum to be availed to the hon. Members. I also direct that the consideration of the Presidential Memorandum on the Media Bill,

by the Committee of the whole House be placed on the Order Paper on Thursday, 30th August, 2007.

Hon. Members, Section 46(5) of the Constitution provides that the National Assembly shall reconsider a Bill referred to it by the President; taking into account recommendations of the President and shall either approve the recommendations with or without amendments, or reject it in toto and approve the Bill in its original form by a resolution supported by votes not less than 65 per cent of all Members of the National Assembly excluding *ex-officio* Members.

The procedure for consideration of the Presidential Memorandum is as follows:-

As you aware, Standing Order No.111(1) provides that on recommittal of a Bill, the Committee of the whole House considers only those matters that are specifically referred to it for reconsideration; in this case Clause 35(4).

Hon. Members, the following is, therefore, in brief, the procedure that will apply on the committal and consideration of the Media Bill, 2007.

As soon as the Order for the Committee is read, the House will proceed to the Committee. The Minister in charge of the Bill will then move a Motion for consideration of the Bill as recommitted. The Committee will then consider the specific recommendation by His Excellency the President, as indicated on the Order Paper, and approve the same with or without amendments, as they deem fit.

(Mr. Wako consulted other hon. Members)

If I could have the attention of the Attorney-General? The rules on amendment of Motions and Bills will apply *mutatis mutandis*. The Committee will then report its consideration to the House. In the event that the Committee adopts the Bill, with amendments, as recommended by His Excellency the President, then pursuant to the provisions of Section 46(5)(A) of the Constitution, a simple majority will suffice. However, if the Committee rejects the recommendation by His Excellency the President in total, a majority vote of more than 65 per cent will be required for the Bill to be approved in its original form.

The Bill will not be read a Third Time. That was actually done and the Bill passed on 2nd August, 2007. It is, therefore, sufficient that the resolution of the House on the adoption of the Report of the Committee of whole the House, in accordance with Standing Order No.111(3) would satisfy Section 45(5) of Constitution, and will be in conformity with the rules of procedure on the committal of Bills as amplified by Standing Order No.111 (1)(2).

Thank you.

WITHDRAWAL OF KENYA COMMUNICATIONS
(AMENDMENT) BILL

Mr. Speaker: Hon. Members, the second communication is as follows:-

I received a letter dated Wednesday, 27th August, 2007, reference No.MIN/GEN/190 withdrawing the Kenya Communications (Amendment) Bill, Bill No.22, written to the Clerk of the National Assembly by the Minister for Information and Communications.

Hon. Members, whereas I am concerned that the Minister for Information and Communications purported to withdraw the Bill when he addressed the media on Wednesday, 22nd August, 2007, may I take this opportunity to firmly advise that the business listed for consideration in this House remains within the domain of our rules of procedure, and shall be considered either for debate or withdrawal, strictly within the meaning and the terms of the Standing Orders.

(Applause)

As you are all aware, this Bill was referred to the Departmental Committee on Energy, Communications and Public Works, pursuant to Standing Order No.101(1) on 4th July, 2007. I am informed that the Committee has not yet tabled its report in accordance with Standing Order No.101(3). The Minister for Information and Communications may very well have sound reasons to withdraw the Bill. But the rules must be upheld. Standing Order No.113 provides, and I quote:-

"Either before the commencement of business or on the Order of the Day for any stage of the Bill being read, the Member in charge of a Bill may, without notice, move that the Bill be withdrawn."

While I accede to the request by the Minister to withdraw the Bill, I direct that the Bill be placed on the Order Paper for Second Reading on Thursday, 30th August, 2007. The Minister for Information and Communications will then be at liberty, in accordance with provisions of Standing Order No.130, to formally withdraw the Bill. In the meantime, I direct that the Committee proceeds no further with the consideration of this Bill.

In making this ruling, I wish also to reiterate that the Ministers have the Floor of this House, to make and communicate policy statements. I appeal to all Ministers, including hon. Members, that they desist from addressing the House through the media, particularly on Business before the House.

Thank you.

(Applause)

POINTS OF ORDER

Mr. Speaker: There are two hon. Members who wish to seek Ministerial Statements. Proceed, Mr. Khamisi!

CANCELLATION OF TENDER FOR CONSTRUCTION OF MARIAKANI-KILIFI ROAD

Mr. Khamisi: Mr. Speaker, Sir, I stand on a point of order to ask for a Ministerial Statement from the Minister for Roads and Public Works. On 10th August, 2007, the Ministry advertised tenders for the construction of seven roads across the country. One of those roads is the Mariakani-Kilifi Road C107. On Monday, 20th August, 2007, a notice was carried in the newspapers cancelling the tender in respect of that particular road, while saying nothing about the other six roads.

I would like the Minister to tell this House the following:-

(i) Why was the tender cancelled?

(ii) Whether the cancellation is temporary or permanent. If it is temporary, when is the tender going to be re-advertised?

Mr. Speaker: Mr. Minister, can you respond to that?

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Speaker, Sir, I can give a comprehensive reply next week. But to soften the feelings of the hon. Member, he should know that the withdrawal was for technical reasons. The way that particular advertisement went out, it could create problems between the Ministry and the contractors when they are quoting. But the

withdrawal is temporary. So, I urge him to take it easy. Next week, I will issue a Ministerial Statement.

IMPLEMENTATION OF THE PRIVATISATION ACT

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Finance regarding the Privatisation Act, No.2 of 2005. That piece of legislation was passed on 10th August, 2005, and assented to by His Excellency the President on 13th October, 2005. It was supposed to commence on notice. But right now, we are seeing State Corporations being privatised. Safaricom, Telkom Kenya, among other parastatals, are on the line to be privatised. Other firms have been sold to private owners in the past.

Mr. Speaker, Sir, I want to know from the Minister why that beautiful legislation has never been put in place. This House unanimously passed it, and our gracious President assented to it, in order to protect public interest when public property is being translocated into private hands.

Mr. Speaker: Is the Minister ready to respond?

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, the Privatisation Act was passed by the House and assented to by His Excellency the President. Since that time, we have been working on the modalities to actually put it in place. That will also determine the date of commencement, which I will then gazette.

Mr. Speaker, Sir, let me also give comfort to all hon. Members that, on all the ongoing privatisations, there are a series of laws that are being followed. There is nothing being done contrary to the existing laws or the provisions of the Privatisation Act, as it is. So, hon. Members can rest in peace knowing that we are taking care of the public assets. We are taking extra due diligence beyond the provisions of the Privatisation Act. But I believe that the one thing we need, within the Privatisation Act, is ready transition mechanisms. We said that all ongoing privatisations will continue. That privatisation will be taken over by the new Act, when it comes on board. We do not want to disrupt the pace of that process. We are being extra careful in terms of the people who we are actually bringing into the Board. Their vetting is ongoing and, within the next couple of weeks, we shall be completing that exercise. But we have to be careful. We are talking of public assets. If we get the wrong people or board in place, we could end up being in more trouble than we are under the current laws. So, everything is being done in good faith. While I am at it, I would like to confirm to hon. Members of this House, especially hon. Raila, now that he has come that, indeed, I am taking care of the assets and disposing of them more carefully than I would dispose of my mother's as he alleged.

Mr. Speaker: Order! Order, hon. Members! On behalf of the House, as the Head of this House, I would like to know from the Minister--- Mr. Minister, we know the procedure to use when the President refuses to assent to a Bill. There is a procedure to follow. In fact, I have just made a communication on such procedure. What procedure is there if you choose to overrule the House and the President by not operationalising the Bill? What do we do? In fact, it is an Act!

(Applause)

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, I have not overruled the House or the President. The President assented to the Bill. The Act is very clear that "it will come into effect on such date as will be gazetted by the

[The Minister for Finance]

Minister". We are working at modalities to ensure that by the time the Bill comes into effect, all the attendant preparations are in place. Those attendant preparations have not been finalised to a point

where we can put it into effect without causing a lacuna.

Mr. Speaker: Just a moment! As the Head of this House, I am interested in this issue because, ultimately, whatever you say, you will ask me to make a ruling. I want to understand the issue further. Before I do that, I think it is now one year--- Or is it two years?

Hon. Members: Two years!

Mr. Speaker: It is now two years since this Act was assented to by His Excellency the President. It is you, the Minister, who brought this Bill to Parliament. It is, therefore, reasonable to conclude that when you came to this House, you needed that Act. You spent our time, as a House, to get that Act in place!

(Applause)

We gave you our time, minds and the Act. Why are you sitting on it?

(Applause)

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, like I said, we are at the tail end of finalising all those issues. Within a couple of weeks, we should have everything in place. It is only this time round that we can set aside the money required to put up the place.

Mr. Speaker: Order! Order! I heard the Minister say that we should trust him. Between the Minister and the law, which one should we trust more?

hon. Members: The law!

Mr. Speaker: I think you want the law. We want to trust the law. Could you give us any good reason why, for two good years, you have not made the regulations? If you do not have a good reason, could you tell us whether or not you want the law or whether you want to bring an Act to repeal it? We do not want this House to act in vain. That is what this is about. It brings the House to disrepute and I do not want that to happen.

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, within the next 21 days, we will have everything in place. That is the undertaking I am giving this House.

Mr. Raila: Mr. Speaker, Sir, I really want to impress on the memory of the House. This is Act was not brought to the House by the Government. A private Member wanted to bring it as a Private Members' Bill. The concern then was the manner in which several public properties had been disposed of in a very opaque manner. Therefore, we decided to borrow a leaf from the experience of the UK. We decided to introduce an Act of Parliament to ensure that before Government property is disposed of, proper procedure is followed, so that people can participate properly in the process.

There was supposed to be a Privatisation Commission which was supposed to prepare a privatisation programme and table it in this House. On an annual basis, the Minister is supposed to come here with a report and table it; to show how the property has been disposed of. The President assented to the Bill on 13th October, 2005. Since that time, the Minister has refused to gazette the Act and bring it into operation. I do not think that it is discretionally upon the Minister to frustrate the efforts of this House by refusing to gazette an Act of Parliament, which has already been assented to by the President. They have proceeded to dispose of some of the properties. For example, the Kenya Re was disposed of the other day. That is why I was saying that the Minister should give this House an assurance that he will suspend the privatisation exercise until he has completely complied with the Act.

(Applause)

Mr. Speaker: Mr. Minister, do you have the power to veto Parliament? Parliament is the National Assembly together with the President. Parliament passed the law and you are vetoing that law! Who gave you that power?

(Laughter)

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, I have no intention of taking away powers from Parliament. Parliament passed the law. Within that law, Parliament set out a whole set of things that need to be done before the law can become operational. We said that when all that was ready, the Minister would gazette the law. That is what we have been working on. I appreciate that it has taken long. However, it is because of the intricacies that were involved in that law. I gave an assurance to the House that there is no new privatisation process that has begun, that was not in process by the time the law was passed. So, we have not started anything new. We are not intending to start anything new without going through the Privatisation Commission. All the ongoing privatisation processes started long before that law was passed by this House. We are taking cognisance of that fact. I undertake that within 21 days, we should have finished the whole process and the law will be up and operational.

Mr. Speaker: Order, hon. Members! Order! As you have already heard, I have no knowledge of any particular procedure to compel the Minister to do what he must, which is to actualise what this National Assembly has enacted. There is really no procedure. As I said, if the President were to veto or to decline to assent to a Bill, there is a procedure to do that. He is entitled to that under the Constitution and it was expected that in certain circumstances, the President should do so. I do not think the framers of our Constitution ever envisaged a situation where a Minister would veto both the House and the President!

(Applause)

I do not think that there was, ever, such a procedure. Two years in any language is inordinately too long. It is not acceptable that the Ministry of Finance, with all the bureaucracies it has, cannot in two years make the modalities to operationalise the Act. In my mind, it is, in fact, a refusal, *a fiat*, if you please, on the National Assembly and on Parliament. If that is the position, it is the responsibility of the Speaker to ensure that Parliament does not act in vain. It is also my responsibility to ensure that this House continues to have its integrity. For lack of any other procedures, I will go to Standing Order No.1. Under Standing Order No.1, I direct and order that the Minister shall operationalise this Bill within seven days, failing which, the House will take such appropriate action as it deems necessary.

Mr. Arungah: Mr. Speaker, Sir, I appreciate your ruling, but in the same vein, could we also direct - because there are certain Acts in other Ministries that this House has enacted but have not been operationalised--- Could you, in the same vein direct that they do the same?

Mr. Speaker: Exactly! Bring that to my attention! Hon. Members, this is not a joking matter! Parliament cannot Act in vain!

(Mr. Ochilo-Ayacko stood up in his place)

That is finished! *Mambo yako yamekwisha. Keti chini!*
Next Order!

BILLS*First Reading*THE COUNSELLORS, PSYCHOLOGISTS
AND PSYCHOTHERAPISTS BILL*(Loud consultations)*

Mr. Speaker: Order, hon. Members! As you all know, I have a very long memory. My memory is very long and always current and fresh. Last week, hon. Members on the Floor of this House, dedicated themselves to hard work, because they were not tired and that they have a lot of energy. So, that energy and the desire to work must be seen to be in place and hon. Members cannot work unless they are attentive. So, use your energies and your desire to work effectively. Sit down and listen. Do not walk out!

(Order for the First Reading read - Read the First Time and ordered to be referred to the Relevant Departmental Committee)

Mr. Speaker: Next Order!

*Second Reading*THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL

(The Minister for Justice and Constitutional Affairs on 9.8.2007)

(Resumption of Debate interrupted on 9.8.2007)

Mr. Speaker: Madam Minister, you were on the Floor!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, If I may continue, this Bill also proposes amendments to the National Assembly and Presidential Elections Act, Cap.7, which seeks to remove the requirements of personal service of election petitions on the respondents. Conscious that we had fully discussed this Bill during the last Session, I will move very quickly.

There are proposed amendments to the Judicature Act, Cap.8, which the Bill proposes to amend to increase the number of Puisne Judges of the High Court; from 50 to 70 and the Judges of the Court of Appeal; from 11 to 14, so as to address the current shortage of judges in the country and also the backlog of cases in our courts.

Mr. Speaker, Sir, the Bill proposes also to amend the Advocates Act, Cap.16 to empower the Attorney-General to grant exemptions from the provisions of the Act requiring a practising certificate for advocates who are public officers upon application to that effect by the organization concerned. It also proposes amendments to enhance the role of the Chairman of the Law Society of Kenya (LSK) in admission of advocates and the establishment of regional disciplinary committees at par with current centrally-based committee.

Further proposals to the Law Society of Kenya Act, the Bill proposes to extend the term of office of the Chairman of the LSK and the Council to two years and to require that all persons offering themselves for election as chairmen or vice-chairmen of the society be current members of the Council. Currently, the term of the Chairman and Council of the LSK is one year and this is considered a very short period. It also proposes to empower the Council to hold meetings in any part of the country as opposed to now when meetings are only held in Nairobi.

Mr. Speaker, Sir, another important proposal relates to amendments to the Limitations of Actions Act, which proposes to amend the Act to exclude suits for the recovery of compensation in respect of laws or damage of public property from the provisions of the Act. Currently, the suits for recovery of property acquired through criminal acts or any other property illegally-acquired, cannot proceed if, in certain cases, it has gone beyond six years or three years. It is important that public property be exempt from civil suits.

This proposal does not offend the Constitution which only provides that for criminal cases, the law shall not act retroactively. There are also proposals to amend the Chattels and Transfer Act, Cap.28 to empower the responsible Minister to make regulations under the Act through which may be prescribed fees payable on registration or renewal of registration of instruments under the Act. The fees are currently provided for under Section 8 and 10(5) of the Act which is proposed to be deleted. The proposed amendment is expected to remove the need for frequent amendments to the Act. So, whenever it is deemed necessary, the fees can be reviewed by the Minister concerned without recourse to Parliament.

Mr. Speaker, Sir, there are also proposals to amend the Penal Code, Cap.63 which is to harmonise the punishment for offences of corruption and economic crimes under the Penal Code and the Kenya Anti-Corruption and Economic Crimes Act, 2003. In addition, it proposes to criminalise hate speech by classifying it as subversion. It also proposes to broaden the definition of "idle" and "disorderly person" and enhance the penalty for it in order to cover offences involving harassment of tourists and, I would say, of other persons. This is necessary and it would enable harmonisation of the Kenya Anti-Corruption and Economic Crimes legislation and the Penal Code.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, the Bill also proposes amendments to the Criminal Procedure Code, Cap.75, so as to abolish the system of trial with aid of assessors in the High Court to ensure speedy, more efficient, cost-effective and fair trials in accordance with the present day conditions in Kenya. It is noteworthy that whatever the verdict of assessors is, it is not binding on judges. So, this is a cumbersome procedure which is not helpful at all. Also, it just increases the backlog and delays the finalisation of hearing of cases.

Mr. Deputy Speaker, Sir, the Bill also provides that where an accused person has been held in custody prior to sentencing, the sentence eventually passed, shall take into account the period spent in custody. We know because of the huge backlog of cases, some people are spending upwards of five years in custody. It is only fair that the period they serve in custody be taken into account during sentencing.

Mr. Deputy Speaker, Sir, the Bill proposes to amend the Evidence Act, so as to enable confessions made before a judge, magistrate or police officer, not being the investigating officer of the rank of not less than chief inspector of police. The Attorney-General shall make rules regulating the making of confessions in all instances where the confession is not made in court. This will, again, allow confessions to be taken in a responsible manner.

It also proposes amendments to the Housing Act, Cap.117 to empower the National Housing Corporation (NHC) to take over the title of any property developed by a local authority using funds provided, secured or guaranteed by the corporation and which subsequently defaults in repayment. The Bill also provides that the corporation shall upon such take-over compensate the local authority for their undeveloped site value of the property.

Mr. Deputy Speaker, Sir, we know of very many instances.

(Loud consultations)

Mr. Lesrima: On a point of order, Mr. Deputy Speaker, Sir. The consultations are just so loud that we cannot hear this important presentation.

Mr. Deputy Speaker: Hon. Members, consult in lower tones!

Proceed, Minister!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, we all know of very many cases where the NHC has problems with the local authorities where they are

[The Minister for Justice and Constitutional Affairs]

attempting to take over housing estates where there has been default. This proposed amendment will help sort out these problems in a more structured way.

There are also proposals to amend the Public Trustee Act to enhance the powers of the Public Trustee by authorising the Public Trustee to administer estates of a higher monetary value. This is necessitated by where our economy is at this time and the value of the shilling, where the value that was previously picked is too low and estates falling under the public trustee are of greater value than what is stated by the law.

Mr. Deputy Speaker, Sir, it is also proposed that the Service Commissions Act, Cap.185 be amended to empower individual service commissions to establish a superannuation fund for the benefit of the officers they employ and prescribe rules in respect of such funds.

There are also proposals to amend the Land Adjudication Act to provide for the prompt registration of titles in respect of which there is no objection after adjudication. Currently, titles cannot be processed even if there are as little as only three disputes in an adjudication section. This proposal is long overdue.

We also propose to amend the Cotton Act to correct erroneous numbering in Section 3(A). There are also proposals to amend the Education Act, Cap.211 to empower the Minister for Education to establish and specify the status of educational training institutions. There are also proposals again to amend the Kenya Tourist Development Corporation Act, Cap.382, so as to enhance the borrowing powers of the corporation. This again is in accordance with where the economy is and the power of the shilling at the moment.

Mr. Deputy Speaker, Sir, there are also proposals for the Kenya National Library Services Act, Cap.225 to be amended to specify the qualifications of the Director of the Service. This again is desirable. There are proposals to amend the Traffic Act to empower the Minister to make rules to put in place measures to implement particular sections of that Act.

It also proposes to amend the Transport Licensing Act, Cap.404 to provide for staggered expiry of licenses issued under this Act, so that people are able to renew the licenses in a structured manner.

Mr. Deputy Speaker, Sir, we also propose amendments to the Constitutional Offices (Remuneration Act), Cap.423 to amend the Constitutional Offices Remuneration Act to facilitate the implementation of the new salary structures for the constitutional office holders. This is, again, overdue at a time when there has been general rise in wages across the public service. It also

proposes to amend the State Corporations Act, Cap.446, to exempt corporations with private sector participation from the provisions of this Act.

There are also proposals to amend the Insurance Act, Cap.487 to clarify that upon the filing of a claim by an injured person, the insurer shall have a period of 90 days within which to admit or deny liability. This will speed up processing of claims. There are also proposals to amend the East African Development Bank Act, Cap.493(A) to incorporate the amendments to the EADB Charter approved by the governing council of the bank way back in 2005.

Mr. Deputy Speaker, Sir, there are also proposals to amend the Trade Marks Act, Cap.506 to harmonise the title of the Registrar of Trade Marks with that obtaining in the Industrial Property Act to empower the Minister to appoint an advocate of the High Court to hear matters relating to intellectual property and to harmonise some of the expressions used in the Act with those now internationally accepted under the Tripes Agreement.

Other proposals are to amend the Hire Purchase Act, to raise the threshold of the hire purchase agreements to which the Act may apply. Again, this is necessitated by the strength or lack of the shilling and also to enhance the penalties for the offences under the Act.

Mr. Deputy Speaker, Sir, there are proposals to amend the Export Processing Zones Act, Cap.517 to empower the Minister to degazette export processing zones. This, again, is necessary and it must have been an oversight at the time of enacting the Act.

There are proposals to amend the Non-Governmental Organisations Co-ordinating Act, Cap.19 of 1990 to enhance NGO accountability by, among other things, adjusting the membership of the co-ordination board, empowering the board to develop and publish a code of conduct for NGOs and empowering the board to prescribe rules for the audit of NGO funds. It is important that as we enhance accountability and governance in public organisations, we do the same in the other sectors, especially the NGO sector which will help their role as watchdogs and generally enhance accountability and issues of governance within the country.

There are also proposals to amend the Narcotic Drugs and Psychotropic Substances Act, Act No.4 of 1994 to improve the provisions on the procedures for destruction of substances seized under the Act. This, again, is very necessary. We know of long periods where we have kept seized narcotics and it is not good for the country.

Mr. Deputy Speaker, Sir, there are also proposals to amend the Auctioneers Act, Act No.5 of 1996 to recognise the existence of more than just one registered body of auctioneers which may be eligible to nominate members to the auctioneers licensing board.

Other proposals are to amend the Kenya Roads Board Act, Act No.7 of 1999 to incorporate the Constituency Development Committee (CDC) into the process of implementing this Act. We know that, currently, funds are already with the Constituencies Development Committees. Therefore, this is a necessary amendment to regularise the situation, and to further define the functions of these Committees and the District Roads Boards Committees.

Mr. Deputy Speaker, Sir, there are also proposals to amend the Industrial Properties Act (Act No.3 of 2001), firstly to give due discretion to the Minister to appoint a Chairman of the Board of Directors of the Kenya Industrial Properties Institute (KIPI), to specify further particulars of the qualifications of the Chairman of the Institute, to provide for compensation of a patent holder, whose patent is compulsorily acquired. This now is a controversial Clause, which actually proposes to delete certain parts of Section 80, or almost all of it, and Section 82, which would take away the benefits of generic drugs currently being enjoyed by people suffering from HIV/AIDS. I want to state upfront that at the Committee Stage, we will be moving amendments to delete all these proposed amendments that would be harmful to our country.

The Bill also proposes to amend the Second Schedule to the Industrial Properties Act to regularise the status of employees of the Institute in the light of the delayed appointment of the

Board of Directors. Any other thing that is proposed for the Schedule that is related to the issue of drugs manufactured under licence will be deleted at the Committee Stage. The Bill also proposes to amend the Copyright Act (Act No.12 of 2001) to empower the Minister to appoint a Chairman of the Copyright Board from amongst the members of the Board. This can be seen as an omission when the Act was passed.

Mr. Deputy Speaker, Sir, there are also proposals to amend the Kenya National Commission on Human Rights Act (Act No.9 of 2002) to vest its administration in the Minister responsible for matters relating to human rights, which is an administrative matter in the organisation of Government.

Currently, the Minister is described as the Attorney-General, and it is proposed to leave it open to the Minister at any one given time responsible for human rights.

There are also proposals to amend the Sexual Offences Act (Act No.3 of 2006) to clarify the provisions relating to child pornography. It also specifies the Minister for Health as the Minister responsible for determining when victims of sexual offenses may access treatment in public hospitals or institutions. It is also proposed to amend the Licensing Laws (Repeals and Amendments) Act (Act No.20 of 2006) to remove provisions which were duplicated, having already been effected by the Cotton (Amendment) Act (Act No.7 of 2006).

Mr. Deputy Speaker, Sir, finally, at the Committee Stage, with the leave of Mr. Speaker, it is proposed that amendments will be introduced to further implement the Cockar Report on the welfare of Members of Parliament.

The enactment of this Bill may occasion additional expenditure of public funds, but for which consent has been given.

These are proposals which had been fully discussed by the House last year, but due to technical reasons, we could not complete the Committee Stage of this Bill. It is hoped that this year, we shall be able to process and complete the enactment of this Bill for the very many necessary adjustments to existing legislation.

Mr. Deputy Speaker, Sir, with those many remarks, I beg to move and call upon the Attorney-General to second the Bill.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to second. I will, first of all, start by thanking the Minister for having moved this Bill, which is my Bill. I could not move it myself because I was out of town on official business. I would crave leave of the House to refer, copiously, to the notes that I have, because this is a Bill touching on many Acts of Parliament.

Mr. Deputy Speaker, Sir, the amendments in this Bill are initiated by the Ministries responsible for operating the various Acts. So, proposed amendments came to me for inclusion herein, because they cannot stand on their own as independent amendments to an Act. So, responsibility for the policy considerations contained in this Bill is on the Ministries concerned. Of course, collectively, as the Cabinet, we are responsible.

So, I hope that the Ministers concerned have attended this sitting, and that they will listen very carefully to what the various hon. Members will say about the proposals touching on their Ministries. Further, I hope that they will take part in the debate and respond to some of those proposals.

Mr. Deputy Speaker, Sir, starting by going, fairly quickly, through the various amendments, we propose to amend the Revision of the Laws Act, Cap 1 of the Laws of Kenya, particularly Section 6(2), which provides that every booklet of the Law shall contain in the front page thereof, amongst other things, the expression "Printed and Published by the Government Printer" and also generally to set out how the Laws of Kenya are to be.

I see that we have obtained other laws which are not printed by the Government Printer. The law requires, as of now, that we only use the laws printed and published, with the authority of

the Attorney-General, by the Government Printer. The way we publish these laws is very archaic, to the extent where if we carry out amendments to any law in this House, as soon as we have passed the amendment, it has to be typed very carefully and then pasted on the law itself, which is very cumbersome.

Mr. Deputy Speaker, Sir, the amendment that is proposed in this Bill is to come into the IT age and facilitate expeditious printing and publication of revised laws of Kenya. Right now, if you go to the old laws that are there, most of them will not be updated because of the old system that we are now using, of pasting amendments to the existing laws, then after some time, printing a revised law to take into account those amendments. With the new system that we are going to have, as and when we pass amendments, these amendments will immediately be reflected in the Laws of Kenya to an extent where we can now use the modern version of the Laws of Kenya, which is now before this august National Assembly.

The other proposed amendment is to the National Assembly and Presidential Elections Act, specifically Section 21, which provides that petitions under the Act should be presented and served within 28 days of the publication in the Kenya Gazette of the result of the election, or a declaration that a Parliamentary seat has become vacant. The amendment is to delete "and served" in both cases. This is an amendment which came from the Electoral Commission of Kenya. The reason for this is in order to remove the requirement for personal service of election petitions to respondents, which has had the effect of hampering court cases relating to the same. We all know that at times an elected Member of Parliament can be very elusive in avoiding personal service of the petition. For as long as he can be elusive for 28 days, the whole thing more or less lapses. This is now to remove that specific requirement of personal service. Service will still be required.

Mr. Deputy Speaker, Sir, the major amendment that is under this Bill is the Judicature Act, which provides for the number of judges in the High Court and the Court of Appeal. It states that, the number shall not exceed 50 and 11 respectively. It is proposed to increase the number of judges in the High Court from 50 to 70, and in the Court of Appeal, from 11 to 14.

Mr. Deputy Speaker, Sir, let me just explain a bit on this because it is a very important amendment that we are proposing. At Independence, we had only seven judges of the High Court. This number was increased to 10 in 1967; to 19 judges in 1977; to 24 judges in 1981; to 30 judges in 1984 and to 50 judges in 1997. At the time of Independence, we had only three High Court stations outside Nairobi; that is, Mombasa, Kisumu and Nakuru. Currently, we have 18 High Court stations outside Nairobi. One of the most cardinal principles is that justice must be done. It must not only be seen to be done, but it must be done. Also, very important is the fact that delay in justice is actually injustice. Even as of yesterday, the newspapers reported about the serious backlog of cases that we have in court.

Mr. Deputy Speaker, Sir, currently, with the 50 judges of the High Court, and assuming that the population of Kenya is 33,800,000 - I believe that the population of Kenyans now should be 36 million to 37 million people. However, assuming that there are 33,800,000 people in Kenya, with the 50 judges, it means that the ratio of judges to Kenyans is one judge for 676,000 inhabitants. This is incomparable to the situation in a country like Canada where they have one judge per 33,756 persons. Even Malawi has a lower ratio than ours. In Malawi, today, there is one judge per 576,000 people. So, our judges are overworked. If we are to take a population of one billion Kenyans, then we have two judges serving one million Kenyans. In India, they have 12 judges per one million people. In Australia, they have 47 judges per one million people. In Britain they have 50 judges per one million people. In Canada, they have 75 judges per one million people. In the USA, they have 107 judges per one million people. If enacted, this will reduce the ratio in Kenya from 676,000 persons per judge to 483,280 persons per judge. That is as far as that is concerned.

Mr. Deputy Speaker, Sir, when we come to the backlog of cases, for example, in 2004,

there were 415,179 cases pending. I chose that year because when we were drafting this particular amendment, it was at that time that we took these statistics. So, I have them ready. In addition to those cases pending by 2004, 8,258 cases were filed and yet in that year only 6,258 were determined, which means that, every year, an average of 2,000 cases are added on to the pending cases in court. Therefore, there is no doubt at all that we require more judges.

The Judicial Service Commission, of which I am a member, has tried to deal with this problem within the limit of 50 judges. The Chief Justice has appointed the Expedious of Cases Committee, which is chaired by hon. Justice Omollo, the members of the Bench, the Law Society of Kenya and the Office of the Attorney-General. This Committee is charged with the mandate of looking into ways and means in which cases can be heard more expeditiously. Also, the Rules Committee is looking into the way regulations can be made so that we have more expeditious hearing of the cases. This is apart from the computerisation programme, which is going on in court to ensure that the records of the court proceedings are recorded rather than manually written by a judge, as we go along.

Mr. Deputy Speaker, Sir, more sub-registries upcountry have recently been set up, for example, in Malindi, Embu, Eldoret, Kitale, Busia and Garissa. New court buildings are in the course of being constructed in Busia, Nyahururu and Kerugoya. Other courts are planned at Naivasha, Nkubu, Nyeri, Vihiga, Kisumu and Homa Bay. So, the problem is being addressed.

Mr. Deputy Speaker, Sir, the increase in the number of judges being created here is conservative, but it is what we can bear now. So, I would really ask hon. Members to agree to this particular proposal.

There is also an amendment to the Advocates Act, which the Minister for Justice and Constitutional Affairs touched on. I do not have to go into the details of it now. It is there for you to see. There are also amendments to the Disciplinary Committee. The reason for the amendments is to ensure that proceedings are a true review of the advocates' conduct by their peers. We are also staggering the appointment of the members of the Disciplinary Committee. We are also establishing a number of benches for the Disciplinary Committee to be able to operate outside Nairobi, that is, Mombasa and other areas, rather than permitting poor litigants who have complaints against advocates to travel all the way to Nairobi for their complaints to be heard. So, the amendments will enable the decentralisation of the process to continue.

Mr. Deputy Speaker, Sir, there are amendments to the Law Society of Kenya (LSK) Act, which have been brought by the LSK and which currently allow for an annual election of the Chairman and members of the Council of the LSK to the effect that now such elections should be held biannually. This is because, as I was told and I agree with that reasoning, when an election has taken place, before the new Council has really settled down to see what it can do for the LSK and for the country, the elections are, again, due. So, it requires a period of time for each Council to prove that they can do their job. That is why they are proposing that rather than have annual elections, they should have elections biannually.

Mr. Deputy Speaker, Sir, there are a number of proposed amendments to the Anti-Corruption and Economic Crimes Act and the Penal Code. These amendments will increase the penalties for various matters under the Penal Code. These very offences are also in the Anti-Corruption and Economic Crimes Act. Under the Act, they attract a higher penalty than under the Penal Code. So, this is to synchronise the two laws.

Mr. Deputy Speaker, Sir, there is an amendment I think I should draw the attention of this House to; that is, Section 85(2), which deals with the issue of prosecutions. It is intended to empower the Attorney-General to appoint an advocate or a person employed in the public service to be a public prosecutor. This will exclude the appointment of a police officer as prosecutor. Here, we want the Attorney-General to have a wider latitude in appointing appropriate persons in the

public service; they may be advocates serving in other departments and so on, to undertake prosecutions when called upon to do so.

Mr. Deputy Speaker, Sir, there is also another major amendment under the Criminal Procedure Code to do away with the system of assessors. Currently, we have the system of assessors who are normally three. They are appointed. Of course, there have been abuses reported in various courts as far as they are concerned. A number of them have even approached the accused persons in prisons to say that, if something is done, they will be able to do whatever they can do. Yet, we all know that under our laws, the decision of the assessors is not binding on the judge. The judge can overrule the findings of the assessors. We have also found that, particularly in murder cases, they contribute a lot to the backlog of the hearing of the cases in this country. At times, they are not available. The cases have to be adjourned and so on. Therefore, we think and the courts have also agreed with us, that we do away with the system of assessors in order to ensure speedy, more efficient, cost-effective and fair trials in accordance with the present conditions in Kenya.

Mr. Deputy Speaker, Sir, we are also doing away with the consequential amendments which deal with the assessors having to be present when the judgement is being read *et cetera*.

Mr. Deputy Speaker, Sir, I wish to draw the attention of the House to an important provision which relates to confessions or admissions of guilt by accused persons. Section 25(A) which was passed by this Parliament under the Criminal (Amendment) Act (1997) states that:

"The confessions or admissions of guilt by accused persons will not be admissible unless they are made in court".

Mr. Deputy Speaker, Sir, as I explained to this august House at that time, that because confessions can be admitted almost freely before the court, then the investigators were not doing their work as they ought to do to find independent evidence in order to find the culprit responsible for a particular crime. Therefore, the provision that confessions can be admitted almost at will, encouraged the investigators to do a bit of torturing to obtain confessions. In other words, it was a short-cut to proper investigations being carried out. This has also been found to be inhibiting proper investigations and those actually guilty escape. Therefore, we think the amendment that is there now, on one hand, deals with the issue of torture. In other words, we want to eliminate torture as a system of obtaining a confession from a person. On the other hand, there is importance of having a fair trial.

Mr. Deputy Speaker, Sir, what we have proposed is that instead of confessions being made only to the court, as is currently the provision, they can be made either in court or before a police officer of or above the rank of a Chief Inspector of Police. We believe that the rank of Chief Inspector of Police is senior enough to know how to do it. The confession can also be made by the suspect before any person of his choice. In saying "any person of his choice" we have in mind; his or her own advocate, a pastor of a church or hon. Member of Parliament, so long as, he or she is a person of his or her choice.

Mr. Deputy Speaker, Sir, to reduce the mischief of torture being used in the course of investigations it is proposed that the confession should not be made before an investigating officer. So, if somebody is investigating and a suspect wants to make a confession, it should not be made before an investigating officer who may be of the rank of a sub-inspector of police and below. The investigating officer must either find a court or another police officer, not involved in the case, of the rank of Chief Inspector of Police or above or ask the person, "before whom do you want this confession to be made?" After that, the confession can be made. However, a confession made before the investigating officer will not be admissible in a court of law if this is enacted.

Mr. Deputy Speaker, Sir, it is also proposed that the Attorney-General, on enactment of this provision, will make rules which will apply in cases where confessions are not made in court. We have already begun that exercise. I can assure you that if this provision is enacted, within 30 days,

the Attorney-General will have made the rules under which the confession can be made. We have begun doing that exercise in anticipation that this august House will be reasonable enough, as it normally is, to enact this legislation.

Mr. Deputy Speaker, Sir, the other amendment is about the Public Trustee Act which had been touched by the Minister for Justice and Constitutional Affairs. There is also an amendment to the Service Commissions Act. This amendment is extremely important because, as you are well aware, we have taken many measures within the Constitution, to ensure that the Judiciary is an independent institution. The Judicial Service Commission (JSC) is the employer of the employees under the Department of the Judiciary.

Mr. Deputy Speaker, Sir, the Judicial Service Commission (JSC), under our laws now, cannot establish a superannuation fund for its employees because they are all now regarded to be under the Public Service Commission when that issue is involved. Therefore, this amendment will enable the JSC to have a superannuation fund for its employees and, therefore, it is a further step on the road to the Judiciary becoming truly independent of the Public Service Commission.

Mr. Deputy Speaker, Sir, the Minister has touched on the Education Act, the Kenya National Library Services Board Act, the Land Adjudication Act and the Kenya Tourist Corporation Act, which are just having minor amendments there. We have also touched on the Traffic Act. Under the Traffic Act, the amendments seek to empower the Minister to make rules specifying the measures which may be applied to that end, including the use of appropriate devices for that purpose. I think we all know what that means, particularly, in enforcing the regulations regarding drivers who drive while under the influence of alcohol. It will enable the police to use the devices to determine the levels of intoxication of a driver whom they suspect is driving under the influence of alcohol.

The Minister has touched on the constitutional offices. I do not have to repeat what she has said. She has similarly touched on the Trademarks Act, the Hire Purchase Act, the Export Processing Zone Act, the Non-Governmental Organizations Co-ordinating Act, which deals with the issue of quorum and so on, on the National Council for Law Reporting.

Mr. Deputy Speaker, Sir, the current position which sets out the functions of the National Council for Law Reporting is the preparation and publication of the Kenya Law Reports and other publications related to those reports. It is proposed to amend the section to provide that the Council may perform other functions conferred on it under other laws. Therefore, we are now expanding the mandate of the Council. Part of expanding the mandate of the Council would be to publish the Laws of Kenya, to ensure that the Laws of Kenya are, at any given time, up-to-date, as and when we pass amendments in this House.

Mr. Deputy Speaker, Sir, this particular amendment is tied to an amendment that I talked about earlier, under the revision of laws, which provide on how our laws are to be printed. We believe that the Council for Law Reporting, as currently constituted, now has the capacity and technical know-how to be able to deal with the publication of the Laws of Kenya under the authority of the Attorney-General.

Mr. Deputy Speaker, Sir, we have amendments to the Narcotic Drugs and Psychotropic Substances Act, which really permits and makes it clear the process of collecting and destroying cocaine and so on, even before the finalization of the case. So, the procedure is now being made very, very clear beyond any reasonable doubt. We have amendments to the Kenya Roads Board Act and the Industrial Property Act, which the Minister for Justice and Constitutional Affairs has touched on. We also have amendments to the Copyright Act to ensure that there are some three copyright societies - the Music Copyright Society of Kenya (MCSK), the Copyken Association of Publishers and the Kenya Association of Music Producers. It is proposed that the chairman of the Copyright Board should come from amongst those copyright societies. The Copyright Act, as you

know, is an Act to enforce the copyright of the holders and so on.

Mr. Deputy Speaker: Your time is up, Mr. Wako!

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, with those few--- I think I still have some time.

Mr. Deputy Speaker: No, you do not have time!

The Attorney-General (Mr. Wako): It is finished? Where is the red?

Mr. Deputy Speaker: Order! Order! Order, Mr. Attorney-General!

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, my eyesight is not very good. So, I thought that light was not quite red.

(Laughter)

I have now been reminded that it is red. Therefore, I beg to second.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Order, Mr. Minister!

(Question proposed)

Mr. Muturi will be giving the official Opposition response.

Mr. Muturi: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to give an Official Opposition response.

Mr. Deputy Speaker, Sir, as I begin my contribution, I wish to draw the Minister's and the Attorney-General's attention to page 1371 of the Bill where there is, within the Memorandum of Objects and Reasons, an Act of Parliament, the States Corporations Act, Chapter 446 of the Laws of Kenya. It is explained:-

"The Bill proposes to amend the State Corporations Act to exempt corporations with private sector participation, from the provisions of the Act".

I want the Minister and the Attorney-General to note that, in the main Bill, there is no such proposal. Therefore, I hope that in the Memorandum of Objects and Reasons, it is not, therefore, proposed to sneak in an amendment that we will not discuss. I am happy that they acknowledge the mistake of their offices.

The Attorney-General (Mr. Wako): On a point of information, Mr. Deputy Speaker, Sir. It has appeared--- I just want to accept---

Mr. Deputy Speaker: Order, Mr. Attorney-General! We must have some order here! You see, the Attorney-General just walked from his chair to the microphone. You must recognize the authority of the Chair! Now, what do you want to do?

The Attorney-General (Mr. Wako): It is just a point of information.

Mr. Deputy Speaker: Do you want to be informed, Mr. Muturi?

Mr. Muturi: No, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: He has said no.

Proceed, Mr. Muturi!

Mr. Muturi: Mr. Deputy Speaker, Sir, with tremendous respect, what I am doing is just purely to point out that there is that anomaly in the objects and, I believe, they will be able to correct the situation.

Further, Mr. Deputy Speaker, Sir, a while ago, this House was treated to some exciting debate or moments about the operationalization of the Privatization Act, which I believe is Act No.2 of 2005. The operationalization is by the Minister for Finance. Therefore, in keeping with that debate which has just taken place, I just want to point out that Clause 3 of this Bill, which provides an amendment to Section 58(a) of the Advocates Act by saying:-

"The proposed Section 58(a) of the Act shall come into operation on such dates as the Attorney-General may, by notice in the Gazette, appoint".

I think with that recent experience, we need now to put an end to this kind of law making style, so that if we want to make a law to govern particular operations, we should not give the Ministers of Governments the latitude to go and sit in their offices year in, year out, before they can operationalise an Act of Parliament, which this House has passed and the President has assented to. I, therefore, wish to point out that this, again, is an area that the Attorney-General should take note of and correct.

Mr. Deputy Speaker, Sir, 15 pages of this Bill are devoted to proposed amendments to the Kenya Anti-Corruption and Economic Crimes Act, (No.3 of 2003). There are very fundamental proposed changes. I must say that I am really surprised that both the Mover and Seconder have said nothing about those serious and fundamental changes proposed. I think the reason must be that they do not want this House and country to know what it is that they are proposing. They should have taken sufficient time to explain to the House what it is that they intend to achieve by some of these proposed amendments.

The Attorney-General (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to insinuate that we did not comment on the Kenya Anti-Corruption and Economic Crimes Act, when the Mover made it very clear that, in fact, most of these provisions that we are being asked to debate again, had been touched on earlier, and we had explained in detail the provisions under the Kenya Anti-Corruption and Economic Crimes Act? There is no need for us to keep on repeating ourselves. But we touched on them briefly.

Mr. Muturi: Mr. Deputy Speaker, Sir, what I am saying is that we are debating this Bill and not the Bill of 2006. Therefore, it is important that everything be put in the proper perspective. I will highlight a few of the proposals, because it is important that this country knows that proposals are coming from the Office of the Attorney-General in relation to the laws that they are bringing to the House.

Mr. Deputy Speaker, Sir, before I go to the Kenya Anti-Corruption and Economic Crimes Act, I want to observe that there is a proposed amendment to the Limitation of Actions Act, Cap.22 of the Laws of Kenya. It is a very interesting new proposal which reads:-

"Actions including actions claiming equitable relief in which recovery or compensation in respect of the loss or damage to any public property is sought--"

What this is means is that, if you are a public servant somewhere, for example, and somebody alleges that you caused some damage or occasioned loss, it does not matter how old that claim will be, that kind of law be allowed to obtain in this country. I want to state from the outset that I am vehemently opposed to that kind of retroactivity being introduced in the making of laws in this country. I would want to call on the Attorney-General and Minister to really rethink their position on this. I do not think, really, it is going to be of any use, unless we are now hell-bent on encouraging witchhunting. This will actually encourage witchhunting and endless litigation. You never know; it might mean that the Attorney-General himself, when he retires, could very well be visited 20 years from now and told that he occasioned some loss. This is the kind of thing that I am saying "no" to. When the Attorney-General retires, we want him to rest in peace in his village. He should not be harassed with questions; that when he was in charge, this and that loss happened.

That is the kind of thing that I will be opposed to.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, I quite appreciate that there are some very good proposals for amendment in this Bill, particularly the ones that are proposed in the various laws like the Copyright Act. I was surprised but, nevertheless, I am happy that the Minister said that she will be introducing an amendment to delete her own proposed amendment to the Industrial Property Act, which was actually going to have very serious repercussions to, particularly the area of Anti-Retroviral (ARVs) drugs in this country. But I am encouraged that they are going to, in their own words, bring amendments to delete their own proposed amendments.

Mr. Temporary Deputy Speaker, Sir, there is a proposal to introduce an amendment to Section 182 of the Penal Code. If we will recall, this is the area where the Minister talked about "any person who uses words, gestures and actions that annoy, alarm or abuse a person, or any person who insults, taunts, or challenges a person in a manner likely to offend." She also talked about "any person who uses obscene or profane language to intimidate a person." Finally, she talked about "a person who disturbs or irritates, especially by continued and repeated acts." I think this is very strange. This is found at pages 1327 and 1328. This is the area where the Minister, while moving the Bill, talked about hate speech. I wonder whether during, this day and age, these are the kind of things that we want to engage in, unless we are getting so easily irritable as a people. Why do we want to legislate on these kind of things? I will, personally, be opposed to this particular proposal, because I think it is draconian and actually, a setback on the much hyped about freedom of expression and democratic gains that this country has witnessed in the last few years.

Mr. Temporary Deputy Speaker, Sir, I will move on to the proposed amendment to the Traffic Act, Chapter 403, of the Laws of Kenya. My take on this is: If, indeed, the Attorney-General or the Minister concerned was to bring an end to this saga, I think he or she needs to table a proper Bill proposing a specific amendment and not just one seeking to give the Minister the power to make rules. In any event, of what use is it? Day in, day out, we are seeing most of these rules that Ministers are making being successfully challenged in the courts. Just last week, the Minister for Transport purported to make rules which have been shelved by the courts. I know that this area is a bit tricky. I would want to encourage the Attorney-General to propose a proper law that deals with the area of drugs and its administration. This is because I know that this is the area where the alcoblow falls in. That is what they are trying to bring in a twisted language. Let us have proper administration of this. Let us not give Ministers powers - open-ended cheques to make rules. When they make them without consulting anybody, other than themselves and their mandarins in their various Ministries, we have seen that on many occasions, they have been successively challenged. It is important that there are proper consultations. Therefore, I want to alert the Attorney-General, again, that he should not be surprised, at the Committee Stage, to see that we will be vehemently opposed to his proposal in that regard.

Mr. Temporary Deputy Speaker, Sir, the proposal to amend the Kenya National Commission on Human Rights Act, Act No.9 of 2002, in my view, appears to be in bad taste. It is in bad taste because we have seen the kind altercations that have gone on between the Commission and the Minister. On page 1,349 we are proposing to:-

"Delete the definition of "Minister" and substitute thereof the following-

"Minister" means the Minister for the time being responsible for matters relating to

human rights."

What have we found wrong with the previous definition of the Minister? The Minister, in the Act, when we enacted here in 2002, was the Attorney-General. That is because some of these Ministries can easily be abolished. We are unlikely to abolish the office of the Attorney-General. These others are for political expediencies a lot of times. Let us not hinge our laws on those kind of things. Therefore, I want to alert the Attorney-General that we will, again, be moving amendments to delete this, so that the Commission remains independent. We do not want it to be brought under some political arm or umbrella.

Mr. Temporary Deputy Speaker, Sir, let me move on to the proposed amendments to the Anti-Corruption and Economic Crimes Act. Before I say what I may have to regarding these amendments, I want to fully associate myself with the Report by the Departmental Committee on the Administration of Justice and Legal Affairs, which has made an extensive review of these proposed amendments. Indeed, their Report has been available with us for a very long time. It is something that I would wish to fully associate myself with, without having to go to its details because I believe the Chair or the membership of that Committee are best placed to delve into that Report.

I also have a take on some of the proposed amendments. On page 1,350, there is a proposed amendment to the Anti-Corruption and Economic Crimes Act. Clause 12(A) says:-

"The Commission may, at any time, with prior notice to the Commissioner of Police, assume the responsibility for an investigation commenced by the police into an offence involving corruption."

This is just a recipe for confusion! We have already seen a lot of this confusion. I do not know why we want to further cause this to continue. We have seen the Director of the Kenya Anti-Corruption Commission (KACC) and the Commissioner of Police--- In fact, we have seen the Director having his own altercation with the Attorney-General. By doing some of these things, we are just going to encourage that. The Constitution is very clear. Let us leave the Attorney-General to deal with some of these things and direct those officers, including the Commissioner of Police, as provided for in the Constitution. If we want to amend the Constitution, let us do so. But let us not use these other short-cuts to take away certain important powers which are vested in the office of the Attorney-General, and give them to other fellows.

Mr. Temporary Deputy Speaker, Sir, I will also be vehemently opposed to the proposed amendment to Section 16(4) on page 1,351, which says:-

"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 and an investigator, as if reference in those provisions to a police station, police office or police officer included reference to the Commission's premises and the Director or an investigator."

This proposal has the effect of turning the Integrity Centre into a police station. That was never the intention. When we debated that law here in 2003, even when it was formulated earlier, because I know it was formulated a little earlier than 2003, that was never the intention. What has happened as to want to make the Director of KACC want to have a police station around himself? We are creating a monster without knowing! It may be expedient for those that are crafty; those who are coming up with these proposals now, but you never know! Tomorrow, they may be the ones crying. To save them for having to cry, we need, at this early stage, to tell them: "Please, do not go that route." We have enough police stations. Indeed, just from Integrity Centre, the former Criminal Investigations Department (CID) Headquarters is just behind. So, why do we need to lock up

people at Integrity Centre? We do not need to!

I would like to say that because there is no proper rationale that has been provided, I will, again, be opposing that particular provision.

Mr. Temporary Deputy Speaker, Sir, there are quite a number of other proposed amendments which I find obnoxious, like the one at Page 1,355, Clause 56(A)(1), which says:-

"The Commission may, at any time before or after instituting civil proceedings or making an application under this Act, appoint a receiver for such property as is suspected by the Commission to have been acquired through corrupt conduct."

People will just suspect that certain properties that you have, have been corruptly acquired and then you find a receiver. Is that the intention of this Parliament? This is very bad law! We cannot have this kind of thing! Please, if receivers must be appointed, let us follow the due process of law. If you suspect and believe that something is illegally or corruptly acquired, use the due process. But do not say that even before you go to court, you have appointed a receiver. That is intended to cripple people. This being an election year, I would urge caution to both sides of the House, that we must not allow this to pass through this House.

Mr. Temporary Deputy Speaker, Sir, another strange clause, although the Minister purportedly tried to explain it while moving the Motion is at page 1360. It is on Costs and Execution. It is quite strange! Clause 61(A) says:-

"Notwithstanding any provision to the contrary in the Civil Procedure Act or any other written law, costs shall not be awarded for or against the Commission in any civil proceedings instituted-

- (a) by the Commission in the exercise of its functions under this Act; or
- (b) against the

Commission in respect of anything done or omitted to be done by the Commission in the exercise of its functions under this Act."

By this, we are encouraging recklessness. If you grab me and take me to court, I want to hire the very best lawyers, including all the Queen's Counsels (QCs)! I will, therefore, incur costs. If the Commission is so reckless as to take me to court without reasonable grounds--- Or even if they had reasonable grounds, if they lose, they should pay me the cost. We are saying that they should not do that. This is draconian! It is very punitive. It is actually selective!

There is a very well known principle in law, that events follow the cause. We must apply that to the letter. We do not want a situation whereby KACC takes people to court at will as they please! Even if you hire ten lawyers, it will be up to you. In today's era--- I do not even know what logic, if any, went into this. Even the Attorney-General, when he represents the Government, he incurs costs and pays. Now, we are saying that the KACC cannot pay costs. What are we saying? If the Government pays costs, why should we make this kind of provision? I want to urge the Attorney-General or the Minister, while replying, to actually commit themselves to deleting this. Otherwise, again, we will be moving to have it deleted because it is draconian!

There is another interesting proposal to amend the Public Officer Ethics Act. I believe this was after the enactment of the Kenya Anti-Corruption and Economic Crimes Act (No.3 of 2003). The other one was Act No.4 of 2003. At page 1363, there is a proposed amendment. Clause 30(1) and (2) read as follows:

The contents of a Wealth Declaration or Poverty Declaration Forms, as the case may be, because people do not have to, necessarily, be wealthy---

"The contents of a declaration or clarification under this Act shall be accessible to any person upon application to the responsible commission in the prescribed manner."

Sub-clause (2) reads:

"No information obtained pursuant to subsection (1) shall be published or in any way made public except with a prior written authority of the responsible commission."

Mr. Temporary Deputy Speaker, Sir, we want the wealth or the poverty declaration forms to be accessible to anybody upon application in the prescribed form or manner. We are also saying that those who apply for that information, once they get it, are not supposed to publish it without the leave of the Commission. If the information was applied for in the prescribed manner and obtained, and it is about something that we suspect to be corrupt--- If it was obtained by a journalist and he leaks it, strategically, to save the country, are we saying that since the journalist will have breached the conditions, he will have done the "strategic leaking" without the permission of the responsible Commission, he will have to disclose who in the Commission gave him the information? We have just been talking about the Media Bill. We must look at these things logically because they can happen. This will happen. Information regarding those who have acquired property in dubious ways will be obtained. It will be published! So, are we on one hand saying in the Media Bill, that a journalist shall not be compelled, which I support, to disclose his source of information and, yet in this Bill, we are talking about a manner which amounts to whistle-blowing---

Are you saying that if a journalist finds out something which he thinks the country ought to know, because it is of such gravity that if he just keeps it to himself--- I do not want to give examples, unless I give an example of the Attorney-General himself or the young man sitting behind him. I am talking about the young man, Mr. Moses Masika Wetangula. If they found out information regarding hon. Wetangula and they thought that it is very serious that the country should know, since the Commission responsible for hon. Wetangula cannot allow that information to be published--- On one hand, we are asking the journalists to get the information but they should not publish it because the Commission would not allow it. If the journalist published that, he would have committed a crime for which he would be punished. For him to save himself, he would have to disclose his source of information. I think we need to rethink and have a clear balance on what we want to do. If we want the information regarding the wealth of the young man, hon. Wetangula, who is talking to the Attorney-General, to be known by everybody and how he acquired it, we must have a balance. Let us rethink. I think there is need for us to see some sense in this.

Below it, Clause 30B(1) says:

"The Minister may, whenever necessary, by notice in the Gazette appoint and assign function to a public body or another suitably qualified person verify declarations, clarifications or returns made under this Act."

These are the declarations which we have been talking about. The fact that the Minister may appoint any public body or other suitably qualified person is liable to abuse! This will be abused because the Minister will just appoint one of the "suitably qualified people." The word is "suitably qualified." In a political sense, you may never know. This can encourage a lot of witchhunt and harassment of people. There is need to re-think about the necessity for that particular clause.

Mr. Temporary Deputy Speaker, Sir, of course, I am happy, with the clause on the amendments to the National Assembly and Presidential Elections Act. However, I think we need to rethink about the issue of costs in election petitions. We have seen instances where certain malicious persons sponsor men and women of strong-willed in villages to file petitions against people who have won in a elections. The petitions will drag on and on. At the time of filling the petition, there may have been a lot of interest. As time goes on, the interest disappears. So, the man or woman of strong-will, who will have been sponsored to file a petition, will be condemned to pay costs. When you go to execute the case, you find that there is nothing to attach. I want to urge the

Attorney-General to consider the issue of costs in election petitions. Of course, I will, myself, also, be introducing further amendments to that Act to curb the rampant nomadism within political parties as we have witnessed in this Ninth Parliament. The clear details will be available when we go into the Committee Stage.

I have listened to the Attorney-General explain the need to amend the Evidence Act, Chapter 80 of the Laws of Kenya just to provide for situations of how confessions may be made. A while ago, in this House, I spoke about the issue of extra judicial statements or confessions. I accept the reasoning by the Attorney-General. Experience has shown that over 95 per cent, in fact, it could be 97 per cent or 98 per cent of all confessions are denied when the trial begins. I am sure that the Attorney-General will agree with me on this that a lot of confessions are actually denied. Why would a person who broke into a bank appear before a police inspector, chief inspector or a superintendent officer and admit to having committed a robbery--- They will be informed of these rules that the Attorney-General is proposing to make. The police always invariably say that they have informed the suspect of his or her rights. For example, they tell you that you can have your Member of Parliament, mother, father or your lawyer present while taking a statement. That is what the charge and caution statement usually reads. But again, experience tells us that, that never happens. Whether it is the investigating officer or any officer, however senior, they never inform suspects.

Mr. Temporary Deputy Speaker, Sir, I am wondering, when we say that a confession is made before a judge or a magistrate, yet we appreciate that 98 per cent of all confessions are denied when the trial begins. We are encouraging a situation whereby a confession will have been taken before a judge or a magistrate, and the man or woman will deny it when the trial commences. We are contemplating a situation where you will have to call that judge or magistrate to come and be a witness, and yet the man or woman is saying that he or she never made the confession. I think we are mixing the two. We should not drag the magistrates and judges into that area of law enforcement because it would create some bad tension.

The magistrate or the judge who would be listening to the case where an accused person has denied having made a confession before another judge, obviously the judge would want to believe a fellow judge. Naturally it happens like that. In this House, we have been accused of being able to unite when we are discussing something that is juicy. So, I am just trying to extend that imagination. When an accused person denies that he never made the confession and it is purported to have been taken before a judge. The other judge listening to the case may say, now this is my father and even if it looks funny, let me believe it. This is an area that would bring some conflict. My advice would be that we should just live it to the police. Let the Attorney-General make the rules but the more important thing is to avail State counsels; trained lawyers in the Attorney-General's office. Let them be present to read out the charge and caution and leave the matter to the police who would be taking the confession, so that we remove the judges and magistrates from that aspect of criminal administration or administration of justice.

Mr. Temporary Deputy Speaker, Sir, although I know it is a very tricky area, I would want to offer that proposal to the Attorney-General to consider it, so that we do not mix issues. The police never follow those things also. I read an interesting Clause. It is a proposed amendment to the Housing Act where it states:-

"The Bill proposes to amend the Housing Act to empower the National Housing Corporation (NHC) to take over the title of any property developed by a local authority using funds provided, secured or guaranteed by the corporation and which subsequently defaults in repayment. The Bill also provides that the corporation shall upon such take-over, compensate the local authority for the undeveloped site value of the property."

We are talking about compensating the local authority for their undeveloped site value but the site would already have been developed. So, are we saying that we are going to compensate the local authority for the site value of that site or location prior to the development or at the time when you know there is development? It is going to be a very complicated case because the corporation will take over the House or the property. For instance, there is a building and the local authority has defaulted in making repayments, and you are saying that when the corporation takes over that House or building, it will compensate the local authority for the undeveloped site value.

Mr. Temporary Deputy Speaker, Sir, unless we are also providing for the site value prior to the development - which has not been done - this is a proposal that is likely to run into some trouble when the local authorities from whom the corporation may be taking over such property, would insist on some value determined by themselves at a particular time, which value might not have been the same at the time of development. I, therefore, would wish to invite the Attorney-General to rethink that particular Clause and proposal and see how best he can improve on it.

Mr. Temporary Deputy Speaker, Sir, I fully support the proposed amendment to the Land Adjudication Act, Cap.250 of the Laws of Kenya because this is going to help very many people to get title deeds. As it is today, blocks of land are declared adjudication sections. Within those blocks, there are the usual village stuff like clans, families and others fighting over land. You may find that there is no dispute in 90 per cent of the block and there is no appeal within the Act to the Minister. But the entire block cannot get title deeds because a few families are still tussling. This is something that is welcome. It is an improvement and I would personally support it.

I know that the Committee on Administration of Justice and Legal Affairs has extensively looked at this and I also had an occasion to look at its report. Our own rules allow us. I had mentioned to the Attorney-General that I may wish to draw his attention to my intention to bring in an amendment to the Penal Code, specifically to Clause 170. I discussed it with the Attorney-General. I find that it is unnecessary in this modern day and age. In fact, a while ago, during Question Time, the Attorney-General was being harassed with questions about customary marriages. In the proposed amendments to the Marriage Act, what would you make of this kind of legal clause in our laws today? It states:-

"Any person who wilfully and by fraud causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have such sexual intercourse with him in that belief, is guilty of a felony and is liable to imprisonment for 10 years."

You can see that even Mr. Munyao is very scared and surprised that we still have this kind of law in our books. I have already discussed with the Attorney-General that because we are amending the Penal Code, it is important that we can also progressively amend some of those obnoxious provisions like this ones because it presupposes that women are of---

The Temporary Deputy Speaker (Mr. Poghio): Where is that? Is it something here or elsewhere?

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, it is in my discussion on the proposed amendments to the Penal Code. It presupposes that women are of some lesser brain than the men. This law is discriminative because it presupposes that it is only women who can be defrauded into believing. Where is the area for the young men who can equally be made to believe that they are married to certain women? I had already discussed this point but I wanted to draw the attention of the House to it because I had already proposed that I will introduce an amendment to the Penal Code and bring it up to date.

Mr. Temporary Deputy Speaker, Sir, as I conclude, the Bill in its entirety is good. On the question of interchanging the 16 per cent and 24 per cent in the Kenya Roads Board (KRB), I think, it is a matter that has been discussed and there is a wide bipartisan support. I think it will spur

development in the constituencies and in very many parts of this country.

With those few remarks, subject to the areas that I have pointed out that I will be proposing amendments at the Committee Stage, I beg to support.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Thank you, Mr. Temporary Deputy Speaker, Sir, for allowing me to also contribute to this Bill.

Mr. Temporary Deputy Speaker, Sir, I will start by dealing with the issue of the Evidence Act on page 1331. The HANSARD will bear me out that in 1996, the Attorney-General, as he was and as he is still today, brought here a similar Bill. We cautioned that the amendment he was proposing at that time to the Evidence Act was dangerous, unacceptable and was going to compromise the administration of justice. At that time, I said that confessions are a very delicate issue in the administration of criminal justice. Criminals and suspected criminals make confessions on the spur of the moment. A man is caught with what Americans call a smoking gun and instantaneously says: "I would not have done it if he did not do this", or something to that effect. He goes to the police and within that time, he makes a series of statements that can be assisted in the subsequent prosecution.

My learned friends, hon. Kajwang, the Attorney-General himself and hon. Muturi can tell you that 99 per cent of criminals who confess instantaneously, subsequently disown those confessions. The moment they disown the confessions in a criminal trial, we go through what we call a trial within a trial to ascertain whether the confession was properly taken and, in fact, whether it was free and so on and so forth. I forgot to mention my learned senior, hon. Marende.

Mr. Temporary Deputy Speaker, Sir, the moment you say that confessions will be recorded by magistrates and judges, you cause a terrible embarrassment to the Judiciary. The moment the criminal disowns the confession, whoever recorded it, automatically, becomes a witness. Are we going to drag judges and magistrates to court? They will be embarrassed in harrowing cross-examinations by criminals and their lawyers. I do not think we should do so. Confessions must be left in the realm of the first point of contact between suspected criminals and the administration of justice and these are the police.

Mr. Temporary Deputy Speaker, Sir, if a suspect is assaulted, courts have thrown out confessions. If a suspect is induced, courts have thrown out confessions and so on and so forth. By the Attorney-General trying to enlarge the section that was already bad anyway, I do not think he is doing anything better because he is inserting the following clause which reads:

"The Attorney-General shall, in consultation with the Law Society of Kenya (LSK), Kenya National Commission on Human Rights and other suitable bodies make rules governing the making of a confession in all instances where the confession is not made in court."

Mr. Temporary Deputy Speaker, Sir, first, there should be no issue of confessions being made in court unless an accused is put to his defence or pleads guilty and admits the offence. Secondly, the Attorney-General should not appoint any other bodies or people to record confessions. Let us leave it to the police force. In fact, we have been saying that with the proliferation of young lawyers all over the country, the Attorney-General and the other organs in administration of justice should endeavour to employ and attach a young or competent lawyer to every police station, so that they can advise the police on the rights of the accused, issues of human rights and so on and so forth. We do not want to end up with the Attorney-General appointing people who sometimes may not measure to the job.

Mr. Temporary Deputy Speaker, Sir, I would submit that the Evidence Act amendment proposed on page 1331 should be deleted. The Attorney-General should instead bring an amendment to remove any requirement for a confession to be made before a judge or a magistrate. Let confessions be made before the police. In the absence of the police, what we call justices of the

peace who are ordinary people bestowed with some titles and meaning very little.

Mr. Temporary Deputy Speaker, Sir, I want also to join my learned friend, hon. Muturi, the "young man", here on his comments on the Anti-Corruption and Economic Crimes Bill. Nobody in this country or, at least in this House, is not committed to fighting corruption. It is a cancer that we must all fight and resist. However, I know the Attorney-General, Mr. Amos Wako, very well. I know his thinking. I do not believe these clauses he is putting here are from himself.

(Applause)

I do not believe so, because I know him very well. I have known him since I was in high school. I cannot believe that the Attorney-General is bestowing authority and power to the Commission to place assets and properties of people under receivership, without due process. This is unacceptable. They can put peoples' properties under receivership, but let them go to court and secure court orders. Every Kenyan has the right of access to courts of law, protection of the court and organs of administration of justice, including fight for corruption must also operate within the expectations of the law. If you look at page 1349, further down, Paragraph 5 says as follows:-

"An application for stay of proceedings in a prosecution involving corruption or an economic crime shall not be entertained at any time during the hearing of the case".

Mr. Temporary Deputy Speaker, Sir, this, again, is not legally tenable, because if a person alleges a violation of his fundamental and constitutional rights, courts will, invariably, want to hear the allegation and determine it, as is provided in the Constitution. Section 84 of the Constitution of Kenya provides that any one who even fears that his rights or her rights are about to be breached can walk into court and demand protection. If we are saying that even as you cry foul that your rights are being breached, a case against you will go on regardless of your cry, that is not good law. So, I support what I have seen from the Muite Committee's Report that, that Clause be deleted.

One of our law professors at the university, who is none other than Justice Ringera himself, used to tell us that the test of a good law is, if you imagine that law in the hands of your worst enemy and you feel safe, then it is a good law. I want to urge the Attorney-General to re-consider this proposal, so that the provisions of Section 84 of the Constitution of Kenya, which deals with the protection of people's rights by giving one the right to go to court for protection when a breach is either being occasioned or is eminent, cannot be taken away.

Mr. Temporary Deputy Speaker, Sir, I want to look at page 1355. Again, this is dealing with the Commission. It says:—

"The Commission may, at any time before or after instituting civil proceedings or making an application under this Act, appoint a receiver for such property—

The appointment of a receiver under Subsection (1) above shall be in writing, signed by the Directorate or Assistant Director. The Commissioner may remove a receiver at any time and appoint a new receiver—"

Mr. Temporary Deputy Speaker, Sir, in this amendment, there is no provision to even protect the person whose property has been placed under receivership and abused. We know the history of receiverships in this country. There is not a single company that has ever been placed under receivership and has survived the plunder and theft by the receiver.

To give authority to the Commission to appoint someone to receive your property, and give it further authority to remove that person and appoint another one; give it authority to remove the third receiver and appoint another at will, without any recourse to a court of law, is not right. I think the Attorney-General should re-consider this Clause. We want to support the Commission in its fight against corruption, but it must be done within the provisions of the existing law, particularly the Constitution.

Mr. Temporary Deputy Speaker, Sir, Subclause (8) on page 1357 says:-

"For avoidance of doubt, a receiver may be appointed under this Section in respect of any kind of property, whether tangible or intangible, movable or immovable, and including buildings, income, debts, bank deposits, business concerns, stocks and other properties."

This means that even when it is suspected that the proceeds of corruption involve, maybe, the purchase of a vehicle, they can go and impound properties that even your father bequeathed to you. Is that good law? I think it is not, and we need to address this anomaly. Subclause (10) on the same page 1357 says: "A person aggrieved by the appointment of a receiver under this Section may request the Commission in writing to set aside the appointment in return for an offer of deposit of some reasonable security or he may apply to the High Court for setting aside or a variation of the appointment on that ground---."

It should be for the Commission to go to the High Court to seek authority to put property under receivership, and not for the aggrieved party to go to the High Court to remove them. I do not think that was the intention of the Attorney-General in drafting this provision.

Mr. Temporary Deputy Speaker, Sir, the very dangerous proposal is on the next page, page 1358, Part (b) which provides that a person whose property has been placed under receivership can go and show that he has in his possession evidence to show that on a balance of probability, he acquired the property otherwise than through crime or civil wrongs. Clearly, this is against the provisions of Section 77 of the Constitution, which provides that every person is presumed innocent until proved guilty, that no suspect is under duty to go and prove that he is innocent. It is those who aver and allege who must prove that the suspect is guilty. So, this proposal is against Section 77 of the Constitution, and I want to urge the Attorney-General to re-consider it.

On page 1360 there is the of execution of costs against the Commission, which Mr. Muturi has touched on. Costs follow the event, at any rate, in any proceedings. You cannot say that a person who has gone through a harrowing and embarrassing process in public, and eventually is found innocent cannot have redress against the Commission. In fact, under the law we set up the Commission, we said that the Commission is a body corporate with the capacity and ability to sue and be sued. Did we not say so? Why are we now giving it this exemption? It is not right. This is going to create recklessness and impunity. We should not pass any law that appears to underwrite any possibility of reckless behaviour. I want to urge the Attorney-General to reconsider this Clause.

There is another Clause I would want to touch on and sit down, because I can see my friend, Mr. Kajwang', wanting to stand up and speak. I have read through the Report of the Muite Committee. I fully agree with their proposals. Those proposals are founded on good law, I believe. Consultations, having been widely carried out, the Attorney-General should, at the Committee Stage, accede to most of those proposals.

Mr. Temporary Deputy Speaker, Sir, other amendments in the Bill are normal. For instance, the amendment seeking the extension of the District Roads Committees funds to the constituencies, rather than leaving them to the districts, and many other provisions, is laudable. However, I want to urge the House that human rights and administration of justice is about expanding rights, and not diminishing rights. So, we should not pass any law which diminishes people's rights.

With those few remarks, I beg to support to the extent that I have spoken.

Ms. Abdalla: Thank you, Mr. Temporary Deputy Speaker, Sir. On behalf of the Departmental Committee on Administration of Justice and Legal Affairs, I wish to elucidate the components within our Report.

This Bill was forwarded to our Committee on 3rd July, 2007, and we went through it thoroughly. While we were compiling the Report, we consulted with the Judicial Service

Commission, the Law Society of Kenya (LSK), the National Association of Auctioneers, the Kenya National Commission on Human Rights (KNCHR) and the United Civil Society Coalition for HIV/AIDS, Tuberculosis and Malaria. After compiling our Report, we also had a session with the Director of the Kenya Anti-Corruption Commission (KACC).

Mr. Temporary Deputy Speaker, Sir, it is the view of our Committee that the Statute Law (Miscellaneous Amendments) Bill is meant to carry amendments that cannot warrant the introduction of a substantive Bill on the subject. However, we have noticed in the last two years that these Bills have been used to sneak in things that the Executive feel would draw attention of Members of Parliament. So, they use the Statute Law (Miscellaneous Amendments) Bill to sneak in things or try to pass things that are not palatable to Kenyans.

Mr. Temporary Deputy Speaker, Sir, as a Committee, we feel that the KACC needs assistance to become more effective. However, we believe that the amendments that have been proposed need to be further looked into by KACC as they, mainly, do not comply with the Constitution. We, therefore, wish to propose substantive amendments to the recommendations made by the Attorney-General. We feel that, that would rather be brought here in the form of constitutional amendments so that he can deal with the issues that we have problems with.

One of the proposed amendments is to do away with personal service in the case of petitions. The amendment proposed by the Attorney-General purports to completely do away with personal service. We are proposing an additional amendment so that we do not completely do away with personal service, but add that if somebody wants to serve you and is unable to get you, they can also publish in the Kenya Gazette and the daily newspapers.

Mr. Temporary Deputy Speaker, Sir, on the Judicature Act, it is the opinion of the Committee that the proposed 70 judges will not be sufficient. Despite the fact that the President told us, when he was here last, that Kenya should have, at least, 200 judges within the very near future, we felt that it was important to propose further amendments by increasing the number of puisne judges and judges of the Court of Appeal from 70 to 75 and from 14 to 15 respectively.

Mr. Temporary Deputy Speaker, Sir, when consulting with the Judicial Service Commission, we were meant to understand that it does not advertise for the post of judges. There was an opaque method through which the names of people to be appointed judges came to them. So, in view of the fact that we had a mishap in the last swearing in of the last three judges, we are proposing an amendment that will ensure that the Judicial Service Commission advertises for vacancies in the Gazette Notice, conducts interviews and based on that advice, proposes names to the President rather than names appearing from opaque sources.

(Mr. Wako consulted with Ms. Karua)

Mr. Temporary Deputy Speaker, Sir, I wish the Attorney-General, who has been causing us delays with regard to moving this Bill, could listen to me considering that he has put us in waiting for all those weeks he was roaming around the world.

We have also proposed some amendments on the Advocates Act, but those have been covered by our colleagues. We have proposed amendments on the Limitation of Actions, which have been well-explained by Mr. Muturi where there was this recommendation to have the law applied retroactively. We have deleted that component.

Mr. Temporary Deputy Speaker, Sir, on the Penal Code, it was the view of our Committee that the enhanced sentences that were proposed by the Attorney-General did not take into account the fact that even existing laws have not been well-spelt out. So, we could not find sufficient justification for the enhanced sentences that he has proposed.

With regard to the Housing Act, it is proposed by the Attorney-General to increase the

number of notice days to 21 by the National Housing Corporation (NHC). Our Committee felt that given the liquidity problems that local authorities have, we should extend this to 90 days notice so that they do not lose their property in the 21 days as they try to solve liquidity problems and pay their debts.

Mr. Temporary Deputy Speaker, Sir, some of our colleagues have stood here and said that they will be opposing the amendments proposed by the Attorney-General in relation to devices. They are all implying to the issue of Alcohol Blow. It is the considered opinion of our Committee that despite the fact that many of those who oppose the Alcohol Blow do so with good intention thinking that the police would use them as some rent-collecting mechanism, we feel that the social good that the Alcohol Blow would give to our society, families and strengthening the family values, we should retain that amendment.

Mr. Temporary Deputy Speaker, Sir, we will be proposing further amendments to the Traffic Act in relation to the current driving licences. The current driving licences are very old and colonial in nature. They serve no purpose in terms of identifying persons who cause accidents.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghisio): Order, Members! Order, in the Front Bench!

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, in this day of ICT, we need to advance our identification documentation. We are proposing to introduce a new Section 37 that will make our driving licences contain microchips so that a motorist who commits an accident can be easily identified. So, there is a lot of justification as to why we should have the microchip-based driving licences. I will not go into that, but those who want the details can have a look at our Report.

Mr. Temporary Deputy Speaker, Sir, on Page 1340 of the Bill, the Attorney-General proposes to amend the Hire Purchase Act to increase the amount of hire purchase price to Kshs2 million. We feel that, that increase is not sufficient given the value of the Kenya shilling and we will be proposing further amendments to enhance this figure to Kshs4 million.

We held consultations with several auctioneer associations in the country---

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghisio): Order, Members! Consultations are getting louder in here and yet hon. Ms. Abdalla is reading the Committee's Report. Let us listen!

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, the "House of Lords" corner is still making noise!

The Temporary Deputy Speaker (Mr. Poghisio): Order! They are just consulting.

Ms. Abdalla: They are still consulting. They have not stopped consulting.

The Temporary Deputy Speaker (Mr. Poghisio): Let us consult in low tones!
Proceed!

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, with regard to the Auctioneers Act, we had a meeting with the two conflicting auctioneers associations. Having consulted with them, we have been made to understand that they have now agreed that only one association will exist. So, the amendment proposed by the Attorney-General is no longer valid. We shall be proposing to delete it so that there is no mushrooming of new auctioneers' bodies.

Mr. Temporary Deputy Speaker, Sir, the three hon. Members, who have spoken so far, elaborated why the proposals made by our Committee and the Attorney General would be

enhancing devolution of development to the constituencies. So, I need not give a rationale for that.

I was glad when the Mover of this Bill admitted that they will be supporting the deletion of the amendments on the Industrial Property Act, 2001. I think our people come first and whoever owns patents or licences should not hold our people at ransom. We should be able to give our citizens affordable medication.

Mr. Temporary Deputy Speaker, Sir, my only concern is that this amendment had been proposed in the 2006 Version of this Bill. If my friend, the Attorney-General who has just walked out, had read that report he should not have published the same.

Mr. Temporary Deputy Speaker, Sir, we are proposing extensive deletions of the proposals made by the Attorney-General on the Anti-Corruption and Economic Crimes Act. As I said in the beginning and as has been elaborated by Mr. Muturi and Mr. Wetangula, when we had a meeting with the Kenya Anti-Corruption Commission (KACC) commissioners, we felt that those provisions are not justified. Since they have already talked about the issue of receivership and making KACC police, I will only be focusing on the areas we had not spoken about.

Mr. Temporary Deputy Speaker, Sir, one of the amendments that are proposed by the KACC is that if the Advisory Board proposes the name of a new director of KACC and Parliament or anybody delays appointing the new director, the previous director would stay in office until the new one is put in place. Our experience when appointing Justice Ringera was that the Government deliberately delayed for nine months. So, in that case, there was no director. Imagine if the current director is not re-appointed and, the Government or whoever, decides to delay the appointment of a new director, that means the incumbent director will be given leeway to be in office for extra time as the Government sorts itself. So, we shall be proposing the deletion of that because we think it would provide room for mischief by the Government.

Mr. Temporary Deputy Speaker, Sir, we are also going to propose an amendment to deal with the problem that this House experienced with regard to the appointment of Dr. Rotich. We will be providing for an insertion of a clause in the First Schedule that states as follow:

"Provided that if the President refuses or fails to appoint the person concerned to the office in respect of which the approval was given within 14 days of that approval, the appointment shall be deemed to have been made upon expiry of that period".

Mr. Temporary Deputy Speaker, Sir, we know that Dr. Rotich is now very happy at the East African Community (EAC). However, we think that using Parliament to vet people and then refusing to appoint them means that the spirit of vetting has not been accepted or internalised by the current Executive.

Mr. Temporary Deputy Speaker, Sir, I would not need to go through the extensive amendments that we have proposed on the Public Officers Ethics Act because Mr. Muturi went too deeply into them.

Mr. Temporary Deputy Speaker, Sir, we will be proposing a small amendment, basically typographical, in the Sexual Offences Act, so that we can separate the offences of indecent acts with adults from that of an indecent act with children.

With those many remarks, I beg to support with the proposed amendments.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, I want to confine myself to the provisions that seek to amend the Anti-Corruption and Economic Crimes Act. I will then say something about hate speech.

May I start with the provision on Article 5 of the Anti-Corruption and Economic Crimes Act on page 1349 which says:-

"An application for stay of proceedings in a prosecution involving corruption or an economic crime shall not be entertained at any time during the hearing of the case".

Mr. Temporary Deputy Speaker, Sir, I know that the Director or Commission may feel

some frustration that they have tried to prosecute a few cases, but before they can proceed, the affected parties have gone to the High Court to seek interpretation of their rights under the Constitution that are threatened with infringement by such action. That feeling could even be legitimate yet you cannot make a law that deprives a citizen of this country of the right to go to a court or a tribunal to seek the protection of that person's human rights.

Mr. Temporary Deputy Speaker, Sir, essentially, what this piece of legislation is trying to introduce is an attempt to oust the jurisdiction of courts. The courts will not have the jurisdiction to listen to an application of a citizen who feels that by bringing him to court and charging him in a certain way, his constitutional right is infringed or threatened with infringement. If we oust the jurisdiction of the courts, then definitely this piece of amendment would be unconstitutional. The High Court has unlimited jurisdiction to listen to any pleading that is presented before it. It has what the law calls original jurisdiction to listen to any complaint or application or any prayer that a citizen may make before that court.

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

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

Mr. Temporary Deputy Speaker, Sir, to purport to make a law that would deprive a citizen of his or her rights to go to court and say that, "I feel that my fundamental human rights are about to or threatened with infringement", would be to take us to a communist State. We cannot just allow anything like this! In fact, Justice Ringera was my teacher. Of course, also the teacher for the Minister for Justice and Constitutional Affairs in the same class. He used to teach us evidence. Justice Ringera, then, used to teach us about human rights. When we fished him to be the head of the KACC, we went to the highest court of the land; a Member of the Court of Justice of the Republic of Kenya. We thought that with that kind of qualification, even having been a Solicitor-General---

The Temporary Deputy Speaker (Mr. Sungu): Order, Mr. Kajwang! I hope that you are not discussing a person. Please, stick to the issue.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, I am talking about the qualifications of the person we have in the person of Justice Ringera.

Mr. Temporary Deputy Speaker, Sir, so we felt that such a person who had the qualities of being a teacher of law, an advocate of the High Court, a Solicitor-General and Judge of the High Court and Court of Appeal, was eminently qualified to protect our rights!

Mr. Temporary Deputy Speaker, Sir, when he starts his job, he comes to this Parliament so as to be given power to make sure that we do not go to court to complain that our rights are likely to be infringed upon.

(Applause)

Mr. Temporary Deputy Speaker, Sir, I do not know what metamorphosis happened to my learned teacher. It cannot just happen! Of course, you can take me to court for any perceived offence, but if I think that you are infringing on my human or legal rights, I told you that I want to first of all determine whether my right is infringed in the Constitution and then you tell me, "you cannot do that, I must finish with you first", what are we talking about?

(Laughter)

Mr. Temporary Deputy Speaker, Sir, Kenya is a developed country in jurisprudence. We cannot allow that in this Parliament, maybe another one!

Mr. Temporary Deputy Speaker, Sir, let me go to the next one on page 1351, Section 23 of the same Act, Clause 4. When we went to head-hunt Justice Ringera, we went to the most qualified person in the land in law. I did not know that, in fact, Justice Ringera wanted to be a police officer. That is what he has now come to ask this Parliament to give him!

The Temporary Deputy Speaker (Mr. Sungu): Order, Mr. Kajwang! This is the Minister's Bill! It is not Justice Ringera's Bill!

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, I just presume, and I hope I am right, that Ministers do not just bring legislation. They must get some feedback or information from their officers, who then say: "I want to tighten here! There is a hole here I want to plug!"

(Applause)

I suppose that Justice Ringera must have advised the Minister: "In fact, I need some police powers. I need a police station!"

(Laughter)

You do not become a judge of the Court of Appeal to become a policeman! We would not need the Director of Kenya Anti-Corruption Commission (KACC), if the police were sufficient! We created that body because we thought the police could not do that job. We needed somebody who is more qualified. We paid him a little more than the policeman. When we pay a policeman Kshs15,000, we pay him Kshs2.5 million because he is eminently qualified! Then, he comes here and says the following:-

"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--- apply to the Director--- The powers shall go to him"

Hon. Members: Eh!

Mr. Kajwang: I thought we were preventing Justice Ringera from becoming a prosecutor!

The Minister for Justice and Constitutional Affairs (Ms. Karua): On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the hon. Member on the Floor is personalising debate. The KACC is not Justice Ringera. He is the head and he is just one of the officers. Is it in order for an hon. Member to personalise debate against an officer, instead of the office or the institution?

The Temporary Deputy Speaker (Mr. Sungu): You have made a point Madam Minister. I think the hon. Member is treading on a very thin line.

Mr. Kajwang: I have taken your point and---

The Temporary Deputy Speaker (Mr. Sungu): Order, Mr. Kajwang! You better limit yourself to the debate on the Floor of the House rather than discuss individuals. You need a substantive Motion to do that!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Yeah!

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, I am not discussing individuals. I am discussing an officer; a very powerful officer! That is an officer who, at one time, arrested a judge of the High Court! So, it is not a joke when I refer to him. When we were discussing him, this Parliament appointed him. We discussed him! I was standing here when we were discussing him.

The Temporary Deputy Speaker (Mr. Sungu): Order, Mr. Kajwang! What I want you to do is to focus on the Bill and the issues therein, rather than personalities. That is the view of the Chair! You better respect the Chair!

Mr. Kajwang: Thank you, Mr. Temporary Deputy Speaker, Sir. I accept your ruling! I only want to say that this Parliament can discuss the officers whom it has appointed.

But let me then proceed to the other item. This item has been canvassed by my friends, and I need not add much. But let me just add another angle to it. It is on the appointment of a receiver.

Mr. Temporary Deputy Speaker, Sir, if the Director or the Commission suspects - let me use the Commission! If the Commission suspects that you may have acquired your property illegally or corruptly--- If they just suspect, and that suspicion is not supposed to be tested by anybody, they just suspect! Of course, if you buy a new car or a new suit, they will suspect! Assuming they were to suspect if I buy a new watch, and the Commission then says that they will appoint a receiver, the first thing the receiver will do is to remove you from your property. He or she will remove you from your powers to control your property. The receiver will then receive your rent. He will then determine who will become your tenant and, of course, he will determine how much rent will be paid. He can, in fact, cause a lot of damage to your property!

An hon. Member: He can pocket your rent!

Mr. Kajwang: He can also pocket the rent and pay himself a salary. In fact, if he has many officers who are very expensive while running this property, he may pay his officers and himself so much money that he can claim some money from you, because he has been managing your property. This is what receivers do. Once they have caused you all that damage, because of suspicion of a group of individuals--- Assuming you show that your property was properly acquired; you got a loan and did business and so on, and after ten years the court says: "Fine, we agree that you properly acquired your property." They tell you that you cannot claim all the rent that went. Likewise, they will tell you that you cannot claim for all the suffering that you went through to defend yourself and acquire architects and lawyers to help you to win your case. Actually, they tell you: "We can destroy you and you will go nowhere!" That is what this Government wants to bring to law; that they can destroy and dismember you economically and you will have nowhere to go. Mr. Temporary Deputy Speaker, Sir, by that time you will have died of heart attack!

(Laughter)

The Temporary Deputy Speaker (Mr. Sungu): Order, Mr. Kajwang! Leave the Chair out of this! The Chair is very stable. Leave it out of the argument and just address the issues!

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Chair can also get a heart attack---

The Temporary Deputy Speaker (Mr. Sungu): Order, Mr. Angwenyi! The Chair has recognised Mr. Wetangula.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Speaker, Sir. I need your guidance. I thought the rules of debate here are that we address the Chair, and the hon. Kajwang was addressing the Chair.

(Applause)

The Temporary Deputy Speaker (Mr. Sungu): Order, Mr. Wetangula! You will not challenge the Chair. You very well know that when he talks about the Chair having a heart attack, that is now going beyond the limit!

Proceed, Mr. Kajwang!

(Laughter)

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, we have no intentions of challenging the authority of the Chair, but because we must address it, I must address you.

I want to address you this way: After so many years of suffering in the hands of a receiver on the suspicion of an individual and you have committed suicide, your son will now go to court and say: "Please, pay me, at least, the expenses that my father underwent just to defend himself before he died." The courts will tell him: "No, we cannot pay you. The law says that the Commission can appoint a receiver on suspicion, destroy your father and lead him to hang himself and will not pay you." That is the law that these professors want to bring here. I am talking about the Commission because it is headed by three or four directors who are thoroughly learned in Law. We looked at their curriculum vitae and made recommendations to the House, as a Committee of the House. They are thoroughly learned in Law. You cannot appoint a receiver to anybody's property - suspicion or no suspicion - without laying a foundation for it in court and persuading it that there is justification for your action, so that the court takes responsibility; that, in fact, we looked at your affidavit and evidence and found sufficient suspicion or reasons to--- How can you just suspect? What is the definition of suspicion?

Mr. Temporary Deputy Speaker, Sir, the Commission has bigger things to do in this country to help us instead of bringing some of these amendments which show that they are frustrated and competing with the Attorney-General over their powers. That is the problem. When we first thought of creating this Commission, some people wanted to make it a constitutional office to take over the powers of the Attorney-General. I was standing on the other side of Government at that time. I told the ladies and gentlemen that we cannot create another Attorney-General. We cannot have two parallel competing Attorney-Generals in a civilised country. That is not anywhere in the world and Kenya was not going to be an experiment. We limited the Commission, and still gave the Attorney-General the powers of prosecution. But with these crawling amendments and encroachments, the Commission still wants to become the Attorney-General of this country. We refuse!

(Applause)

If one of those Commissioners is lucky to become the Attorney-General, I am sure he or she will oppose this. But there is something wrong with our Attorney-General! He is supposed to be the advisor of the Government. He never even advises the Government that he has a lot of powers under Section 26. Such powers cannot be taken over by some officers of Government or Kenya Anti-Corruption Commission (KACC)! If we intended to give those powers to the Commission, we would have done that. But this Parliament said no. The Commission also needs to be checked. Otherwise, it can run amok and destroy this country.

Mr. Temporary Deputy Speaker, Sir, I was saying that the Attorney-General needs to do a few things, which are very serious. But he is not doing those things. He is not dealing with glaring corruption. Let me give this House an example. There is a bank in this country called Equity Bank. It is a huge bank by any standards. After only four years, it grew from a small thing to a multi-national bank. One of the directors of that bank wrote to the management and the Chairman of the bank and asked them a few questions. The director is called Ms. Wanjiku Mugane. She asked the following question: "There is corruption going on in our bank." She wrote a letter and said: "The shareholding in this bank is contrary to the rules of the Banking Act." There is one individual called Mr. James Mwangi, who owns more than five per cent as authorised---

The Temporary Deputy Speaker (Mr. Sungu): Order, Mr. Kajwang! Do you have

evidence of what you are talking about?

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, I have evidence. I am saying that a director of the bank wrote to the Chairman---

Mr. Weya: On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. Kajwang says that he has some evidence. Could he produce the evidence that he says he has?

Hon. Members: Evidence on what?

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, the little evidence I have is a letter by a director of the bank to the Chairman of the bank complaining about irregularities in the bank. Could I table it?

The Temporary Deputy Speaker (Mr. Sungu): Well, you can hand it over to the Clerk-at-the-Table!

(Mr. Kajwang laid the document on the Table)

Mr. Kajwang, I will only allow that letter to be tabled once we verify that it is proper!

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. That matter was raised in this House. It was contemptuously dismissed to be false and fake. Is it in order for the hon. Member to introduce matters which have been disposed off by this House? Why can he not stress on what he was talking about? We were supporting him? *Hii mambo ya wezi ya kuletwa vitu hapa sitaki!*

Mr. Kajwang: What is itching hon. Angwenyi!

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

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

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! Mr. Kajwang, just proceed!

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, I was trying to say that the---

Mr. Midiwo: On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Kajwang, do you need to be informed?

Mr. Kajwang: That is all right, Mr. Temporary Deputy Speaker, Sir!

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I want to respond because of the issue raised by Mr. Angwenyi.

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Midiwo, are you responding or informing?

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I am informing Mr. Kajwang that, in fact, what he is saying is contained in a KPMG audit report of April this year, which I would like to lay on the Table of this House!

(Mr. Midiwo laid the document on the Table)

(Applause)

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, could I proceed?

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! Mr. Midiwo, you cannot just table documents and give information any time that you want! Mr. Kajwang, you allowed for information to be given to you.

Mr. Kajwang: I did that, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Kajwang! You should be seated! I will not allow this information to be thrown on the Table the way you like it! Mr. Midiwo, you can inform him, but, please, do not proceed to do the---

Proceed, Mr. Kajwang!

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, I wanted to say that this is a very serious matter.

The Minister for Water and Irrigation (Mr. Katuku): On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. Angwenyi raised a very substantial issue about the letter which was laid on the Table by hon. Kajwang. He said that the letter had been laid on the Table earlier and the Chair ruled that it was a fake letter. I just want to seek your guidance on whether that is the same document which had been declared by the Chair to be fake.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, hon. Angwenyi has not even seen the letter I have laid on the Table.

The Temporary Deputy Speaker (Mr. Poghisio): Proceed!

Mr. Kajwang: Thank you, Mr. Temporary Deputy Speaker, Sir. This lady, a very senior lady called Wanjiku---

The Temporary Deputy Speaker (Mr. Poghisio): Order! Order! A document is deemed to be laid on the Table after it has been declared properly before the House by the Chair. Just because it has been placed on the Dispatch Box does not necessarily mean that it has been accepted. You will be told if it is properly before us.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir---

The Temporary Deputy Speaker (Mr. Poghisio): Order! In any case, I do not know if Jimmy Angwenyi and hon. Kajwang are talking about the same letter.

An hon. Member: Exactly!

The Temporary Deputy Speaker (Mr. Poghisio): We do not know that yet!
Proceed!

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, the information I have--- I am being gagged!

*(Messrs. Angwenyi and Kiunjuri
stood up in their places)*

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Temporary Deputy Speaker, Sir!

The Temporary Deputy Speaker (Mr. Poghisio): Even a point of order has to be raised in an orderly fashion. Order! Order! What is happening? What has happened all of a sudden? Order! Order! There is no quarrel in a debate. Anyone who wants to raise a point of order should do so in an orderly manner. You do not have to shout or be loud about it.

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

The Temporary Deputy Speaker (Mr. Poghisio): What is your point of order, Mr.

Angwenyi?

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, I would hate to see the Floor of this House being used to destroy Kenyans who engage in small businesses.

The Temporary Deputy Speaker (Mr. Poghisio): What is your point of order?

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, is it in order for this Parliament to turn itself into a witchhunting institution to destroy indigenous entrepreneurs? Is that what we are elected to do here?

The Temporary Deputy Speaker (Mr. Poghisio): What is your point of order?

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, that is not a point of order. It is a point of argument. Hon. Angwenyi can wait until---

The Temporary Deputy Speaker (Mr. Poghisio): I think there is a deliberate attempt to interrupt the hon. Member.

The Minister for Water and Irrigation (Mr. Katuku): On a point of order, Mr. Temporary Deputy Speaker, Sir. I rose on a point of order earlier on to seek your guidance on this matter. I am now asking for further guidance. Since the document which has been laid on the Table was alleged to be fake, is it in order for hon. Kajwang to continue referring to it without your ruling?

The Temporary Deputy Speaker (Mr. Poghisio): Proceed, Mr. Kajwang!

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, first of all, the letter I have was written and signed by the director of the bank. The letter is dated 6th June, 2006. The letter is properly signed and I have a right to speak on this letter.

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

The Temporary Deputy Speaker (Mr. Poghisio): Order! Order! If this continues, I will throw people out. There should be no competition for points of order! There can only be competition for people to contribute. If you want to raise on a point of order, do so in an orderly fashion. Why should there be a competition for points of order? Why are you not allowing the hon. Member to speak and give his opinion?

Mr. Keter: On a point of order, Mr. Temporary Deputy Speaker, Sir. Would I be in order if I called upon the Mover to reply because we are just repeating ourselves?

The Temporary Deputy Speaker (Mr. Poghisio): There is interest.

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Temporary Deputy Speaker, Sir. You ruled that the matter on the document laid on the Floor of this House, can only be discussed further, if it is substantiated and authenticity established. You can see the issue that has been raised on a member of the public who cannot defend himself in this House.

Mr. Kajwang brought up the matter and Mr. Weya was very quick to ask for substantiation and Mr. Midiwo at the same time laid another document. This issue is co-ordinated. Is it in order for Mr. Kajwang and his friends to come for only one purpose; to destroy an institution which is run by an individual who is indigenous and entrepreneurial? Your ruling was very clear that he should not continue with that debate.

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! Even if you have availed ways of trying to stop Mr. Kajwang from contributing, I am going to let him say his bit. If you want to say your bit, you will say it.

Proceed, Mr. Kajwang!

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, this letter was written by a director of

the bank, a Ms. Wanjiru Mugane and the letter is dated 6th June, 2006 and addressed to Mr. Peter Munga, the Chairman of Equity Bank Limited and signed by Wanjiku---

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Kajwang! On that point, I will tell you that I am still looking at this document and I have not ascertained whether it is properly before the House. So, proceed---

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, I am trying to say that there were allegations raised by the Director of the bank to the Chairman of the bank. The allegations are that the shareholding of the bank was contrary to the law and that there was insider lending which goes unreported and there was unsecured staff loans which raised depositors money---

The Temporary Deputy Speaker (Mr. Poghisio): Do you want to proceed on this particular letter or you can use other examples? I am looking at this letter with a view to telling you if it is acceptable for you to proceed with it, you cannot say anything on the basis of something that has not been properly laid.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, the Bill says that the Anti-Corruption Commission wants certain powers to prosecute people for other things. I am saying that there are serious matters especially in banking fraud, money laundering, cheating on shares, fixing share prices, insider lending and all those things that are illegal in this country. The Anti-Corruption Commission would do us a lot of good. The Central Bank of Kenya (CBK) is sitting pretty. They have been informed of this letter and even the Attorney-General knows but they are doing nothing to protect the citizens of this country who are putting billions of shillings in that bank.

Then a whole PeatMarwick, an international organization goes through these things and reports that there are big irregularities and CBK keeps quiet and yet the same CBK has closed certain banks on lesser allegations!

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member, who has been deregistered from practising law in this country in order to---

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

Mr. Kajwang: That is not new. Can I table this report?

An hon. Member: Table it!

*(Mr. Kajwang laid the document
on the Table)*

The Temporary Deputy Speaker (Mr. Poghisio): Order! I do not want this House to be used to discredit anybody. I do not even know why, you would like to discuss the people who have written or received this letter. If you want to give examples, why do you not do so without having to drag names or people who cannot defend themselves here? I have seen the letter and I am reading it. I need a lot more expertise to know if this letter, which has no letterhead; it is written on personal letter heads, is actually originating from the people who have signed it. To begin with, it is a photocopy. I do not want to get into matters that, by nature, will destroy anybody.

In the same vein, Mr. Angwenyi, I do not like that kind of attack, where you attack an hon. Member on the Floor just because his opinion differs from yours. Let us use this House to make good laws for our people. That is what we are here to do and to protect those who cannot defend themselves in the House. I do not want you to go that direction. If you have examples that you want to give, do so, but you do not necessarily have to use this as a basis of your argument, at the moment.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, the general feeling I have after reading that letter and after listening to many other people in the industry, especially of the Nairobi Stock Exchange (NSE), is that there is some behaviour where people who consider themselves a clan

behave as they wish. They fix prices of shares as they wish. They can, of course, mislead the public who then buy those shares. The Enron case in America, is a case in point where the public can be robbed.

The Temporary Deputy Speaker (Mr. Poghiso): Order, Mr. Kajwang! As I said, this is a special audit report for a bank which is out there.

Mr. Kajwang: Yes, Mr. Temporary Deputy Speaker, Sir. It is a public document. I wish to---

Mr. Sambu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Seeing that the matter is not moving us anywhere because we are discussing personalities on documents which have not been approved by the Speaker, could I be in order to request that the Chair calls upon the Mover to reply?

(Applause)

The Temporary Deputy Speaker (Mr. Poghiso): That is something that the House can decide.

(Question, that the Mover be called upon to reply, put and agreed to)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I beg to reply. I want to thank the hon. Members who have contributed and pointed out areas where we need to revisit the clauses. However, the reports of the Departmental Committee on Administration of Justice and Legal Affairs have made some very good suggestions, but others will need to be harmonised bearing in mind that we are making laws for posterity and not for ourselves and friends. We must look at those clauses and know that if we want to eradicate corruption in this country, we will have to have a measure of what is good for the country and not what is good for an individual member or client.

Mr. Temporary Deputy Speaker, Sir, this is an important piece of legislation that carries so many other legislations which are all needed to keep our country going. I know this House will scrutinise all those clauses at the Committee Stage. I know, using the collective wisdom, we shall provide the best laws possible for Kenyans.

With those remarks, I beg to move.

(Applause)

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghiso): Order! Hon. Members, it is time for interruption of business. The House therefore, stands adjourned until Tuesday, 28th August, 2007, at 2.30 p.m.

The House rose at 6.30 p.m.