

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 4th July, 2007

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

VISITING SPEAKER OF EALA IN SPEAKER'S ROW

Mr. Speaker: Order, hon. Members! Hon. Members, I wish, with special pleasure, to introduce to you and welcome the hon. Abdirahim Eithar Abdi, Speaker of the East African Legislative Assembly (EALA), who is on an official visit to the country. He is accompanied by Mr. Justin Bundi, the Clerk of the Assembly.

(Applause)

On my behalf and that of hon. Members, I would like to welcome them home and wish them a happy stay. I think hon. Members will realise that the hon. Speaker of the EALA is a Member of that Parliament representing Kenya. His Clerk, Mr. Justin Bundi, was the Personal Assistant to Mr. Speaker. So, I wish them a joyous stay in Kenya.

Thank you.

(Applause)

PAPER LAID

The following Paper was laid on the Table:-

Report of the Departmental Committee on Health, Housing, Labour and Social Welfare on the Tobacco Control Bill, 2007.

(By Mr. Oporo)

QUESTION BY PRIVATE NOTICE

EMPLOYMENT OF DRIVERS BY KRA

Mr. Bett: Mr. Speaker, Sir, I beg to ask the Minister for Finance the following Question by Private Notice.

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

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

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

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, I beg to reply.

(a) I confirm that the KRA employed 62 drivers between May and July 2007.

(b) I confirm that those employed are qualified and competent drivers.

(c) I hereby table copies of their driving licences and a full list of those who were employed.

*(Mr. Kimunya laid the documents
on the Table)*

Mr. Bett: Mr. Speaker, Sir, of concern to me is the safety on our roads in that a driver who drives a vehicle on the road must be competent and experienced. Out of these drivers, 30 of them had not been trained as drivers. They were trained recently as drivers through a crash programme by the Automobile Association (AA).

Could the Minister confirm or deny that part?

Mr. Kimunya: Mr. Speaker, Sir, I have just tabled a list of the 62 driving licences that the hon. Member requested. Secondly, just for the benefit of hon. Members, when KRA hires drivers, in addition to the oral interviews they undergo, they actually have to go for a thorough retesting and retraining by AA because we are concerned about the safety on our roads.

Mr. Speaker: Mr. Bett, have you seen this bulk of documents?

Mr. Bett: Mr. Speaker, Sir, I have not seen it! So, I am not familiar with it!

Mr. Speaker: I want to be fair to you. Do you want to have a look or we revisit the Question tomorrow?

Mr. Bett: Yes, Mr. Speaker, Sir. Thank you, Mr. Speaker, Sir.

Mr. Speaker: There you are!

(Question deferred)

Mr. Speaker: Next Order!

ORAL ANSWERS TO QUESTIONS

Question No.254

SUPPLY OF ELECTRICITY TO MARKETS IN KHWISERO

Mr. Arungah asked the Minister for Energy when Eshibinga, Eshirulo and Emalindi markets will be supplied with electricity.

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

Construction work is currently in progress for the supply of electricity to Emalindi, Eshibinga and Eshirulo markets and it is anticipated that the same will be completed by the end of August, 2007.

Mr. Arungah: Mr. Speaker, Sir, I wish to thank the Assistant Minister for that answer. However, if there was an award to be given to Ministries, I would strongly recommend the Ministry of Energy to get that award. I wish to confirm that work is in progress on the said projects, for which I am truly grateful. However, which other projects have been earmarked for funding in this year's Budget?

Mr. Kiunjuri: Mr. Speaker, Sir, we are considering to have the following projects implemented in 2007/2008: Munjiti Secondary School, Emusitsa Health Centre, Isabwali Polytechnic and Emunyanzia Health Centre among others.

Mr. Maore: On a point of order, Mr. Speaker, Sir. We have a tradition in the Commonwealth for "sweetheart Questions" where friendly hon. Members to the Government ask friendly Questions to help the Government to say what it has done. Have we reached there or we ask Questions to seek information and the truth?

Mr. Speaker: Can I get what you have said?

Mr. Maore: Mr. Speaker, Sir, I am saying that there is a tradition in the commonwealth for Back Benchers to ask the Frontbenchers what they call "sweetheart Questions" to be answered nicely. The hon. Member has said that he is happy because the job has been done. Then why was he asking the Question? Have we reached the stage of the "sweetheart Questions" or we ask Questions here to seek information?

Mr. Arungah: On a point of order, Mr. Speaker, Sir. This Question was filed about six months ago. At that time, this work had not started. Is it in order for the hon. Member to insinuate that I asked a Question whose answer I knew? He is talking about "sweethearts".

Mr. Speaker: Order! Hon. Members, there is nothing really repulsive about sweethearts. On the contrary, it is something to be aspired to. Every Government that I know, aspires to have some sweethearts in the Back Benches and, if possible, in the Opposition. If you are talking about the Commonwealth, we are securely in the Commonwealth and, therefore, you should commend the hon. Member for re-introducing a long forgotten tradition of the Commonwealth.

Mr. Cheboi: On a point of order, Mr. Speaker, Sir. There is a tendency by Ministers, when they are answering Questions, to indicate that some Questions are extraneous and, therefore, cannot be asked. So, they do not answer them. Since he has answered the Question properly, is it not in order for him to answer this other new Question, which the hon. Member has actually not asked?

Mr. Speaker: Order! If you do not understand the procedures, let me run the House. I think nothing is out of order there.

Mr. Sambu: Mr. Speaker, Sir, could the Assistant Minister further increase the sweetness by asking the Kenya Power and Lighting Company (KPLC), which is just a distributor, to reduce the rates payable before the consumers are connected to the transformer? Because, for a school, it is Kshs100,000 and for a rural home, it is Kshs32,000. Not many people can raise that amount of money. Even schools cannot raise that money.

Could he ask the KPLC to reduce the rates or ask that they be paid in instalments?

Mr. Kiunjuri: Mr. Speaker, Sir, I have already extended the sweetness to the hon. Member's constituency, where I am supposed to go and launch a few projects in the next two weeks.

Mr. Speaker: As a sweetener?

Mr. Kiunjuri: As a sweetener, Mr. Speaker, Sir. However, we are really considering lowering the rates. We have asked the KPLC to come up with a Paper which will enable us to stagger the payments for the customers to enable them to be connected easily. That is what they are

working on and I believe that, in the next few weeks, we shall be able to answer that question.

Eng. Okundi: Mr. Speaker, Sir, I would like to ask the Assistant Minister to extend the sweetness to my constituency. A number of contractors have been contracted to implement the rural electrification projects. However, several projects have been awarded to one contractor who seems to just be dropping poles and disappearing. Although there is a lot of sweetness in that other constituency, in my constituency and in many others, there is just a show that something is being done, but nothing is really being done.

Mr. Speaker, Sir, could the Assistant Minister promise that these projects will proceed with the same speed like projects in other areas?

Mr. Kiunjuri: Mr. Speaker, Sir, it is good for us to appreciate what is being done instead of permanently condemning issues. If you look at what the KPLC has done for the last three years, you will only commend it and pass the sweeteners also to the Ministry. We are really trying.

However, we are also concerned about the delays by some of the contractors. We are trying to push them, so that by the end of the year, especially before November, most of these projects are completed.

Mr. Arungah: Mr. Speaker, Sir, I have no further question. I would like to confirm that I am truly grateful. I hope that the projects which are earmarked by the Assistant Minister will, indeed, be implemented. I thank him for that.

Mr. Speaker: As they say: "The taste of the pudding is in the eating thereof". So, he has eaten the pudding. He knows the taste!

Question No.309

AMOUNT OF MONEY ALLOCATED FOR
CONSTRUCTION OF SIAYA LAW COURTS

Mr. Weya asked the Minister for Justice and Constitutional Affairs:-

- (a) how much money was allocated for the construction of the new Siaya Law Courts;
- (b) whether the tenders for construction have been awarded; and,
- (c) when the construction is likely to commence.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, the hon. Questioner did not state in what capacity.

Mr. Speaker, Sir, I beg to reply.

(a) In line with Mr. Maore's theory, the Judiciary provided Kshs4 million for the proposed extension of Siaya Law Courts in the Financial Year 2006/2007.

(b) The tenders for the construction of the Siaya Law Courts have not been awarded.

(c) The construction is scheduled to commence in November this year.

Mr. Weya: Mr. Speaker, Sir, I am surprised. I have written to this Ministry three times and that is why I am asking this Question. You have heard the Minister say that the money was for the Financial Year 2006/2007. The said financial year ended this June.

Has the Minister allocated some money to this project in this financial year, so that it can continue? The financial year has already ended and the tendering process is not going on. What is the Minister trying to say, unless she has allocated some money to the project during the current financial year? As far as I am concerned, the Kshs4 million was for the design of the Siaya Law Courts.

Ms. Karua: Mr. Speaker, Sir, that is incorrect. The money was for design and for commencing the transaction. When, around March this year, it was evident that the designs will not

be ready, Kshs3 million was re-allocated to other projects that had already commenced and Kshs1 million was left outstanding for design.

The designs are still not yet ready. That is between the District Works Office and the Provincial Works Office. They are trying to do a building that accommodates futuristic facilities. It is expected that this will be complete and tendering may be done before November. There will be money to start the construction, but not to finish it.

Mr. Mukiri: Mr. Speaker, Sir, I wish to commend the Ministry for the work it is doing in expanding infrastructure in courts all over the country. However, there is a big problem in the delay of court cases. Sometimes, some magistrates just adjourn cases without good reasons. This is done, sometimes, when witnesses have travelled from very far.

What is the Minister doing to ensure that there is some sort of control, so that justice is not delayed, especially by the magistrates?

Ms. Karua: Mr. Speaker, Sir, I hope that all hon. Members read newspapers. Over the weekend, and in today's newspaper, there is a supplement indicating that the Judiciary has launched a Court Users Committee and a Peer Review Committee Mechanism, all aimed at speeding the wheels of justice.

I would like to invite the hon. Member, being a court user in his capacity as a professional and also as a member of the public, and other members of the public, to approach the Court Users Committee in their areas, air these grievances and find solutions of getting the cases to move.

I will not agree with blaming only magistrates. Advocates, to which profession I and the hon. Member belong, are also a great cause of the delay and of clogging of the wheels of justice.

Mr. Midiwo: Mr. Speaker, Sir, first of all, let me commend the Ministry for trying to improve the courts, particularly Siaya and Kisumu Law Courts, which are heavily congested. However, expression of will to allocate money to improve a facility is not enough without proper supervision.

We, as leaders, have spoken about the tendering process in Siaya Law Courts for about nine months. There is controversy as to who should be awarded this tender. Everybody thinks that they are trying to award this contract to somebody who is not a local. The same thing is happening in Kisumu. I was in Kisumu yesterday and the biggest controversy is that the Kisumu Law Courts have been contracted to a company that is linked to Kirinyaga Construction Company.

Could the Minister assure this House that she is going to look into the general complaints of the staff in these law courts? In Siaya, the magistrates themselves are complaining. The good intention of the Government should be taken care of, so that the people do not feel short-changed at the end of the day.

Ms. Karua: Mr. Speaker, Sir, as a Government, we are looking into all those issues. We are trying to improve governance in the area of tendering. As you are aware, we have the new procurement law. But while we are doing that and liaising within the Government, because some of those issues belong to different Ministries, I would also like to ask the locals to remove the idea of local self interest which, coupled with interest from some of the stakeholders on our side, is complicating the equation. Let us work together and ensure that the court is built.

Mr. Weya: Mr. Speaker, Sir, in part (c) of the Minister's answer, she has said that construction is scheduled to commence in November, 2007. How much does the Ministry intend to put in the construction of these law courts? What expansion will be carried out in the law courts?

Ms. Karua: Mr. Speaker, Sir, we are talking of additional new buildings. The estimate of those buildings cannot be known until the designs are complete.

SHORTAGE OF SECONDARY SCHOOL
TEACHERS IN MOGOTIO CONSTITUENCY

Mr. Korir asked the Minister for Education:-

(a) whether he is aware that Cheberen, Sinende and Reuben Cheruiyot Secondary Schools are newly registered with students, but have no teachers except a headmaster; and,

(b) when teachers will be posted to these schools.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, on behalf of the Minister for Education, I beg to reply.

(a) I am aware that the three secondary schools, namely, Cheberen, Sinende and Reuben Cheruiyot, are provisionally registered by the Ministry. The schools have enrolments of 103, 53 and 130 students respectively. The current staffing position of the schools is as follows:-

Cheberen has three Teachers Service Commission (TSC) teachers, including the head teacher. Sinende has one teacher who is the head teacher. Reuben Cheruiyot has one TSC teacher.

(b) The Ministry will consider posting more teachers to the schools along with other schools throughout the country when recruitment of teachers, which is expected to take place later this year, is finalised.

Mr. Maore: On a point of order, Mr. Speaker, Sir. I hope you have noticed what is happening. His Excellency the Vice-President and Minister for Home Affairs is answering Questions on behalf of Ministers who are in the House and yet the issue of Assistant Ministers being on strike is not being addressed. Mrs. Mugo is supposed to be responding to Questions concerning the Ministry of Education. What is the problem?

Hon. Members: They are on strike!

Mr. Awori: Mr. Speaker, Sir, I really did not know there was any problem. The Question has been put and it has been answered. What is the problem?

Mr. Speaker: Order, hon. Members! I do not know what to do with this because His Excellency the Vice-President and Minister for Home Affairs knows a little more regarding this matter and I also do. I do not know whether we should leave it at that?

Hon. Members: *Toboa!*

The Assistant Minister for Education (Mrs. Mugo): Mr. Speaker, Sir, we will leave it at that for this time.

Mr. Speaker: Very well. Let me tell you the following. As you all know, the hon. Assistant Minister has been answering Questions in this House and doing so very well. If I were her teacher I would give her an "A". I happen to be your Speaker so you do get an automatic "A". So, I oblige her request.

The Assistant Minister for Education (Mrs. Mugo): Thank you, Mr. Speaker, Sir.

Mr. Korir: Mr. Speaker, Sir, I would request the Minister to at least send us a few teachers for the time being while we are waiting for the recruitment.

Mr. Speaker: Could you use the microphone please?

Mr. Korir: Mr. Speaker, Sir, I am sorry I have a problem with my voice.

Mr. Speaker: I can help. He is asking whether the Ministry could provide some more teachers pending the recruitment exercise.

Mr. Awori: Mr. Speaker, Sir, there are no teachers there because they are not available. We will recruit 11,000 teachers. Out of those 11,000 we will ensure that the schools in hon. Korir's constituency are provided with teachers.

Mr. Muriithi: Mr. Speaker, Sir, I am quite happy to see the Vice-President and Minister for Home Affairs answer the Question on behalf of an Assistant Minister and that is probably the

reason why Assistant Ministers are making noise saying that they have no work to do.

(Laughter)

Mr. Speaker: Order, Mr. Muriithi! First of all, hon. Members do not make noise. That remark is out of order. Even if that remark was in order, to the best of my recollection, no Assistant Minister has made noise in this House that they have no work, as a matter of fact. So, let us go factually as far as the House is concerned. But you are out of order.

Mr. Muriithi: It was a misunderstanding, Mr. Speaker, Sir. I thank the Vice-President and Minister for Home Affairs for responding very well to this Question. Looking at the whole country, the Government is registering and upgrading secondary schools without recruiting teachers. Indeed, that defeats the purpose. In my constituency we have 22 secondary schools and only one head teacher. What is the logic of having schools without teachers although we are told they will be recruited? When will they be recruited because we are approaching the end of the year?

Mr. Awori: Mr. Speaker, Sir, with the enthusiasm of the community starting secondary schools, many communities request that their schools be provisionally registered and they undertake to provide teachers pending the Ministry providing teachers.

Mr. Speaker: Last question, Mr. Korir!

Mr. Korir: Mr. Speaker, Sir, let me donate my time to Mr. Sambu!

Mr. Sambu: Mr. Speaker, Sir, yes, teachers are employed, but their distribution is quite unfair. Could the Minister and His Excellency the Vice-President and Minister for Home Affairs, for once, make sure that all the schools in every constituency have a fair and equitable distribution of teachers in all primary and secondary schools?

Mr. Awori: Yes, Mr. Speaker, Sir. We will ensure that. I would like to give that undertaking that the distribution of teachers will be done equitably throughout the country.

Question No.280

OWNERSHIP STATUS OF MURATA/MUGAMA
FARMERS CO-OPERATIVE SOCIETIES

Mr. Mbau asked the Minister for Co-operative Development and Marketing:-

(a) who owns the Murata Farmers SACCO Society and Mugama Farmers Co-operative Society and how the two societies are related; and,

(b) whether he is aware that Murata Farmers SACCO Society is demanding an outstanding loan arrears from coffee farmers in Murang'a South District and threatening to attach their properties although the farmers acquired the loans from Mugama Farmers Co-operative Society, where they are members and not Murata Farmers SACCO Society?

Mr. Speaker: Mr. Mbau, I am afraid the Minister for Co-operative Development and Marketing says he is not ready for this Question until Tuesday. What do I do?

Mr. Mbau: Tuesday is fine.

Mr. Speaker: The Question is deferred to Tuesday.

(Question deferred)

Question No.287

PURCHASE OF SECOND-HAND
AIRCRAFT FOR SECURITY FORCES

Mr. Speaker: Mr. J. Nyagah requested that he wishes to have this Question deferred to Tuesday. Is the Minister of State for Defence here? I am sorry about that. Is Tuesday okay for you?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Speaker, Sir, could the hon. Member have been held up by the problem facing the luminaries?

(Laughter)

Mr. Speaker: What has held back Mr. Njeru Ndwiga? Is it luminaries or darkness?

(Laughter)

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Speaker, Sir, they are jostling to get one presidential candidate.

Mr. Speaker: Hon. Members, light moments are accepted in the House, but they must be within context. I do not think we should trivialise everything, including some very sound reasons why, maybe, business is not being transacted. Let us be serious. Let us have a little time for light moments; let us laugh a little and let us be serious.

Next Question!

(Question deferred)
Question No.293

COMPENSATION FOR MAN KILLED
BY STRAY LEOPARD

Mr. Speaker: Mr. Kimeto also requested for deferment. Sorry, Mr. Minister, but I will defer this Question generally.

(Question deferred)

So, today, the Back Bench, by requesting for deferment of Questions, outweighs the Ministers by two to one!

Next Question!

Question No.313

PROMOTION OF A-LEVEL/DIPLOMA/GRADUATE
POLICE CONSTABLES TO INSPECTOR

Mr. Ojode asked the Minister for Administration and National Security:-

(a) how many A-Level, Diploma and University degree holders are in the police force in the rank of constable;

(b) why they have not been promoted to the rank of inspector; and,

(c) what action he is taking to compensate the affected officers for being underpaid.

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

(a) There are 175 A-Level, 376 diploma and 157 degree holders who are police constables.

(b) Promotion to the rank of inspector is competitive. The merits of individual candidates are considered by Headquarters Promotions and Selections Board in respect of promotions to and within the inspectorate and subordinate ranks. As and when vacancies arise, they will be given equal opportunities to compete against each other as per Cap.24 of Force Standing Orders Section 9(i)(ii).

(c) The matter of compensation does not, therefore, arise.

Mr. Ojode: Mr. Speaker, Sir, we have an anomaly in the recruitment into the police force. Recruits for specialist cadets, who are degree holders, diploma holders and A-Levels go to the scale of inspectors directly. There is another recruitment of constables whereby degree holders, diploma holders and A-Level holders are not given the job scale of inspectors. That means that if you are recruited as a constable and you are a degree holder you will still earn a salary of Kshs9,600 per month. If you are recruited as a specialist cadet and you are a degree holder, you will earn Kshs28,000 per month. Why should we have this anomaly? Could the Assistant Minister explain the disparity?

Mr. Munya: Mr. Speaker, Sir, I have already explained that the rank of an inspector in the police force has a ceiling. There is a particular number of officers that we are supposed to have and it cannot be exceeded. Those positions are filled according to the existing vacancies.

Secondly, graduates who are recruited as constables start at Job Group "J" whereas the other constables start at Job Group "F". So they already start at a higher level than the other ordinary constables and, therefore, earn higher salaries than the other ordinary constables. Besides, the police force advertises vacancies of cadets and constables and it is up to the graduates to decide which position they want to apply for.

Once they apply for the position of constable, they are to follow the normal procedures of promotion. You cannot be promoted just because you have a degree when you joined the force. You will be looked at; as to whether you are capable of becoming a police inspector. You cannot just be promoted because you have got a degree. In any case when you applied for the job you should have gone for cadet posts which were also advertised.

Mr. J.M. Mutiso: Mr. Speaker, Sir, I beg to differ with the Assistant Minister on this issue touching on promotions in the police force because some officers who were recruited as constables have stagnated in one scale for more than 12 years. Besides, the method of promoting one on merit which the Assistant Minister is insisting on is not followed because the Police Promotions Board also considers the tribal balance of the officers.

Could the Assistant Minister confirm to this House whether also the tribal balance is used to the disadvantage of some police officers?

Mr. Speaker: What is a tribal balance?

Mr. J.M. Mutiso: He knows!

Mr. Speaker: What is a tribal balance? You know, a balance, as I understand, is if you have a whole and you take away a part of it, you then have the balance.

Mr. J.M. Mutiso: Mr. Speaker, Sir, when we talk about "tribal balance", we are talking about ethnic equity.

Mr. Speaker: Okay, I see! So, we get it tribal? Would you like to be tribal, Mr. Assistant Minister?

(Laughter)

Mr. Munya: Mr. Speaker, Sir, I have already read the Standing Orders that govern promotions in the police force and there is nowhere ethnic balance is mentioned. Even as much as I respect the information he is giving me, there is nowhere in the Standing Order that I have read where ethnic balance is a criteria for promotion. The criteria for promotion is the capability of the individual in accordance with individual merit.

Mr. Speaker: Prof. Oniang'o!

Prof. Oniang'o: Mr. Speaker, Sir, I just learnt this morning that we have about 40,000 Kenyans in the police force living in very substandard conditions. Given the rising insecurity and sophistication of crime, could the Assistant Minister tell us why we do not have a police force that has a good scheme of service that recognises education and fits within the rest of the public service sector?

Mr. Munya: Mr. Speaker, Sir, I have already said that the police force recognises education. I said that the graduates who are employed as constables start at Job Group "J" like other graduates in the Public Service. So, education is recognised there. However, there are other requirements for promotion that are looked into and not the mere fact that you are a university graduate.

Mr. Ojode: Mr. Speaker, Sir, you have heard what the Assistant Minister has said. It is true that promotions in the police force are given in the following manner:-

One, you must be somebody who comes from the Minister's place. Secondly, you must be 55 years old. If that is not true, then why is it that graduates joining the police force as constables start at Job Group "J", which earns them a salary of only Kshs11,000 and the graduates who join as cadet officers earn Kshs28,000 and above? Could he, please, explain that to the House so that we know? Why?

Mr. Munya: Mr. Speaker, Sir, I have read the criteria for promotion and there is nowhere I have said that one of the criteria is where a Minister comes from. So, really, I do not think I have anything to explain, but I appreciate the Questioner's elaborate rhetoric which is not founded on any facts.

Mr. Ojode: On a point of order, Mr. Speaker, Sir. The Assistant Minister is misleading the House! In fact, I am going to file a separate Question giving us the names of police officers who have so far been promoted and he will be ashamed! My question is very simple. Why is it that those police officers who are graduates and diploma holders are recruited as constables while those who apply for cadet officers and are equally graduates are promoted to the scale of, say, Kshs28,000 per month? Why can he not explain that to us?

Mr. Speaker: Do I understand what is going on really?

Mr. Ojode: You do not, Mr. Speaker, Sir! Let the Assistant Minister explain to us so that we can understand.

(Laughter)

Mr. Speaker: Order! Can I tell you, Mr. Orwa Ojode, if I cannot, it is beyond your comprehension, and I must understand it!

(Laughter)

What are these two levels of the same qualifications? Do they exist or is it an allegation? Do you know anything about that, Mr. Assistant Minister?

Mr. Munya: Mr. Speaker, Sir, from the beginning, I explained that when the police force advertises for jobs, it advertises for constables and cadet officers. Now, you choose to apply for whichever job you want.

Mr. Speaker, Sir, if you are a graduate and you decide to apply for the job of a constable, you get hired as a constable. So, that is not the problem of the force. I do not know what Mr. Ojode is quarrelling with. When graduates decide to be constables, Mr. Orwa Ojode cannot stop them because they have decided to apply to become constables and they become constables.

Mr. Speaker: Mr. Munya, do you read the Bible?

Mr. Munya: Yes, Mr. Speaker, Sir.

Mr. Speaker: The good word has an answer for you. It says: "You reap what you sow", or, *kile unapanda ndicho unavuna. Ukitaka kuwa askari, unakuwa askari. Ukitaka kuwa cadet, unakuwa cadet. Unaona nimefahamu kuliko wewe, Bwana?*

(Laughter)

Mr. Munya: Thank you, Mr. Speaker, Sir.

Mr. Speaker: *Ahsante.*

Next Question! The Member for Kajiado Central!

Question No.375

DISPLACEMENT OF LAND ALLOTTEES IN
OLCHURRAI SETTLEMENT SCHEME

Maj-Gen. Nkaisserry asked the Minister for Lands:-

(a) if he is aware that the people who were allocated plots at Olchurrai Settlement Scheme in Gilgil Division, Naivasha District, have been displaced by outsiders;

(b) how many people have been displaced and why;

(c) if he could state the names of the people who displaced them and where they were from; and,

(d) where the displaced people will be resettled since they have nowhere else to live.

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

(a) I am not aware that the people who were allocated plots in Olchurrai Settlement Scheme which was established in 2005 in Gilgil Division, Naivasha District, have been displaced by outsiders.

(b) I am further not aware of any number of displaced persons in Olchurrai Settlement Scheme.

(c) I have no names of people alleged to have displaced others nor areas they come from.

(d) There are no displacements in Olchurrai Settlement Scheme.

Maj-Gen. Nkaisserry: Mr. Speaker, Sir, you can see this Assistant Minister is intentionally misleading the House and the country at large. In part (a) of his answer, he said that he is not aware. In parts (b) and (c), he also said that he is not aware. Now, this Assistant Minister earns Kshs100,000 extra to work for the people of Kenya. This Assistant Minister, if I am aware, is one of those who are on a go-slow in this Government. If that is the case, could I request that we defer this Question until the substantive Minister is present? I cannot accept this answer!

(Mr. Tarus stood up in his place)

Mr. Speaker: What are you standing there for? Do you have any response?

Mr. Kamama: Mr. Speaker, Sir, first of all, I want to inform my good friend, hon. Maj-Gen. Nkaisserry, that I am not misleading the country. Secondly, I also want to inform him that I am paid to make him aware of the actual situation on the ground, and especially in as far as this Question is concerned.

Mr. Speaker, Sir, I would like to give a background of what is happening in Olchurrai Settlement Scheme. This Scheme comprises of three parcels of land, that is, LR.No.10242, LR.No.8252/2 and LR.No.9581 totalling 25,702 acres. This land was donated by the Agricultural Development Corporation (ADC) to the Settlement Fund Trustee (SFT). So far, phase one of this scheme has actually been planned, surveyed and beneficiaries have been verified. We have a total of about 3,008 families. Out of this, 1,223 are going to get their plots. Already, their names have been confirmed by a committee of seven villages. I wish to table the list of names of the members of the committee.

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

Lastly, Mr. Speaker, Sir---

Mr. Speaker: What about the beneficiaries? Can you also table that list? There is no point of tabling the names of the committee members and you do not table those of the beneficiaries.

Mr. Kamama: Mr. Speaker, Sir, we have not concluded this matter, because there is Court Case No.187/2000, filed at Nakuru High Court---

Mr. Speaker: Order! Order, Mr. Assistant Minister! I insist that the business of this House is for the benefit and in the interest of the Kenyan people. You know, we are not doing it for fun. We are doing it for the benefit and in the interests of the people of Kenya. If you cannot say who the beneficiaries are, then why tell us who the committee members are? What do they committee for, if they do not committee for some people? If you do not have the information, say so!

Mr. Kamama: Mr. Speaker, Sir, first, I want to say that the committee members are actually not beneficiaries. They are there to assist the Government, or the Ministry, in getting the list of the beneficiaries. I want to confirm to the House that, if the hon. Member wants me to table the names of the beneficiaries, I can do so at a later date. I do not have that information now.

Hon. Members: Defer the Question!

Mr. Speaker: Mr. Kamama, you can help, please. As I said---

Mr. Kamama: Mr. Speaker, Sir, I can table that list on Tuesday, next week.

Mr. Speaker: Please, I want everybody to understand this, and hon. Members on the Front Bench and the Bank Benches on both the Government and the Opposition sides must understand the position from which the Chair comes. The position of the Chair is the following: When we address matters in this Assembly, it is for and on behalf of the Kenyan people. I have said it in the past, that, those Kenyan people are alive. They actually exist. They are not fictitious. They listen to the radio, because they believe in Parliament. In fact, they listen to the radio almost religiously. They are fixated. They want to hear what their representatives have said. They want to hear what their Government is saying. Therefore, what I am saying is, when we talk about a problem affecting the people, let it be real because the people listen, and they have fears and aspirations. So, it is on that ground that I agree with the Assistant Minister. Let me give him the opportunity, so that he will come and address the matter conclusively.

Mr. Cheboi: On a point of order, Mr. Speaker, Sir. I think it is wrong for the Assistant

Minister to mislead this House. First, he has indicated, in his answer, that the plots were given out in 2005, which is factually wrong. I come from that district. The plots and the settlement scheme were done between 1998 and 2000. So, it means that the Minister is proceeding from the wrong premise. Even though he is going to table the list of the beneficiaries on Tuesday, he should come with facts which are correct. In 2005, there was no settlement in that area, unless it was the issue of removing the beneficiaries from that particular area.

Mr. Speaker: Hon. Members, we will not deal with a Question that is being deferred. That is unprocedural. So, I will defer the Question, and not anticipate what the Assistant Minister is going to say. He is probably coming to disappoint you on your facts. So, give him the opportunity.

Maj-Gen. Nkaiserry: On a point of order, Mr. Speaker, Sir. May I, therefore, request that on Tuesday the Assistant Minister comes with an elaborate answer to satisfy the people of Olchurrai?

Mr. Speaker: Now, between your voice and mine, Maj-Gen. Nkaiserry, which one is stronger? Is it yours or mine?

Maj-Gen. Nkaiserry: I am most obliged, Mr. Speaker, Sir.

Mr. Speaker: Very well.

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

Mr. Speaker: Do you have anything to add, Mr. Kamama? I hope we are not going back to it!

Mr. Kamama: Mr. Speaker, Sir, I am not going back to it. I just want to confirm that I will have the list although the hon. Member did not actually ask about the beneficiaries. He was talking about the people who were displaced, and I said that nobody was displaced. So, I want to confirm that I will bring that information. The hon. Member should also advise me on the difference between Olchurrai and Oljorai. On that one, he must also give me information because there is a lot of mix-up.

Mr. Speaker: Mr. Kamama, I can help you. It is the name of the same plan spelt differently, according to how one pronounces it. I do not think Maj-Gen. Nkaiserry wrote those names. It is the same place.

Very well. The Question is deferred to Tuesday, next week!

(Question deferred)

Next Question by Prof. Julia Ojiambo!

Question No.380

NON-PAYMENT OF DUES TO WIDOW
OF LIVINGSTONE ONADI

Mr. Speaker: Is Prof. Ojiambo not here? Question dropped!

(Question dropped)

The Assistant Minister for Transport (Mr. Githae): On a point of order, Mr. Speaker, Sir. I just want to be put on record that the Ministry was ready to reply. When the Minister happens not to be present to answer a Question, he should not always be blamed because even hon. Members fail to turn up to ask Questions sometimes.

Thank you.

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

Mr. Speaker: What is it, Mr. Mukiri?

Mr. Mukiri: Mr. Speaker, Sir, I rise on a point of order in respect of the Question that was before the House. This morning, there was a similar Question on retirees and pensioners. You realise that such Questions come to this House every day. We are being turned into debt collectors for pensioners and retirees. Could the Government find a way as to how hon. Members can deal with the Government in respect of retirees, so that we do not keep on asking these Questions in Parliament? We are taking too much time on these matters, despite the fact that we even passed a law here to deal with these specific issues. I believe that, through the Office of the Leader of Government Business, we can find a way of dealing with these matters.

Mr. Speaker: Exactly, Mr. Mukiri! This House passed a law requiring certain actions to be taken even before the employees have retired. There is a specific time-frame within which they should be paid. If I understand that law correctly, it provides that if one's pension is not ready, one should continue earning until it comes.

Mr. Kimunya, what happened to that law, and why have you ignored it?

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, we have not ignored the law. I believe, we have given some of the problems that we have in terms of following up on people who have retired. Some of them have not provided any information. Some of the information has not been complete. It is only when the full package of information is available that pensions are processed.

So, there is a dual responsibility on the pensioners and the Pensions Department, to ensure that everything is done, so that payment can be facilitated.

Mr. Speaker: Mr. Kimunya, I think I was in the Chair when the Bill was debated and passed in this Chamber. Sometimes there is something called institutional memory, and I happen to be the institution's memory in this regard, for as long as the Chair remains. So, if I remember correctly, that amendment to the law required of employers, particularly Government Departments, to take an audit of people who are supposed to be retiring and prepare all the documentation before the employees leave office. That information should be available in every Department. However, I can understand Mr. Kimunya's problem. Sometimes Ministers do not get as much help as they should from their so-called "juniors", who are also called "their bosses", the civil servants. I wish you well!

Mr. Raila: On a point of order, Mr. Speaker, Sir. The Minister is taking the issue which has been raised very lightly. He is part of the Government and the head of the Ministry!

Mr. Speaker: Exactly!

Mr. Raila: The Permanent Secretary is supposed to be his subordinate. Therefore, he is the one who is responsible to this House and not the Permanent Secretary.

Mr. Speaker, Sir, you need to be more and more harsher!

Mr. Speaker: Mr. Raila, you want me to "fry" him?

Mr. Raila: Yes, Mr. Speaker, Sir!

Mr. Speaker: All right! Mr. Kimunya I am in the "frying" mood. So, could you make sure that I do not "fry" you! Give us a good explanation!

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, I believe we are debating a Question that has not even been asked. The Ministry of Transport was to respond to the Question, but there was no Questioner. All I was clarifying was the delay in paying the pension.

Mr. Speaker: Order! We will finish this! Actually, this issue was raised as a matter of

policy. In fact, it is a follow-up to an Act of Parliament which we passed. Mr. Mukiri said that, a long time ago, we passed a law to stop those kinds of problems so that when people retire, they get their pensions as a matter of routine, as they should. In fact, that is their right. What happened is that, in spite of the law, we are still asking these Questions? The natural person to answer that is you, the Minister for Finance! It is to you that all pensioners must look upon to get their pensions!

I want to remind this House a maxim of equity. "Equity" means a branch of law dealing with fairness, as the hon. Member for Ndia Constituency will attest. Equity states that "equity cannot act in vain". In the same breath, I will state from the Chair, that the House cannot act in vain. The House cannot and should never pass a law to be disregarded. That is the point!

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

Mr. Speaker: Order, Mr. Sambu! Could you allow the Minister to comment on that?

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, I can confirm that we are not in any way disregarding the law as it was passed. I explained at an early opportunity that, in fact, the problem has not been with the people who are retiring now, because we are able to collect all that information before they retire. But for the people who retired earlier--- In almost all those Questions that are coming up, we are talking about issues dating back to the 1990s, before the passage of that law. But with regard to all the people who are retiring now, at least, we do not have that problem.

Mr. Speaker: That makes some sense! Does it not?

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

Mr. Speaker: What is it? Does it have to do with that explanation?

Mr. Sambu: Mr. Speaker, Sir, while we contemplate how they will implement the new law, could the Minister tell the officers in the Pensions Department to make the files of those old retirees available? If we were to bring Questions about pensioners who are not getting their money because their files are lost, this House would be flooded with Questions! Could they make their files available because all them have disappeared?

Mr. Speaker: Mr. Kimunya, I think you have heard that!

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

Mr. Speaker: I think we are done with that Question. Mr. Mwanicha, what is it?

Mr. Mwanicha: Mr. Speaker, Sir, this Question regarding the pension of somebody has been dropped. I have no problem with that. When a Question by an hon. Member from an area is dropped--- As you are aware, sometimes five of us come together and request an hon. Member to ask a Question on our behalf on matters regarding electricity, health and so on. When such a Question, which is of national importance, is dropped because that particular hon. Member is not in, the rest of us who had an interest in that matter are disadvantaged. I would like to seek your guidance. I am not an expert on Standing Orders, but we need some clarity so that when a Question of national importance is asked in the House and the Questioner is not in, we get an answer to that Question. We lose when it is dropped!

Mr. Speaker: Very well! Let me give you a very simple advice. When you sit together to make a choice, be sure you have made the right choice!

(Laughter)

POINTS OF ORDER

INVASION OF NORTH AND WEST POKOT DISTRICTS BY UPDF SOLDIERS

Mr. Poghisio: Mr. Speaker, Sir, I stand to seek a Ministerial Statement from the Minister

of State for Defence. In the last few days, the people of Pokot North and West Pokot districts have experienced attacks from the Uganda Peoples' Defence Force (UPDF), purportedly pursuing pastoralists who are crossing with their livestock in an area called Arale Division, particularly in a place called Nasal, and also in areas around Kanyarkwat and Katikomor in West Pokot District. Several Kenyans have been killed by the UPDF.

Mr. Speaker, Sir, a good number of those people have been killed by mortars thrown from across the border and helicopter gunships. That is not the first time that this has happened. It has happened before and I have even brought that matter to the Floor of the House. I want to seek the following clarifications from the Minister:-

(i) What immediate remedial action has the Minister taken since he got news of that attack?

(ii) Why is that becoming a perennial problem? Year in, year out, the Pokots are being attacked by an army from another country.

(iii) What action will the Minister take to recover the livestock that has been taken into another country?

(iv) What compensation can the people expect in terms of loss of lives and livestock?

(v) What security guarantee will the Minister give, so that an army from a neighbouring country does not attack our people inside our own country?

Mr. Speaker: Is there any Minister to respond to that?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Speaker, Sir, I undertake to issue the Ministerial Statement on Tuesday, next week. I thought that the Ministerial Statement should have been directed to the Minister of State for Administration and National Security. Nevertheless, we shall give the Ministerial Statement.

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

Mr. Speaker: What is it?

Mr. Sambu: Mr. Speaker, Sir, while the Assistant Minister contemplates what to do, could he, in the meantime, send helicopters to hit helicopters from the other country?

Mr. Speaker: Mr. Sambu, are you declaring a state of war?

Mr. Sambu: Yes, Mr. Speaker, Sir!

Mr. Speaker: Order, Mr. Sambu! That is totally out of order! You cannot declare a state of war. You know you have no constitutional right to do so, neither does the Minister have that power! That is a complicated issue. It is not that simple. Let us tread very carefully!

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

Mr. Speaker: Will you sit down? Grave matters must be considered in a manner that they deserve. Let us not trivialise even very grave issues. They can have very severe consequences.

Yes, Mr. Poghio!

Mr. Poghio: Mr. Speaker, Sir, this is just a matter of clarity; the Assistant Minister does not think this issue is in his docket. He says he might refer it to the Minister of State for Administration and National Security.

However, this is external aggression. Therefore, it is either going to be dealt with by his Ministry or the Ministry of Foreign Affairs. I do not want this to get lost in the process.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Speaker, Sir, I have committed myself to issue the Statement next Tuesday. Therefore, he should not worry.

DELAYED MINISTERIAL STATEMENT
ON SECURITY OF KENYAN MPS
ATTENDING SESSIONS OF
PAN AFRICAN PARLIAMENT

Mr. M'Mukindia: On a point of order, Mr. Speaker, Sir. I am rising for the third time to request the Minister for Foreign Affairs to issue a Statement regarding the security of hon. Members of Parliament who are Members of the Pan African Parliament in South Africa.

Mr. Speaker: Mr. Wetangula, you are here now!

An hon. Member: The Minister is here!

Mr. Speaker: Is he?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, this matter came up about three weeks ago. I, however, think there has been some mis-communication from the office of the Clerk of the National Assembly.

Mr. Speaker, Sir, our Ministry has not received any communication to the effect that the Statement is required. However, this afternoon, when I arrived from Ghana, I called my officers and talked to them. They are getting in touch with the Clerk of the National Assembly's office to pick a copy of the HANSARD and prepare a Statement which we can issue either tomorrow or on Tuesday. We regret the delay. It is not entirely our mistake.

Mr. Speaker: For the guidance of the House and the hon. Assistant Minister; when a matter is raised on the Floor of the House, it is not the business of the Clerk of the National Assembly to communicate or represent a Ministry. It is the business of the Ministry to be represented in the House and to find out, for itself, what transpired in the House.

(Applause)

So, it is your problem. You must take interest in matters of your docket in Parliament! Be present! If you are absent, get somebody to communicate to you! That applies to every other Ministry. Otherwise, it would be a difficult job for us to hold brief for every Ministry. We would not! We are not an extension of the Executive!

Thank you!

(Applause)

Next Order!

BILLS

First Readings

THE FINANCE BILL

THE INTERNAL LOANS
(AMENDMENT) BILL

THE LICENSING LAWS
(REPEAL AND AMENDMENT) BILL

THE KENYA COMMUNICATIONS
(AMENDMENT) BILL

(Order for First Readings read -

*Read the First Time and ordered
to be referred to the relevant
Departmental Committees)*

**COMMITTEE OF THE
WHOLE HOUSE**

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Mr. Khamasi) took the Chair]
THE KENYA ROADS BILL*

The Temporary Deputy Chairman (Mr. Khamasi): Hon. Members, we are now in the Committee of the whole House to consider the Kenya Roads Bill.

(Clauses 2, 3 and 4 agreed to)

*(Messrs. Nyachae and Moi moved
towards the Dispatch Box)*

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Minister, are you moving an amendment?

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, it is between him and me. You can decide who moves the amendment.

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Gideon Moi, please, proceed! An amendment can be moved by either the Chairman of the Departmental Committee or the Minister!

Clause 5

Mr. Moi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 5 of the Bill be amended in subclause (1) by deleting subparagraph (iv) of paragraph (f) and substituting therefor the following new subparagraph:-
(iv) surveying;

(Question of amendment proposed)

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

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

(Clause 5 as amended agreed to)

(Clauses 6 and 7 agreed to)

Clause 8

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

THAT, Clause 8 of the Bill be amended in Subclause (1) -

(a) by deleting (f);

(b) in paragraph (g)-

(i) by deleting the word "four" and substituting thereof the word "five";

(ii) by deleting the sub paragraph (ii) and substituting therefor the following new paragraph-

(ii) surveying

(iii) by adding the following new sub paragraph at the end thereof-

(iv) farming.

(Question of the amendment proposed)

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

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

(Clause 8 as amended agreed to)

(Clauses 9 and 10 agreed to)

Clause 11

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

THAT, Clause 11 of the Bill be amended in Subclause (1) by deleting paragraph (f) and substituting therefor the following new paragraph -

(f) a member of an association for the time being recognised by the Government as representing the interests of local authorities.

*(Question of the amendment
proposed)*

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

(Question, that the words to be

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

*(Clause 11 as amended
agreed to)*

(Clause 12 agreed to)

(Mr. Moi stood up in his place)

The Temporary Deputy Chairman (Mr. Khamasi): Order, Mr. Moi! I need to, first of all, propose it!

Mr. Ojode: Mr. Temporary Deputy Chairman, Sir---

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

Clause 13

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

THAT, Clause 13 be amended in Subclause (3) by deleting all the words appearing after the words "hold office" and substituting therefor the words "for a term of three years and shall be eligible for appointment for one more term."

*(Question of the amendment
proposed)*

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

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

(Clause 13 as amended agreed to)

*(Clauses 14, 15, 16, 17, 18, 19, 20
21, 22, 23, 24, 25, 26, 27,
28 and 29 agreed to)*

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir---

The Temporary Deputy Chairman (Mr. Khamasi): We have not received any notice of amendment for the above clauses. Mr. Angwenyi, what do you want to say?

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir, I just want to point out that there is a new clause to be introduced.

The Temporary Deputy Chairman (Mr. Khamasi): Yeah! Hold your horse!

Clause 30

Mr. Moi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 30 of the Bill be amended by deleting paragraph (c) and substituting therefor the following new paragraph-
(c) in case of the Rural Roads Authority and the Urban Roads Authority taken together, thirty per cent of the funds from Local Authorities Transfer Fund or such higher portion of such funds as the Minister for Finance may direct.

*(Question of the amendment
proposed)*

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

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

(Clause 30 as amended agreed to)

*(Clauses 31, 32, 33, 34, 35, 36, 37,
38, 39, 40, 41, 42, 43, 44, 45,
46, 47 and 48 agreed to)*

Clause 50

Mr. Moi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended by deleting Clause 50.

*(Question of the amendment
proposed)*

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

(Clause 50 deleted)

An hon. Member: Mr. Temporary Deputy Chairman, Sir, Clause 49 has not been covered.

The Temporary Deputy Chairman (Mr. Khamasi): Order, hon. Members! There was an error. We skipped Clause 49 and we must go back to it. We need to put a question on that one.

(Clause 49 agreed to)

(Loud consultations)

The Temporary Deputy Chairman (Mr. Khamasi): Order, hon. Members! We must have

some response. We are making law! I will put the Question again; that Clauses 51 and 52 be part of the Bill.

*(Clauses 51 and 52
agreed to)*

Clause 53

Mr. Moi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 53 be amended by renumbering the existing provision as sub-clause (1) and inserting the following new subclause

(2) Notwithstanding subsection (1), each Authority shall encourage community and private sector participation in road construction, maintenance and management under its supervision and guidance.

*(Question of the amendment
proposed)*

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, while I appreciate that this Bill has been considered by both the Ministry and the Departmental Committee, I am just wondering what is the rationale of suggesting that each of the three Authorities shall encourage community and private sector participation, particularly community participation.

When you are dealing with highway authority, how is the community going to get involved in this?

The Temporary Deputy Chairman (Mr. Khamasi): Who wants to respond to that? Is it Mr. Moi or the Minister?

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, every public utility in this country involves the public. The highways are used by the public.

Mr. Temporary Deputy Chairman, Sir, when we talk about the public in communities, we mean even transporters and the farmers who are served by those big vehicles. They must also give an opinion. The communities can also tell us whether there is anything wrong which has occurred on the highway and drained water into their farms.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Chairman, Sir, while completely agreeing with the Minister, I would have gone further. I do not know whether it is already too late to re-amend the amendment, that apart from participation in construction, maintenance and management, communities and the private sector should also participate in ownership of roads, especially if we are looking forward to the build, transfer and operate manner of doing business.

Mr. Temporary Deputy Chairman, Sir, even ownership of roads should be included in the communities and private sector participation.

The Temporary Deputy Chairman (Mr. Khamasi): Thank you for noting that.

Mr. Minister, do you want to comment?

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, firstly, let us appreciate that we are moving towards the public and the private sector getting involved in the management of all the infrastructure.

Mr. Temporary Deputy Chairman, Sir, in this particular case, we are talking about roads. Therefore, in every set-up that we want to move to, we must involve the taxpayer. The road users are the same taxpayers. That is why we want to involve all the stakeholders.

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

(Clause 53 as amended agreed to)

*(Clauses 54, 55, 56, 57, 58, 59, 60,
61, 62, 63, 64, 65, 66, 67, 68, 69,
70, 71, 72 and 73 agreed to)*

New Clause 20A

Mr. Moi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended by inserting the following new clause immediately
after Clause 20-

Delegation of
function

20A. Notwithstanding any other provision of this Act, the Authority may, in
consultation with the Minister, delegate its functions relating to roads under
its jurisdiction to a suitable corporate body.

*(Question of the new clause
proposed)*

(New clause read the First Time)

*(Question, that the new clause be
read a Second Time, proposed)*

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, if you look at the new Clause 20A, it
says:-

"Notwithstanding any other provision of this Act, the Authority may, in
consultation with the Minister, delegate its functions relating to roads under its
jurisdiction to a suitable corporate body."

I am just wondering why only a corporate body, because we have in this country, within our own
laws, the District Roads Committees (DRCs), which are not corporate bodies. Is it not anticipated
that those authorities could delegate any of their functions to the DRCs?

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy
Chairman, Sir, those institutions that we are calling "corporate bodies" mean that even the DRCs
would have to be given some legal status, so that they become corporate bodies or entities which,
legally, can be expected to follow the law as required.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, following the Minister's
explanation, then I think we must change the wording from a "suitable corporate body" to "any
suitable body" or "institution". I suppose that the authority, in consultation with the Minister, may
delegate to a city council, municipal council, county council, or any other body that they may find
suitable. However, if you say "corporate body", then the technical meaning is that it is a company

with some kind of a seal. So, I just want to persuade the Minister to alter that wording, so that it is open to interpretation to include any other body, even if it does not have a corporate seal.

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I do not think I am in a position to get into the issue of interpretation here, because we have also consulted the Attorney-General's Office. He has taken into account what Mr. Kajwang is talking about. We do not foresee any problem with the expression "corporate body". The way we understand it is that any institution that is recognised in law can be recognised as a corporate body.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Chairman, Sir, it effectively means that we shall be making law, given the good will of the Minister but that is not good enough. I think Parliament must make laws which will stand the test of time. In which case, the only cover that the Minister can have is for the word "suitable corporate body" to be defined in the Bill.

Mr. Temporary Deputy Chairman, Sir, in the definition section, we can say: "suitable corporate body means---" then you list them. Otherwise, if you leave it as "suitable corporate body" then Mr. Kajwang is correct. It will mean only corporate in a legal term, otherwise we should replace the expression with an appropriate one. We have to get a clarification. Is the expression "suitable corporate body" going to be defined in the preamble section of the Bill, or do we just leave it to the good will of the Minister?

The Temporary Deputy Chairman (Mr. Khamasi): Very well! Before you respond to that, Mr. Minister, I would have wished that either Mr. Kajwang or Prof. Anyang'-Nyong'o would have brought an amendment to this amendment, which you have not done. So, you will have to defeat this amendment.

Mr. Minister, do you want to say anything?

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I was thinking more or less on your lines. However, to also help my brothers across the Floor, should they at a later stage - because they never gave us any notice of an amendment - want to bring an amendment when the Act is there, there is always room for any amendment if they think we have done something which is not in conformity with the interpretation of a corporate body.

The Temporary Deputy Chairman (Mr. Khamasi): Yes, we have had enough debate on that!

*(Question, that the new clause
be read a Second Time,
put and agreed to)*

*(The new Clause was read
a Second Time)*

*(Question, that the new clause
be added to the Bill,
put and agreed to)*

(First Schedule agreed to)

Second Schedule

Mr. Moi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Second Schedule to the Bill be amended -

- (a) in Part A by deleting item 4 and substituting therefor the following new item -
 4. Institution of Surveyors of Kenya.
 (b) in Part B-
 (i) by deleting item 3 and substituting therefor the following new item -
 3. Institution of Surveyors of Kenya.
 (ii) by inserting the following new item at the end thereof-
 6. Kenya Farmers' Association.

*(Question of the amendment
 proposed)*

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

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

*(Second Schedule as amended
 agreed to)*

(Third Schedule agreed to)

Fourth Schedule

Mr. Moi: Mr. Temporary Deputy Chairman, SI beg to move:-
 THAT, the Fourth Schedule to the Bill be amended (a) by deleting
 paragraph 1 and substituting therefor the following
 new paragraph -

1. The Minister shall establish an interim management committee for the Highways Authority and the Rural Roads Authority, and for the Rural Roads Authority in consultation with the Minister responsible for Local Government.
 (b) by deleting paragraph 2.

*(Question of the amendment
 proposed)*

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I wonder whether there is no mistake. The clause says: -

"The Minister shall establish an interim management committee for the Highways Authority and the Rural Roads Authority, and for the Rural Roads Authority in consultation with the Minister responsible for Local Government."

I think one part should read "urban" while the other should be "rural." Therefore, if we pass the law in this order, one of the three authorities will be left out. So, I think the Minister should make the appropriate amendments.

Mr. Moi: That is correct.

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, that is absolutely necessary because the Local Government Act involves the

Minister on matters of roads in the urban centres.

Therefore, as regards the Urban Roads Authority, the interim team that will be set up for that purpose has to be done in consultation with the Minister concerned.

(Loud consultation)

The Temporary Deputy Chairman (Mr. Khamasi): Order! order hon. Members! I think, Mr. Minister, you missed the point and I would like hon. Muturi to take the Floor and explain.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, the point I was bringing up is that the first line should read "the interim management committee for the Highways Authority, the Urban Roads Authority and for the Rural Roads Authority.

I think there should be some amendments after the "Highways Authority."

The Temporary Deputy Chairman (Mr. Khamasi); I think you need to confirm that was the intention, Mr. Minister. I think that is all he was asking for.

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I apologise. I think this is a typing error. When the amendment was done, that was an oversight. However, it specifically refers to the Urban Roads Authority.

Mr. Moi: Mr. Temporary Deputy Chairman, Sir, this is how it should appear in the Order Paper, as per our proposal. What hon. Muturi has suggested is that, there should be "Highways Authority, Urban Roads Authority and the Rural Roads Authority." That way, they are all captured.

The Temporary Deputy Chairman (Mr. Khamasi): Order! Let us not spend too much time on a matter that is obvious. This has been clarified. In fact, hon. Moi, you did not need to stand and read to us again. The Minister had done it and it was understood.

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir, I am a member of the committee and we said that there would be; "the Highways Authority, the Rural Roads Authority and the Urban Roads Authority in consultation with the Minister for Local Government."

The Minister for Local Government would be consulted only on roads regarding the Urban Roads Authority.

The Temporary Deputy Chairman (Mr. Khamasi): You have said nothing different from what the Minister clarified.

Mr. Raila: Mr. Temporary Deputy Chairman, Sir, I am not satisfied with the explanation given by the Minister regarding consultations with the Minister for Local Government. Does this imply that this Authority is, in any way, going to be responsible to the Minister for Local Government? If not, why should he be consulted when appointing the Urban Authority?

The Temporary Deputy Chairman (Mr. Khamasi): Would you like to comment on that, Mr. Minister?

The Minister for Roads and Public Works (Mr. Nyachae): Yes, Mr. Temporary Deputy Chairman, Sir. As the law stands, at the moment, and if you will recall, when the debate was going on, hon. Muite drew the attention of the House to the fact that once this Bill goes through, it will be necessary to make amendments to the Local Government Act so that the docket of the Urban Roads Authority is removed from the Minister. We are aware of the fact that once this Bill is passed, we will need to make certain amendments to the existing laws. You are going to see the need to bring in together various pieces of the law, in the country, which involve roads so that they can harmonise with this Act.

*(Mr. Kimeto stood up in his place
and raised his hand)*

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Kimeto, we do not raise hands here. You should stand up to catch the Temporary Deputy Chairman's eye.

Mr. Kimeto: Mr. Temporary Deputy Chairman, Sir, according to my understanding, an authority is an independent entity. So, when it becomes submissive to a Minister, it stops being an authority. I would like to make it clear that an authority is an authority. Authority is understood by hon. Kimeto as an authority. It should not be submissive to anybody else. So, if the Authority has to consult with the Minister, it stops being an authority. Secondly, today, we are making amendments to this Bill and I think we should deal with it once and for all.

The Temporary Deputy Chairman (Mr. Khamasi): I think you made an observation, Mr. Kimeto. So, I do not think there is anything that the Minister should respond to.

Mr. M.Y. Haji: Mr. Temporary Deputy Chairman, Sir, my question is very simple. What is the rationale of putting this Authority under the Ministry of Local Government while we know that roads fall under the Ministry of Roads and Public Works?

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Minister, would you like to comment on that?

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I think if my colleagues in this House had read the Bill comprehensively, they would have known that we, and the relevant Departmental Committee have gone through this issue. It is very clear that as a start, to set up these operational committees, which will prepare for the Authorities to take over, we must consult. We cannot just ignore the existing systems and laws which have been there and move on because a law has been passed. We have to consult!

Mr. Biwott: Mr. Temporary Deputy Chairman, Sir, I think this provision will create more confusion because there will be no clarity as to the responsibility. If you have an authority which manages a specific project and another authority which manages another set of specific projects, why is it then necessary to come and consult?

Mr. Temporary Deputy Chairman, Sir, furthermore, we have local authorities, which is a fully fledged Ministry and we have the Ministry of Roads and Public Works, which is also a fully fledged Ministry with its own budget. Why is it necessary to come and bring this confusion? I would imagine that if there was any need to consult, co-ordinate, harmonize and rationalize the whole thing, that should be the responsibility of the Ministry of Planning and National Development in order to integrate the development programme. First of all---

The Temporary Deputy Chairman (Mr. Khamasi): Order! Order, Mr. Biwott! You know you are now on the path of debating this Bill.

Mr. Biwott: I just want clarity. That is all.

The Temporary Deputy Chairman (Mr. Khamasi): Yeah, seek clarification, if you want. In fact, what surprises me is that, if, really, hon. Members wanted an amendment to this amendment, you should have brought the notice of an amendment to this amendment to the Chair. The reason is because I can see a lot of interest in this issue.

Anyway, finish what you want to say!

Mr. Biwott: Mr. Temporary Deputy Chairman, Sir, I just want clarity on that issue of co-ordination by this interim committee and whether it is really necessary. I just want to know why was it necessary? Why did he say that the moment we passed this Roads Board--- The respective authorities shall exercise their authority in managing and directing those parts of the roads which are assigned to them, instead of bringing more confusion. I just want---

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Minister, do you want to comment on that?

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy

Chairman, Sir, I think I will just seek indulgence of hon. Members, because it appears as if some hon. Members did not read the Bill itself. Secondly, they did not listen to the debate because that is the time they should have contributed. Now that they are referring to what is a kind of an introduction of debate, all that I can do is to emphasize the fact that we are talking about the interim committee; that is a transitional committee, then the authorities will take over and at that time, that is a different matter! But today, this particular schedule we are talking about is just about an interim committee which will perform the duties for just a few months, then the authorities will be appointed, they become autonomous and nobody else will interfere!

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

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

*(Fourth Schedule as amended
agreed to)*

Fifth Schedule

Mr. Moi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Fifth Schedule be amended-

(a) in the provisions relating to the Traffic Act by inserting the following amendments in proper sequence-

S.58(1) Delete the words "nine months" and "twenty thousand" and substitute therefor the words "two years" and "four hundred thousand" respectively.

(3) Delete the words "six months" and substitute therefor the words "two years".

S.119(q)(i) Delete the words "ten thousand" and "six months" and substitute therefor the words "two hundred thousand" and "two years" respectively.

S.119(q)(ii) Delete the words "twenty thousand" and "one year" and substitute therefor the words "four hundred thousand" and "four years" respectively.

(b) in the provisions relating to the Kenya Roads Boards Act by inserting the following amendments in proper sequence -S.6(2)(d)(i) Delete and substitute therefor the following -

(i) twenty per cent of the monies from the Fund is allocated equally to all constituencies in the country to be administered by the Rural Roads Authority.

S.6(2)(d)(ii) Delete and substitute therefor the following -

(ii) twelve per cent of the monies from the fund is allocated equally to districts in respect to rural roads administered by the Rural Roads Authority".

S.6(2)(d)(iii) Delete and substitute therefor the following -

(iii) Forty per cent of monies from the Fund is allocated in respect of the national roads to be administered by the National Highways Authority.

6(2) Insert the following new paragraph immediately after paragraph (k) -

(1) The Highways Authority, the Rural Roads Authority and the Urban Roads Authority may utilize such portion of monies received from the Fund for operational and administrative expenses as may be approved by the Minister on the

advice of the Board: Provided that such expenditure shall not in any year exceed, as a proportion of the projected annual expenditure of the fund -

- (i) in the case of Highways Authority, four per cent;
- (ii) in the case of Rural Roads Authority, five and a half per cent, and
- (iii) in the case of Urban Roads Authority, five and a half per cent.

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, the Fifth Schedule seeks to amend the provisions relating to the Traffic Act, *inter alia*, and there are many proposals. If I look at the first one:

"Deleting the words "nine months" and "twenty thousand" and substituting therefor the words "two years" and "four hundred thousand" respectively".

Similar things go on. Could we just get to understand the rationale for those replacements? Is it the penalties which are provided for under the Traffic Act which are being increased?

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Moi, do you want to reply to that? You moved the amendment.

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, we have worked together very closely. For the first time, this is history. You can see, we are fully harmonised!

The amendments have been proposed because the relevant Committee, in conjunction with the Ministry concerned are also very concerned about the road usage, the conduct of drivers and so on. Therefore, it is absolutely necessary that as we move into the new reforms, we also bring some degree of discipline. That is all that we need!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I want to appreciate what the Minister has said. They have really done consultations. Indeed, it happens that I was seated in the next room when they were doing the consultations.

Mr. Temporary Deputy Chairman, Sir, I think it is important, not just to get to understand the rationale behind the proposals on the last page, that is:

"Delete and substitute therefor the following-

- (ii) twelve per cent of the monies from the Fund is allocated equally to districts in respect of rural roads administered by the Rural Roads Authority".

Twelve per cent; is that, therefore, to replace the 24 per cent which is provided for under the Kenya Roads Board Act of 1999 and reduce it accordingly to twelve per cent?

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, this has been brought about because it has been the interest of the whole House here that the allocation should be adjusted on this basis. Therefore, we are conforming to the wishes of this House.

The Temporary Deputy Chairman (Mr. Khamasi): Very well. Mr. Angwenyi, do you want to raise another one?

Mr. Angwenyi: No, Mr. Temporary Deputy Chairman, Sir. I just want to confirm what the Minister has said; that this House---

The Temporary Deputy Chairman (Mr. Khamasi): Order! Order, Mr. Angwenyi! You do not have to! We know you are a member of this Committee and once your chairman has already proposed, the Minister is to support. You do not need to do it again.

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

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

*(Fifth Schedule as amended
agreed to)*

We do not have any notice of amendment on the Title and I will put the Question.

(Title agreed to)

(Clause 1 agreed to)

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Kenya Roads Board Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE KENYA ROADS BILL

Mr. Khamasi: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Kenya Roads Bill and approved the same with amendments.

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister for Local Government (Mr. Muchiri) seconded.

(Question proposed)

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I appreciate the work done at the Committee Stage in this House. But I would like to draw attention of the Government, that although no amendments are normally moved when we are discussing amendments to a Bill, the opportunity should be used by the Government to note certain concerns of the House to the Bill being discussed and the amendments therein. So that the Government can eventually move amendments to a law passed because it is in the responsibility of this House to pass good laws at all

times.

Mr. Temporary Deputy Speaker Sir, in that regard, I would really like to plead with the Minister that the two amendments that Mr. Kajwang and myself proposed are extremely important to a good law. That is, even after the law is published, the Attorney-General's Chambers and the Ministry of Roads and Public Works which has done a very good work to bring this Bill to the House, should try and define in a further amendment, the words "suitable corporate body" otherwise it may produce complicated legal tussles for the Government once that responsibility is handled by subsequent bodies which handle it. I just plead with the Minister that, that should be taken into consideration.

Mr. Temporary Deputy Speaker, Sir, with regard to participation, it is very important that we move fast to implement this Build, Transfer and Operate Principle. That means that Kenyan people should own roads or participate in the ownership of roads. I plead with the Minister to take that into account.

Mr. Temporary Deputy Speaker, Sir, finally, it is unfortunate that I was not present when this Bill was discussed in the House. One thing that I have noticed in the Bill is that there is no provision for highway patrol.

It is very important that we institutionalize highway patrol. There is a lot of robbery with violence on highways. That will also lead to the lighting of highways and putting of certain safety measures. Indeed, that will move us towards the First World; it will attract investment; it will attract tourists and add a good name to the Ministry which has done a very good job to bring this Bill to the House.

With those few remarks, I beg to support.

The Assistant Minister for Local Government (Mr. Muchiri): Mr. Temporary Deputy Speaker, Sir, I want to congratulate the Minister for having these amendments passed. I would like to say that, we in the Ministry for Local Government will liaise with him with regard to having this law properly implemented. I want to tell the House that the Ministry for Local Government has a lot of presence within with our precincts and that is why the consultation that was there was necessary. We have the Urban Development Department and in our cities and towns, there is a lot of road network that needs to be done.

I also want to ask the Minister that as we constitute the authorities, that consultation should be there so that there is good harmony within the collective responsibility of the Government. That the Ministry of Local Government and the Ministry of Roads and Public Works are seen to be working together. I want to promise that we, as the Ministry of Local Government, will ensure that the new measures that this House wishes to implement are done properly.

Mr. Biwott: Mr. Temporary Deputy Speaker, Sir, now that this Bill has gone through and it will become law and road network is very important in the country, I hope that the Minister will do one thing immediately after the passage of this; to look at the meaning of this word "interim." This law will become permanent unless it is amended later. An interim arrangement cannot really be law. It might be necessary to remove the word "interim" and call it a management committee which will carry out consultations which can last.

Regarding the management of the roads, it is important for the Minister to ensure that whatever resources are available, are shared equitably and distributed in such a manner that no area will be left out because it will take a long time for that area which is left out, to catch up. That will mean that the development of this country will be uneven as far as the services are concerned. That is something that is important and I hope that the Minister will address it. I am addressing a Minister who has been in this Government for as long as the independent Government has existed. So, he has enough experience and knowledge to address that issue.

With those few remarks, I beg to support.

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, I first congratulate the officers of the Ministry who have worked tediously for about two or three years with our Committee to have this law enacted. I urge the Minister to move with despatch to have the Presidential assent to the Bill so that it is effected. It does not have to take as long as The Sexual Offences Bill took to be effected.

Secondly, I recently noticed that the Ministry was unable to get contractors who can take up jobs and provide infrastructure in the country. I hope the Ministry will move with despatch to source contractors from abroad like the Chinese or the Japanese, so long as we get the infrastructure quickly.

Finally, I hope that the Ministry will develop a policy of tarmacking roads in areas which have very high rainfall in a year. Areas like Gusiiland, some parts of Western Province, most parts of Rift Valley Province and most parts of Central Province, so that instead of murraming those roads which are washed within two or three months, they should even put a single seal which can last five or six years. That will save money for road construction and maintenance.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, actually, I had an opportunity to make a contribution to this Bill. However, I want to say that I am very happy today because the baby that was conceived when I was in the Ministry has finally been born. I want to congratulate the Minister and his staff for ensuring that this has been done.

I have two issues to raise. One concerns concessioning which I mentioned during the debate on the Bill. It is very important that the Government moves fast to institutionalize concessioning in our road construction.

Mr. Temporary Deputy Speaker, Sir, secondly, now that the Government has a comprehensive legal framework within which to deal with the road network, I would like the Minister to move fast and bring all these authorities to life as quick as possible, particularly, the Urban Roads Management Authority. As I have said a number of times, our urban local authorities in this country have all failed.

The failure is actually attributed to the Ministry of Local Government. The roads in our urban areas are in a very sorry state. Therefore, this Authority should move with speed to rein in these local authorities, so that our urban roads can be improved for the benefit of the people who live in the urban areas.

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

The Temporary Deputy Speaker (Mr. M'Mukindia): Hon. Members, we will now move on. If you have further comments to make, you will have a chance to do it during the Third Reading.

I shall now put the Question.

(Question put and agreed to)

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Kenya Roads Bill be now read the Third Time.

The Minister for Finance (Mr. Kimunya) seconded.

(Question proposed)

Mr. Khamasi: Thank you, Mr. Temporary Deputy Speaker, Sir. I also had the opportunity to contribute to this Bill. I had short remarks for the Minister for Roads and Public Works. I told him that the taste of the pudding is in the eating thereof. The Bill looks very good on paper. However, we want to see its implementation to the right conclusion. I am saying that because of what we have gone through with civil servants in that Ministry. I do not blame everybody,

wholesale, but we have got certain "rotten eggs" in there, which are actually incorrigible.

Mr. Temporary Deputy Speaker, Sir, in order to implement this Bill, the Minister will require the support of the entire Ministry. So, it is up to him. Let him have a meeting with the civil servants and plead with them; that for a change, let them serve Kenyans. We have got problems in that Ministry which need to be addressed.

With those few remarks, I beg to support.

Mr. Kimeto: Thank you, Mr. Temporary Deputy Speaker, Sir. I thank the Minister for bringing this Bill.

However, the three authorities which have been created in this Bill, if not well-managed, will look like a white elephant. The Ministry does not lack the money or ability to maintain our roads, but it does not have trusted and committed people. That is the only problem which we have. So, I hope the Minister will implement this Bill with all amendments. However, I do not see the proposal that I made when I brought a Motion on roads; that the Members of Parliament will be responsible in ensuring that in their constituencies---

If there is any misuse of funds, those responsible should be taken to court and charged. So far, nobody has been charged and sentenced for misusing the Kenya Roads Board (KRB) money. The only people who have been charged are those who have been found guilty of stealing small things like chicken. Nobody is concerned about those who steal billions of shillings meant for road construction and maintenance. Why can we not charge them? We should give that responsibility to the people who deal with corruption ili *wawekwe ndani! Mtu akiharibu anafaa awekwe ndani!*

The Temporary Deputy Speaker (Mr. M'Mukindia): Order! Hon. Kimeto, you are out of order!

Mr. Kimeto: Mr. Temporary Deputy Speaker, Sir, I beg to support.

The Minister for Finance (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir. I would like to take this opportunity to congratulate the Minister and, indeed, thank the House for co-operation and time with which this Bill has been debated and completed. This is because we all do recognize the fact that the need for infrastructure is the cornerstone on which the future development of this country will be anchored.

I do hope that even as we move forward now with the Bill, and with the funding, we are going to see smooth roads and everyone participating in terms of doing it.

Mr. Temporary Deputy Speaker, Sir, once again, I really wish to thank the House for its co-operation.

I beg to support.

Mr. Weya: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to say just a few things on this Bill.

I know now that there is a legal framework in which the Ministry can now operate when it comes to roads. I think this House really needs to consider people with disabilities. We passed the disability law in the year 2003, which talks about how we should consider people with disabilities even when we are constructing our roads. For example, in most cases, we construct bridges without even allowing facilities on the sides to enable people with disabilities to cross. Also, most of our roads do not have provisions for people with disabilities, like the ones in the developed countries. We need to consider some of these things.

Mr. Temporary Deputy Speaker, Sir, I would also like to, briefly, talk about game reserves. There have been a lot of complaints about the poor infrastructure in areas where game reserves are located, yet, they bring a lot of resources through tourism. I think the Ministry should go---

(Mr. Mukiri consulted while standing)

The Temporary Deputy Speaker (Mr. M'Mukindia): Order! Hon. Mukiri, only one hon. Member should be standing at any given time!

Proceed!

Mr. Weya: I think the Ministry should liaise with other Ministries when constructing and repairing roads, so that environmental issues, for example, can be addressed. For example, water that goes to waste on the side of the roads during the rainy season can be harnessed.

Mr. Temporary Deputy Speaker, Sir, I hope the Minister will consider the remarks that I have made.

Mr. Arungah: Thank you, Mr. Temporary Deputy Speaker, Sir. First, let me commend the Minister and his entire staff for bringing this Bill here. It is now clear that the Ministry will be able to know who is exactly responsible for which road. This is because in the past, there has been an element of confusion.

Mr. Temporary Deputy Speaker, Sir, I do hope that as the Ministry begins its long journey and seeks to increase the road network generally, it will also lay some emphasis on maintenance, because it is something that has been ignored in the past. So, as we seek to improve on our road network, emphasis should be put on the issue of maintenance.

My colleague has alluded to the idea of the bad eggs in the Ministry. As we condemn the workers in the Ministry, I would urge the Minister, as he sets up these authorities, to look critically at the issue of remuneration. This is because it is my humble submission that these people, in the Ministry, are not adequately remunerated given the kind of work that they do. That issue should be looked into.

With those few remarks, I beg to support.

Mr. Ojode: Mr. Temporary Deputy Speaker, Sir, let me also add my voice to this very important Bill. First of all, I would like to congratulate the Minister and his entire team. However, passing and implementing a Bill are two different things. I think the latter one was a past issue. I wonder whether the C18, Rodi-Kopany-Karungu Road, for example, is classified under urban road Authority or a rural road Authority. There is no road. I would urge the Minister---

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, hon. Ojode! You know the reason for Third Reading. Please, do not reopen the debate. Conclude and then give hon. Prof. Anyang'-Nyong'o one minute.

Mr. Ojode: Mr. Temporary Deputy Speaker, Sir, what I am trying to say is that I would want the Minister to move with speed to implement what we have just passed. My friend, hon. Kimunya, please, release some money to the Minister, so that he can implement the provision of this Bill immediately.

I beg to support.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, let me join the House in congratulating the Ministry for a job well done.

I just want to mention one thing. In the Republic of Kenya, we review the population of our country every ten years, if I am right. We also review the constituency boundaries every ten years. I would like to plead with the Minister to review the structure of roads in this country every ten years. I am saying this because in my constituency I have not seen new access roads for a long time, except one which we did recently during the District Roads Board (DRB).

However, the Minister for Finance made a very important remark, that infrastructure is key to economic development. He must be very sensitive to road infrastructure, particularly in the rural areas. So, I would like to plead with the Ministry to work with the relevant Departmental Committee in Parliament to bring that report of the review of the road infrastructure, so that we can keep up with the demand for road infrastructure, particularly in rural areas.

Mr. G.G. Kariuki: Mr. Temporary Deputy Speaker, Sir, now that the Bill is becoming an Act of Parliament, I would also like the Minister to note the following. We have started something new where the management of our roads is being assigned to a particular group of people. I know without the politicians' interference in these authorities, I hope they will do a good job. Our practice has been that in matters of creation of bodies by Government or Parliament, politicians are normally involved. However, in this case, we have given clear blanket, I believe the politicians will not interfere with the operations of these authorities. We want them to do a good job. We expect to see changes on our roads in the next two years. Our biggest problem has been that we establish authorities like these ones, but they are terribly politicised and interfered with by politicians. We do not want to see these roads considered on that line.

The current Minister is here. He is a very straightforward man in his dealings. He is a man who will not do things just to please anyone. I believe he will do a good job. Let us also not condemn his staff because we have never given them a chance to do what they are supposed to do. Most things go wrong because of the political interference. I plead that we allow the people who will manage these authorities to carry on in a free manner and within three years, we will see the fruits.

Thank you very much, Mr. Speaker, Sir.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I am very happy to note that the two Ministers are here. These are the Minister for Finance and the Minister for Roads and Public Works. I wish that they listen to what I am saying here.

Mr. Temporary Deputy Speaker, Sir, it is very important that these two Ministries work in tandem. The reason why a lot of money allocated to the Ministry of Roads and Public Works goes back unused is basically because of lack of proper co-ordination. If the Ministry of Finance could telescope to the Ministry of Roads and Public Works in advance of how much money it is likely to be given, that would help in the procurement process. To procure a contract takes a very long time that at times you find that sometimes money is allocated, the Minister reads a Budget here and that is when the Ministry will start the process of procuring. It takes sometimes four to five months before the contractor can be identified.

Mr. Temporary Deputy Speaker, Sir, the other one is allocating money for roads which have not been designed. That way the money will never be spent during that financial year. It is important that there is very close co-ordination between the Treasury and the Ministry of Roads and Public Works to allow the full utilisation of funds allocated. However, I am happy that this year the Minister heeded my call when I launched my vision and said: "Infrastructure, infrastructure, infrastructure." I am happy that he has begun to reflect it in the Budget.

Thank you for learning from Orange Democratic Movement ODM(K).

(Laughter)

(Question put and agreed to)

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

The Temporary Deputy Speaker (Mr. M'Mukindia): Next Order!

Second Reading

THE MEDIA BILL

(The Minister for Information and Communications on 3.7.2007)

*(Resumption of Debate
interrupted on 3.7.2007)*

The Temporary Deputy Speaker (Mr. M'Mukindia): Who was on the Floor? Capt. Nakitare, you were on the Floor. I believe you have 25 minutes.

Capt. Nakitare: Thank you, Mr. Temporary Deputy Speaker, Sir, for allowing me to continue with my contribution on the Media Bill.

It is important to note that our media has under it several sectors that have been ignored. We have freelance journalists. How do they earn their living? This is an area which we have to look at.

Mr. Temporary Deputy Speaker, Sir, I also spoke about cyber cafes which are used under Information and Communications Technology (ICT) as a means of communication. This is an area where a lot of misinformation or good information will pass without the Government's notice. It has already been noticed in mobile telephones.

Mr. Temporary Deputy Speaker, Sir, the manner in which the Short Message Service (SMS) is used is regrettable. In fact, just in the recent times women were lamenting that communication via SMS is depriving them of their marital status. This means that there is a lot of secrecy that goes on between married men, women and girlfriends out there.

Mr. Temporary Deputy Speaker, Sir, these are ills of the technologies that have come in to destroy or improve our economy. So, to clip wings of the media is not to deny the media autonomy. They want to have a Board, a Chairman of the Board and a Tribunal that will deal with disciplinary matters.

Mr. Temporary Deputy Speaker, Sir, one other thing that I must mention here is the manner in which journalists report. If journalists misreport or misquote me erroneously and when I point out that the information was incorrect, if it was in bold letters, the damage has already been done! However, when it comes to apologising, they give it a very small column where nobody can notice the apologies. That is also a question that should be put to them. It is not a reciprocation by way of defamation of character, mudslinging and so on. In politics, many people use the media to mudsling others. This is not a profession. It is high time Kenya came up to produce the likes of Jeff Koinange, formerly of CNN.

Mr. M. Kilonzo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Would I be in order to seek your guidance and ruling as to whether this House can, in fact, debate a Bill that is a clear violation of Section 79 of the Constitution of this country?

Mr. Temporary Deputy Speaker, Sir, I have looked at this Bill very carefully and formed a considered opinion that it clearly violates Section 79 of the Constitution. I was wondering if you could allow me to elaborate on my observations regarding the actual wording of the Bill so that we can at once know whether, in fact, what we are doing is legitimate or not.

I have raised this issue with the Minister for Information and Communications, hon. Kagwe, himself. I have raised this issue with the Chairman of the Departmental Committee on Administration of Justice and Legal Affairs, hon. Muite. I have also raised this issue with other hon. Members of this honourable House, in conversation as well as request, that, as a country, we ought to consider whether this Bill, in fact, ought to be on the Floor of the House. The reason is this:-

Mr. Temporary Deputy Speaker, Sir, allow me to---

Temporary Deputy Speaker (Mr. M'Mukindia): Order, hon. Mutula! Order! I have heard you and I think we will allow hon. Capt. Nakitare to continue with his contribution. I will give you a chance to elaborate on your viewpoint or argument to convince this House that, indeed, what you are saying is correct. In the meantime, since the matters that are likely to be raised by hon. M. Kilonzo are important or could be important, I would wish to urge the Government side to look for hon. Kagwe or any of the Ministers to listen to what might come about. So, therefore, could the Government Chief Whip, or the Ministers do something before that happens?

Proceed, hon. Capt. Nakitare!

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, it is a clear indication that this Bill has attracted a legal argument, but what I was saying is that, notwithstanding the fact that we have come into a new generation of invention, our journalists should endeavour to pursue the profession without fear and/or favour. We should be proud of Jeff Koinange, a Kenyan who excelled up to the international status and worked for the CNN. We would like to produce a Larry King or a Peter Jennings in this country. It is not a way of controlling the media, but media houses misuse the journalists and undermine their intellectual capacity. This is one area where the Government has to be an overseer. It is not that they are clipping the wings of the media, but it is just a matter of introducing checks and balances.

Mr. Temporary Deputy Speaker, Sir, we have seen the effect of the paparazzi. They have caused chaos in the country. They have caused deaths of human beings because of looking for information that would probably cause defamation or bring money to their profession. In this Bill, there is no clause that talks about dialogue between the Government, the private sector and the media. That is why the media has come up to suggest that they would want to have autonomy. If they can guarantee this House that they will be able to finance their autonomous privileges, then that can be considered.

However, on the other hand, you spare the rod and spoil the child. If we allow excessive freedom of speech, we have seen that, with regard to communications, a tongue is a double-edged weapon.

Mr. Temporary Deputy Speaker, Sir, journalism is a creation of harmony and love. So, while we consider the effect of the law on the media, we also have to consider the professionalism of the media, that the personnel will be counter-checked by the organisations themselves and make sure that they will not have liberal cases or complaints of misquotations or abuse or character assassination and so forth. This is the reason why the society is scared of even talking to the media because of misinterpretation.

Mr. Temporary Deputy Speaker, Sir, there has to be a distinct line. This is a scholarly area where hon. Members know that professionalism is an elite's area. This is a profession where journalists themselves have to embark on book writing. They are authors! The stories they write in the newspapers and the oratory work they produce in announcements are all a section of the brain that should be brought into the books. Let them docket and produce books like Larry King in *The Memoirs*. We will then allow the Kenya Media Council and tell them, "Yes, you are autonomous and qualified to stand on your own. You can concession a media house like the Government wants to have its own voice piece". The private sector and the politicians too would want to have their own media. This is not an area where we should manipulate our school of thought.

So, I would suggest that we should support this Bill for the benefit of this country.

With those few remarks, I beg to support.

POINT OF ORDER

LEGALITY/CONSTITUTIONALITY

OF THE MEDIA BILL

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I rise on a point of order to seek a ruling from the Chair on the legality and constitutionality of this Bill. I will go straight to the point. Section 79 of our Constitution - if you allow me, I will read it out, because this is an extremely critical matter - which appears at page 52, reads as follows:-

"79(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference whether the communication be to the public generally or to any person or class of persons and freedom from interference with his correspondence."

Mr. Temporary Deputy Speaker, Sir, it is my very humble view that, that constitutional provision is clear. It does not require further interpretation. The framers of our Constitution gave us a window for dealing with the media and people who deal with freedom of expression. Therefore, they created subsection (2) of the Constitution. Again, if you allow me, I will read it out briefly, because it demonstrates that the parameters in this Bill are completely outside the province of the windows created by the fathers of our country. Subsection 2 of Section 71 reads as follows:-

"79(2). Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for-

(a) that it is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings; preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television; or,

(c) that imposes restrictions upon public officers or upon persons in the service of a local government authority, and except so far as that provision or, as the case maybe, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society."

Mr. Temporary Deputy Speaker, Sir, you will notice that the framers of our Constitution finished this subsection with the use of the words "justifiable in a democratic society". It is my humble request to the Chair that a finding be made as to the constitutionality of this Bill. Why? Because, looking at it carefully, you will observe that no attempt whatsoever has been made in it to address the provisions of Section 71(1) and 71(2). In fact, the framers of this Bill, with utmost respect to them, have gone to the extent of creating a definition of a journalist in Part I. They have gone to the extent of creating a Code of Conduct that, in my very firm view, is a complete derogation of the word "hindered" in Section 79 of the Constitution.

I would like to say that the code of conduct formulated from page 754 - the Third Schedule - looking at it very carefully, even attempts to define the fundamental objectives of a journalist. I dare submit that, that alone, again, is a complete derogation from Section 79 of the Constitution. There is no excuse whatsoever--

The Temporary Deputy Speaker (Mr. M'Mukindia): Mr. M. Kilonzo, you remember that you are on a point of order?

Mr. M. Kilonzo: Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. M'Mukindia): Just allow other hon. Members to comment on the issue also.

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, a careful examination of all the clauses of the code of conduct flies in the face of Section 79 of our Constitution, including independence, accountability and integrity.

Above all, you will notice that the Bill also proposes certain punishments, including deregistration. It is requiring people who want to practise journalism to even be registered. It is requiring people to even be submitting themselves to the Minister for Information and Communications, so that he can appoint a chairman of a Council, *et cetera*.

Mr. Temporary Deputy Speaker, Sir, my humble prayer is that a finding be made that this Bill contravenes Section 79 of the Constitution, and that it is, indeed, a violation of the Constitution that the House be debating and considering it.

Thank you, Sir.

The Temporary Deputy Speaker (Mr. M'Mukindia): Hon. Members, I shall allow a few interventions on this one for purposes of clarification.

Mr. Muchiri, do you want to comment on the same?

The Assistant Minister for Local Government (Mr. Muchiri): Thank you, Mr. Temporary Deputy Speaker, Sir. I was rising to contribute to the Bill, because I did not think it is proper for Mr. M. Kilonzo to rise on a point of order to challenge matters that are being dealt with by Parliament. This country believes in the philosophy of separation of powers. To the extent that there is the Executive, the Legislature and the Judiciary---

The Temporary Deputy Speaker (Mr. M'Mukindia): Order! Order, Mr. Muchiri. I want to dispose of the matter that Mr. M. Kilonzo has raised. I would like to hear from a lawyer.

Mr. Wetangula!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to respond to the point ably argued by my learned Senior Counsel, Mr. M. Kilonzo.

Mr. Temporary Deputy Speaker, Sir, I have looked at this Bill very carefully. It, certainly, has provisions and clauses that can be improved, and which need to be improved. My learned friend has quoted Section 79(1). He has omitted to quote Section 79(2). I do not know if he did.

The Temporary Deputy Speaker (Mr. M'Mukindia): He actually did.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, Section 79(2) reads as follows:-

"79(2). Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons---

Mr. Temporary Deputy Speaker, Sir, indeed, if you look at this Bill, it falls squarely into provisions within the exception or the proviso under Subsection (2) of Section 79. Nothing in the enjoyment of fundamental right, anywhere, is absolute. There are always limitations by law and under the law. What is important is to create provisions that guarantee the protection of persons affected by the law from possible arbitrary behaviour by those in authority or abuse.

Therefore, this Bill is perfectly within the provisions of the Constitution but, as I said - and you will hear me when I come to contribute to it - it has a lot of issues on which we need to improve to make it a better law. Otherwise, if the learned Senior Counsel has issues to raise, let

them be arguments, in the course of debate, that can be replied to and rebutted by those who hold contrary views, so that we can carry on with the debate on the Bill. Mr. Temporary Deputy Speaker, Sir, there is absolutely nothing in this Bill that falls within the arguments advanced by the hon. Member. I urge you to allow debate to go on for those of us who are ready to contribute to the Bill.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. M'Mukindia): Hon. Raila!

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I would like to support the position that has been taken by Mr. M. Kilonzo. Section 3 of Chapter I of the Constitution of Kenya says:-

"This Constitution is the Constitution of the Republic of Kenya and shall have the force of law throughout Kenya and, subject to Section 47, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void."

It is incumbent upon this House to ensure that the Bills that we pass, which eventually become law, do not contradict the provisions of this Constitution.

Mr. Temporary Deputy Speaker, Sir, I would like to support the position that has been taken; that this Bill contravenes the provisions of Section 79 of the Constitution. Section 79(1) is very explicit and clear that freedom is not restricted. It says:-

"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication is to the public generally or to any person or class of persons) and freedom from interference with his correspondence."

That is unfettered freedom.

There are restrictions that have been placed here on the journalists. In the Third Schedule of the Bill, on the Code of Conduct for the Practice of Journalism, Part (a) on Accuracy and Fairness states:-

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

Mr. Temporary Deputy Speaker, Sir, that violates the provisions of Section 79, where somebody restricts a journalist on what he or she should be reporting. That he or she must report all sides of the story. If he or she does not report all sides of the story, then he or she has offended the provisions of this Code of Conduct. That is a restriction. The entire Code of Conduct completely restricts journalists. In my view, this will interfere very fundamentally with the reporting by journalist in this country.

Therefore, I support the view that this Bill contravenes Section 79 of the Constitution and, therefore, it should be withdrawn.

The Assistant Minister for Information and Communications (Mr. Wamwere): Jambo la nidhamu, Bw. Naibu Spika wa Muda. Nadhani hakuna---

Prof. Anyang'-Nyong'o: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it not in order for the Assistant Minister to reply when he has not heard---

The Assistant Minister for Information and Communications (Mr. Wamwere): No!

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, hon. Members! The Chair has the right to decide!

The Assistant Minister for Information and Communications (Mr. Wamwere): Prof.

Anyang'-Nyong'o, niko kwa jambo la nidhamu!

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Wamwere! Address the Chair!

The Assistant Minister for Information and Communications (Mr. Wamwere): Bw. Naibu Spika wa Muda, ningependa kusema ya kwamba kuhusiana na jambo la nidhamu la Bw. M. Kilonzo, yale maoni yote ambayo yametolewa hapa, ni maoni ambayo yangetolewa katika mjadala. Kusema ukweli, wale waliongea walikuwa wanajadili Mswada huu. Hawana jambo ambalo kwa kweli ni tatizo la kikatiba. Isitoshe, Wizara yetu, wakati wa kutayarisha Mswada huu, ilipata ushauri kutoka kwa Mkuu wa Sheria kuonyesha ya kwamba hakuna chochote kilichomo katika Mswada huu ambacho ni kinyume cha Katiba. Kwa hivyo, mwanasheria mwingine akisimama hapa abishane na huo ushauri, basi nadhani jibu ni watu kufikishana mahakamani, lakini sio kuzuia mjadala uendele. Sioni ni kwa nini maoni ya Bw. M. Kilonzo yawe ni muhimu kuliko yale ya Mkuu wa Sheria, na wote wawili ni mawakili. Kukiwa na ubishi na kutofahamiana kati ya maoni yao, uamuzi utakuwa wa mahakama. Lakini sio sisi wenyewe kwa wenyewe tubishane.

Bw. Naibu Spika wa Muda, ukweli ni kwamba hakuna uhuru usiokuwa na mipaka. Hata Katiba yetu haisemi ya kwamba kuna aina za uhuru ambazo hazina mipaka hata kidogo. Tumeambiwa na wataalamu wa kidemokrasia kwamba huwezi ukasimama katika sinema ukasema, "kuna moto", na hakuna moto! Ukifanya hivyo, utakuwa unaingilia haki za watu wengine. Lazima tuelewe ya kwamba Katiba inatoa haki kwa kila mtu. Lakini hakuna mtu ambaye haki zake zinaweza kutekelezwa huku zikiathiri haki za mwingine.

Bw. Naibu Spika wa Muda, yale waliongea ni maoni. Msimamo wetu ni kwamba ni afadhali waombe nafasi ya kutoa maoni hayo wakati tunajadili. Lakini sio kujaribu kusimamisha mjadala wenyewe au kupitishwa kwa Mswada.

The Temporary Deputy Speaker (Mr. M'Mukindia): I will give the last chance to Prof. Anyang'-Nyong'o! Please, be brief!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I will be very brief. The argument by the Assistant Minister really cannot hold water. The fact that we have an Attorney-General who is a lawyer and the Senior Counsel is a lawyer, does not mean that they cannot disagree about the Constitution. Mr. Wamwere, your argument is completely illogical! They can disagree over the interpretation of the Constitution, and that is why the courts are there. Lawyers take the Attorney-General to court over constitutional matters!

The Assistant Minister for Information and Communications (Mr. Wamwere): That is what I am saying!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, what I am saying is that, that is not good enough argument here! The argument you we are making here---

As lawmakers, it does not matter whether one is a lawyer or not. We, as lawmakers, must point out when a Bill that is brought to this Parliament is likely to contravene the Constitution. You cannot tell us that you have an Attorney-General who has advised you! We know he advises the Government, but he has given the Government so much bad advice in the past, which has landed this country in a lot of problems. That is why this House is here to prevent a bad Attorney-General giving bad advice to the Government!

Mr. Temporary Deputy Speaker, Sir, I want to make one point. When I was a first entrant in this Parliament in the early 1990s---

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Prof. Anyang'-Nyong'o! I do not wish to cut you short, but you are actually addressing another issue---

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I am addressing this issue. One thing that I would like to say about this point is this: When you are in doubt about the constitutionality of a Bill---

The Assistant Minister for Information and Communications (Mr. Wamwere): You got to court!

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Wamwere!

Prof. Anyang'-Nyong'o: You should rather be on the side of delay and consultations, rather than on the side of speed and move for the closure of debate.

A Bill is coming before this House called the Kenya Communications (Amendment) Bill, which will have a lot of bearing on this Bill. I would rather we delay the discussions on the constitutionality of this Bill until we are happy.

Secondly, if you look at this Bill--- I know that the Government is impatient about it. They want to pass this Bill because I know the political motive behind it. If you look at this Bill--- The unconstitutionality of this Bill can be seen on page 754, the Third Schedule on the Code of Conduct for the Practice of Journalism---

The Assistant Minister for Information and Communications (Mr. Wamwere): That is your view!

Prof. Anyang'-Nyong'o: But my view matters to this Parliament!

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

Mr. Wamwere, it is not correct for you to try to muzzle Prof. Anyang'-Nyong'o! He is free to express his opinion. You do not have to agree with him! Please, do not muzzle him! It is undemocratic!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I just wish to make a point and then sit down. The unconstitutionality of this Bill can be found on page 754, Third Schedule, Part (b).

(Mr. Wamwere stood up and consulted Mr. Wetangula)

Mr. Temporary Deputy Speaker, Sir, I want the Assistant Minister to sit down and listen. The Constitution is a very important document in this country!

Mr. Wamwere, you do not smile about it and consult with your friend when I am talking!

An hon. Member: *Profesa, Wacha ukali!*

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, Part (b) of the Third Schedule says:-

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

It is recognised by who? That is where freedom comes in. It means that it is recognized by the Government, which wants to suppress the freedom of the Press. This is a very important matter.

An hon. Member: It is a debate!

Prof. Anyang'-Nyong'o: It is not a debate! It is at this point that this Bill is unconstitutional. The unconstitutionality of the Bill comes across in so many phases in the Bill.

So, if it is unconstitutional, it should not be debated in this House until the Chair makes a ruling, otherwise!

The Temporary Deputy Speaker (Mr. M'Mukindia): Mr. Muturi, I will allow you only one minute to make your point!

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, one minute will not be enough. I want to bring this issue to its logical conclusion.

The Temporary Deputy Speaker (Mr. M'Mukindia): You cannot do so, Mr. Muturi! Only the Chair can do so.

(Laughter)

Mr. Muturi: Thank you, Mr. Temporary Deputy Speaker, Sir, for that correction.

Mr. Temporary Deputy Speaker, Sir, the freedoms granted to all citizens of this country as provided for in Section 79(1) of our Constitution, are clear. Indeed, those freedoms and rights have been read out.

Mr. Temporary Deputy Speaker, Sir, if you go to Section 79(2), it creates some other classes of people in particular situations. In respect to those persons, it is said that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision. The law in question here is this Bill. It is seeking to make certain provisions. The classes of people about whom if anything were to be made it would not be inconsistent with Section 79(a). If the law makes provisions:-

"(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health."

That is one class of people. If the law we are making was to make provision relating to those provisions, then anything done in that law will not be inconsistent with any of the rights and freedoms given under Section 79(1) of the Constitution.

The next class of people is the class in (b). It generally relates to legal proceedings. However, for clarity, if, again, the law is making provision:-

"(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or technical operation of telephony, telegraphy, posts, wireless broadcasting or television."

That is another class about which, if the law was making provisions relating to those, then any provisions within the law will not be inconsistent with Section 79(1) of the Constitution.

Mr. Temporary Deputy Speaker, Sir, the other class or category of people about whom if anything were to be provided in any law; including this Bill, it will not be inconsistent with the Constitution is if the law makes provisions:-

"(c) that imposes restrictions upon public officers or upon persons in the services of a local government authority, and except so far as that provision or, as the case may be, the things done under the authority thereof is shown not to be reasonably justified in a democratic society."

Mr. Temporary Deputy Speaker, Sir, we must know that this Bill is not about public officers. It is about journalists and media practitioners. I want to make that distinction. Journalists are also generally not employed by local authorities.

This is in relation to public officers or people employed by local authorities. We know what public officers are. We have a Public Officers Ethics Act (2003). To the extent, that is where we have difficulty. Notwithstanding that the Attorney-General may have given advice; to the extent that there are provisions made here, particularly with regard to the accuracy and fairness within the code of conduct, that the people to be affected are not any of these for whom Section 79(2) creates a distinct class, I believe that the Bill would be inconsistent with Section 79(1).

(Applause)

CONSIDERED RULING

THE MEDIA BILL IS CONSTITUTIONAL

The Temporary Deputy Speaker (Mr. M'Mukindia): Thank you. Hon. Members, as you know, we have listened very carefully to the arguments advanced by Mr. M. Kilonzo and other hon. Members regarding the constitutionality of this Bill. In fact, Mr. Wamwere was asking me under what Standing Order would I allow it. I said, the Speaker can allow an hon. Member to raise a question of major importance to such a Bill.

I was listening specifically to the actual provisions in the Bill that Mr. M. Kilonzo would have mentioned as being inconsistent with the Constitution. If I can remember correctly he mentioned that you need to define who a journalist is. I do not know if you defined who a lawyer or an engineer is that prejudices the profession. Does that interfere with a Constitutional right? I, personally, do not believe so in terms of defining a profession.

The other issue that Mr. M. Kilonzo raised was the fact that you have defined a code of conduct. By so doing, perhaps, you introduce restrictions on the freedom of the journalist. The question then that comes to mind is; if you defined the code of conduct of an engineer, a doctor or a lawyer, does that prejudice your ability to do your job? Honestly, would it? Again, I do not believe that, that in itself would prejudice your right under the Constitution. Also, there are things like punishment. For example, the fact that one has to register as a journalist. Again, if you are a professional, I think registration is required.

Mr. Raila raised a question and quoted Section 3 of the Constitution. It regarded supremacy. I think this Section just states that our Constitution is supreme. I think nobody would argue against that. So, Mr. Raila, you were quite right. It is supreme!

Having said that, I need to read Section 79(1) together with Section 79(2), especially subsections (a) and (b). Now, the subsection that Mr. Muturi has read and which applies to public officers is correct as far as public officers are concerned. However, it does not invalidate subsection 2(a) and (b) which says to the extent that the law in question makes provision:-

"(a) that is reasonably required in the interest of defence, public safety, public order, public morality or public health; or,

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or private lives of persons concerned in legal proceedings, preventing the disclosure of information---"

So, I do not believe that subsection 2(c) invalidates (a) and (b).

Again, Prof. Anyang'-Nyong'o, raised the issue of code of conduct. As I said, I do not see how that would prejudice the freedom of a journalist to do his or her job.

Mr. Raila also raised the issue of defining the duties of a journalist. He mentioned something to do with the fact that journalists have to be fair. Prof. Anyang'-Nyong'o also raised the same issue on fairness. Whenever it is recognised that an inaccurate, misleading or distorted story has been published or broadcast, it should be corrected promptly.

Prof. Anyang'-Nyong'o wondered who will recognise that a journalist has misbehaved. I supposed that would have to be defined in the Bill itself. The Bill, itself, does not provide for that. I think it should provide the person who is supposed to recognise that. That, in itself, does not go against the Constitution. That is because, in all fairness, even our Constitution obviously promotes equity.

If we believe that our Constitution promotes equity, then fairness, surely, is something that

we must accept whether it comes from journalists, lawyers, engineers or others. So, I do believe that if you read Section 29(1) on its own, then Mr. M. Kilonzo will be quite right. However, we need to amend the Constitution - Section 79(1) and 79(2), delete it completely in order for your argument to be valid. For as long as you have Section 79(2) (a) and (b), it invalidates your arguments. Therefore, on that basis, my ruling is that the Bill is Constitutional. It does not go against the Constitution. Therefore, debate may continue.

Hon. Muchiri, you have the Floor.

*(Resumption of Debate on
the Media Bill)*

The Assistant Minister for Local Government (Mr. Muchiri): Thank you, Mr. Temporary Deputy Speaker, Sir, for your ruling. I think your ruling is supreme in this House.

In contributing to this debate regarding the media Bill, I want to say this: First of all, this Bill has come at a time when we need it most. The structure of this Bill is very clear. It creates the Media Council. One feature which makes me happy about the Media Council is the fact that, it has incorporated those persons who are in that particular industry. At the same time, it has also incorporated those who are not in that industry, but are the consumers of the services of the media industry. So, when we look at the composition of the Media Council, I want to say that everybody is represented.

The Bill also goes ahead to create an Advisory Board to ensure that the Media Council is properly advised. The inclusion of the Advisory Council in the relevant section is also a pointer to the right direction.

There is the issue of a Complaints Committee in the Bill. The Complaints Committee is very important. It incorporates a journalist, an advocate and a member of the public. It is supposed to have five members. So, other can even join it. It is also supposed to be created by the Media Council. To that extent, the media is regulating itself. Nobody--- Not even the Government nor this Parliament is regulating the media.

Mr. Temporary Deputy Speaker, Sir, I was taken aback when you stopped me and said that you wanted to hear from the lawyers. As a lawmaker, I believe in my own self. The lawyers may interpret what we make. Myself, being a son of a lawyer, I can comfortably say that I am not a layman.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): It is not hereditary! I can tell you!

The Assistant Minister for Local Government (Mr. Muchiri): I can tell you that I am schooled in many of those things. I am not a layman in that line. But that aside, I want to say that the creation of a Complaints Committee, where everybody is incorporated, tells us that the Government and this Parliament do not want to control the media. But, obviously, we want to regulate the media. It raises one fundamental question: Is journalism a profession or a trade? That is a very fundamental question that I want us to bear in mind. We want to know whether journalism is a profession or it is a trade. An engineer is a professional. A lawyer is a professional. A doctor is a professional. A valuer, like myself, is a professional under the relevant Act. Why am I a professional? It is because I profess a specialised trade in my own line. Hon. M. Kilonzo professes a specialised line in the legal profession - the learned profession. We also call ourselves the "landed" profession!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Are you saying the learned or the "landed"?

The Assistant Minister for Local Government (Mr. Muchiri): Mr. Wetangula, I said the

"landed". There is a lot of difference between the "landed" and the "learned". But we are all learned in our own right, anyway. So, I want to say that journalism is not a profession. It is a trade.

Mr. Raila: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead the House? He knows that, in fact, people study journalism even up to degree level. That makes it a profession. Is he really in order to try to denigrate a fairly honourable profession like journalism and call it a trade? Does he know what he is doing?

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Muchiri! Order! I totally agree with Mr. Raila. Journalism is an honourable profession. It is not a trade. It is a profession. Please, do withdraw and apologise to the members of the Fourth Estate!

The Assistant Minister for Local Government (Mr. Muchiri): Mr. Temporary Deputy, Sir, I was, perhaps, not understood. But may I rescind what I said. I want to say---

The Temporary Deputy Speaker (Mr. M'Mukindia): I heard you very clearly. So you have to apologise.

The Assistant Minister for Local Government (Mr. Muchiri): Mr. Temporary Deputy Speaker, Sir, I withdraw and apologise. I did not, at any one time, demean that line of work. But I wanted to draw some distinction here. There is somebody called Bernard Shaw. Bernard Shaw said that a profession, sometimes, is a conspiracy against the laymen. In other words, Bernard Shaw was saying that most professions kind of conspire against the layman. I wonder whether the power of the pen, the power of the spoken word and the power of the broadcasted word is a conspiracy against the laymen. But, anyhow, may I also say this: That the freedom of speech, the freedom of movement and the freedom of this or that as enshrined in the Bill of Rights, is not unlimited. There are no unlimited rights. When we say that somebody has the right of movement, it does not mean that you can come into my land because it will be trespass. When we say that somebody has the right of expression, it does not say that he or she has to express himself or herself to the extent of injuring my reputation. So, I want it to be very clear, as we deliberate on this matter that, there is no freedom which is unlimited. There have been many cases in courts, including the Court of Appeal, to that extent.

Mr. Temporary Deputy Speaker, Sir, I want to remind this House that there is something we call "the neighbours principle". You must care for your neighbour. You must take great care not to injure your neighbour, although you may not necessarily be your brother's keeper.

Mr. Temporary Deputy Speaker, Sir, the neighbour principle is very clear, that whatever you do you must do it in such a way that you do not injure the reputation of your neighbour, either through slander, which means the spoken word, or through libel, the written word. This is exactly what we are trying to do. We want to tell the media, as Parliament, that they must be responsible. They must act responsibly! That is why there is the code of conduct, which is everywhere.

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

The Assistant Minister for Local Government (Mr. Muchiri): I do not need it, Mr. Temporary Deputy Speaker, Sir.

(Laughter)

In every profession, there is a code of conduct, and quite often it is part of an Act of Parliament that applies to a particular profession. So, when we say, for example, that the media must report accurately and fairly, we are only demanding what is obvious. You cannot call what is black white, otherwise what will you be telling us? Accuracy is not only in Mathematics, but also in every line of duty. You must be accurate in whatever you say. You must also be fair and, particularly when you write. When you put your pen to paper, you must be clear that what you are writing is accurate. It must be fair to the extent that it does not injure the so-called "your

neighbour", and lawyers will understand me properly.

Why have we, in the field of journalism, continued to create falsehoods in many instances? Why have we been relying on sources of information that are not authenticated? I am happy that this particular legislation is bringing in some kind of order, in the sense that there is nobody in this world who purports to hold himself to be a doctor, an engineer, a valuer or even a journalist without accepting the responsibilities that go with those professions. So, for example, when we talk about integrity, journalists must have integrity, we are just emphasising what is necessary. When we say they must be accountable, or must give an opportunity to reply--- An opportunity to reply is one thing in law which is also guarded very jealously by everybody and the courts. For example, you cannot condemn somebody unheard. There is a Latin maxim that goes with it, but I do not want to bother this House with it. However, an opportunity to reply where a matter is being complained about is also important and it is obvious. It goes on and on.

Mr. Temporary Deputy Speaker, Sir, when we are talking about this legislation, it is important that we tell the Attorney-General that when companies are being registered to carry out this kind of work, it is important that they must have a fixed abode. Sometimes it is perturbing when people purport to carry on some journalism in what is called "the alternative Press" - I do not want to call them the "gutter Press". You cannot know where such newspapers are being printed or where their offices are, yet they purport to know who procured what abortions. I think it is best that we hold our horses in some of those things, because each one of us has had his own experience. However, where falsehoods are peddled in the print media, where some in the alternative Press say that a particular hon. Member does not go home, speak here or does not go to his constituency, yet he goes to those places, what are we supposed to do? That is why we are saying that there is no monopoly of those things. There is no monopoly to write or speak.

The Assistant Minister for Local Government (Mr. Shaaban): Or monopoly to say!

The Assistant Minister for Local Government (Mr. Muchiri): Yes, monopoly to say. Thank you, my colleague in the Ministry of Local Government.

Mr. Temporary Deputy Speaker, Sir, we want to tell the Press, either the print or electronic media, that they have a responsibility. We know they are doing many good things. However, when somebody goes to a broadcasting house and says that this Parliament needs to be bombed, what are we supposed to think of that particular line of argument? Parliament should be bombed and somebody is there at 8.00 o'clock. Those are the excesses we are saying need to be curtailed or regulated.

We are within our rights, as a Parliament, because we are the custodians of law making in this country. However, I must appreciate that most of the Press, particularly the mainstream Press, know what not to say or what not to write, because if they do that, they know what consequences will befall them. I must congratulate the mainstream media. I think they have really done their work well!

Prof. Anyang'-Nyong'o: Do not look at them; look at us!

The Assistant Minister for Local Government (Mr. Muchiri): Mr. Temporary Deputy Speaker, Sir, could you protect me from Prof. Anyang'-Nyong'o? Could he also accept that I am on the Floor? Just a minute ago, the other side was playing to the gallery!

Prof. Anyang'-Nyong'o: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to impute improper motives on our side? Which gallery were we playing to?

The Temporary Deputy Speaker (Mr. M'Mukindia): There is nothing wrong!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, it is a very important expression, that we--- Is he in order? Could he withdraw and apologise?

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, hon. Members! I think, it is out of order for any of us to play to any gallery. We would all be out of order! So, let us concentrate

on the matter at hand, the debate.

The Assistant Minister for Local Government (Mr. Muchiri): Much obliged, Mr. Temporary Deputy Speaker, Sir. We speak to the whole world and not to the gallery.

However, I think we should not bring politics into this debate. There is no politics in it! All what we are saying, and I am just about to end my contribution, is that there is no life without "dos" and "don'ts", otherwise life would be one monolithic and uninteresting thing.

So, I want to urge this House--- I know there are many things that we need to, perhaps, clean up in this Bill through amendments. We are all in agreement, as the Government, that any amendments that will be brought, and are reasonable, will be considered. The House will be obliged to consider them.

This is a legislation that is necessary. It will put us on a proper footing in matters relating to journalism, and the relationship between that part of the world and the society at large.

With those few remarks, I beg to support.

Mr. M. Kilonzo: Thank you, Mr. Temporary Deputy Speaker, Sir. I beg to oppose this Bill, and particularly Clause 38. If this was the law when the story of King David was written in the Bible, when he sent Uria to the front of the Army so that he could be killed in order to take over his wife, I have no doubt that the journalists then would have been punished under this law.

Clause 38(1) says: -

"The media shall, in a free and independent manner and style, inform the public on issues of public interest and importance in a fair, accurate and unbiased manner whilst distinctly isolating opinion from fact and avoiding offensive coverage of nudity, violence and ethnic biases."

Mr. Temporary Deputy Speaker, Sir, the reason I raised the issue of King David is because as you would recall, the two tribes of Israel were at war. This then, would have outlawed the story that appears in the Bible.

If this was law when the Queen of Sheba travelled to Israel to go and pay tribute to King Solomon, and they ended up doing what they did, then writing that story would have been outlawed.

The Assistant Minister for Information and Communications (Mr. Wamwere): On a point of order, Mr. Temporary Deputy Speaker, Sir, I am just wondering whether the hon. Member is not, in fact, distorting the story in the Bible. The reason why King David sent Uria into the middle of the war was because he wanted to take his wife. Is the hon. Member now implying that this law wants to take away the wives of journalists?

(Loud consultations)

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I am trying to be extremely serious in this matter. I want to remind the House---

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. M. Kilonzo. While I accept that, perhaps, that was not a point of order, the arguments you pushed by introducing Biblical verses in this debate, one would wonder, in so far as our Constitution is concerned, how that is valid.

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I dare say that my argument will emerge as I move along. Please, allow me to raise two other verses, because they are not many, to demonstrate the problems that this country is going to have if this Bill becomes law. Let me remind the hon. House and the country the story of King Nebuchadnezzar. King Nebuchadnezzar ended up eating grass for seven years after he violated the laws of God and the scribes then wrote that story in the Bible.

(Mr. O.K. Mwangi nodded his head)

Mr. Temporary Deputy Speaker, Sir, I have no doubt in my mind, and I can see the Bishop nodding because he knows what I am talking about. If this law had been the law applicable in Persia at the time of the story of King Nebuchadnezzar, the scribes would have been arrested, deregistered as journalists and they would have been told that they were writing false stories. What point am I making? The point I am making is that the freedom of the media is the single most important aspect of a democratic state. I will always insist, without fear of contradiction, that I do not agree with the media and the gutter Press when they write stories or falsehoods against my client, hon. Wamwere. I will never agree to that. In fact, when they do so, I will take them to court as I would do in the case of hon. Wamwere and others. Let me also emphasise---

The Assistant Minister for Information and Communications (Mr. Wamwere): On a point of order Mr. Temporary Deputy Speaker, Sir. Is it right that the hon. Member should bring into this debate---

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Wamwere! I had not even recognised you. Please, allow hon. M. Kilonzo to continue with his argument.

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, the point I am making is that, a country which is emerging from one party rule and from serious controls of communication and information---

As I speak now we have no Freedom of Information Act as a law in this country. As we emerge into a modern democracy, into a modern competitive state where people must share opinion and exchange ideas, it is ridiculous for us to be behaving in a manner that is even more odd than that displayed in the story about King Nebuchadnezzar because he did not stop journalists or the scribes from writing stories. King Solomon did not stop the scribes, he never passed a law like this and you would not find it in the laws of Moses. What am I saying? We have been told that---

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

Mr. Temporary Deputy Speaker, Sir, the hon. Assistant Minister cannot keep to his seat. Could you, kindly, protect me so that I can proceed with my contribution?

The Assistant Minister for Information and Communications (Mr. Wamwere): On a point of order, Mr. Temporary Deputy Speaker, Sir. I really do not want to interrupt the hon. Member but when he implies, in what he is saying, that the intention of this Bill is to kill the freedom of the Press, when, in fact, there is a specific phrase in this Bill saying that one of its intentions is to promote the freedom of the media; is he not misleading the House?

The Temporary Deputy Speaker (Mr. M'Mukindia): No! Order, order! That is a point of argument. Hon. M. Kilonzo is quite free to express his opinion about the Bill.

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, before I deal with the issue that has been raised by the hon. Assistant Minister, we have been told by the Government that there is such a law in Austria, USA, Belgium, India, Denmark, Spain, and probably in Norway, Tanzania, Uganda and in the United Kingdom. I want to take this opportunity to remind this House that not very long ago, masked men invaded the premises of a television station. As I speak to you this afternoon, we do not know who those masked men are, why they invaded the premises of a television station and why they burnt it. I want to remind this House and the country that nowhere in those countries has a First Lady invaded a television station as it happened in the recent past in this country.

(Applause)

When we give the Government in office the power to determine whether a story is accurate, how it has been collected and decide whether stories that fall short of accuracy and fairness should not be published, that becomes an issue of conduct.

I want to say, without fear of contradiction, that the hole we are going to dig for this country is one which we will never be able to come out of. We must allow the media, the freedom expressed in Section 79 of our Constitution to be respected, recognised and not to create editors on top of editors.

Mr. Temporary Deputy Speaker, Sir, even the gutter Press has its editors who are unknown to all of us. The media has called me names. They have called me all the names you can think of. Recently, they said that I had a boil in my rear part. I want to defend the right of the media to make those remarks. I want, for the rest of my life, to assure them that they can say anything they want to say about Mutula Kilonzo. When they make those remarks, I will take them to court and dry clean them and get damages and sufficient compensation for what they have done.

*(Mr. Wamwere pointed fingers
at Mr. M. Kilonzo)*

You can now see the problems we have in this country. Instead of the Assistant Minister listening and taking note of what I am saying, he is just shouting and pointing fingers at me, yet he is the presenter of this Bill.

Let me make another point.

The Assistant Minister for Local Government (Mr. Muchiri): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member on the Floor to speak directly to hon. Wamwere instead of addressing the Chair?

The Temporary Deputy Speaker (Mr. M'Mukindia): Indeed, he is not in order and neither is hon. Wamwere in order for talking directly to the hon. Member on the Floor. Please, address your issues to the Chair.

Mr. K. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I will address the Chair. I apologise for that.

The fact of the matter is that the Government is looking for a back way of legislating and approving what became of the Kenya Television Network (KTN) when it was invaded by hooded men. The Government is trying to bring a law to justify the First Lady walking into the Daily Nation premises and harassing the country about a newspaper report that she found to be unacceptable to her. The Government is creating the right atmosphere to continue the arrests, prosecution and false persecution of journalists as we have witnessed in the recent past. The Government is looking for a way of making sure that journalists will never be able to write anything critical about the Government so that whenever the Government creates figures and false allegations, and if one publishes that information, he or she will be required to give an apology. In fact, most of the journalists in this country will be moving from their offices to one Ministry to the other and they will not have time to write what they think.

Mr. Temporary Deputy Speaker, Sir, allow me to tell you this, in respect and in answer to the Minister, telling us about the United States of America (USA) Constitution. The USA Constitution, in fact, contains an express provision saying that:

"Congress shall not make a law abridging freedom of expression".

The councils that you talk about in the USA are created by the media houses themselves through

self regulation. They are not through legislation and you do not have to register with any Minister or Committee for purposes of becoming a journalist.

Mr. Temporary Deputy Chairman, Sir, let me also highlight something else. In the definition clause---

The Assistant Minister for Information and Communications (Mr. Wamwere): On a point of information, Mr. Temporary Deputy Speaker, Sir.

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I do not need information from hon. Wamwere, if you allow me, so that I can continue making my contribution.

Mr. Temporary Deputy Speaker, Sir, looking at this Bill, you will find that for an inexplicable reason, in 2007, the people of the Republic of Kenya want to define what a journalist is when everybody in the world is moving away from that. I would like to remind the country that nowadays, we are reading blogs and bloggers, news are being published by people on the internet, people who, probably, have never even been inside a classroom for the purposes of journalism. The country is also attempting to define the media and, thereby, restricting itself and end up being unable to take advantage of modern technologies as they move forward. This is a law that could have been contemplated 50 years ago or even before the Bible was written. I think the time to reject this law is now, because it is taking us backwards. We want our citizens, if they are in Subukia, if they see an incident or something happening in Subukia Forest, to go to the nearest computer cafe, publish a story and it is published and quoted by *The Financial Times* in London, because that is the way the world is developing.

Mr. Temporary Deputy Speaker, Sir, you will have noticed that in Clause 5, the Bill is attempting to define the functions of the Council. As you know, once you define a function, the opposite is that any function not included there is deemed to have been left out. You cannot import functions that are outside the definitions of the functions of the Council. I want to remind the Government with humility and very, very humbly that Clause 5 should not even be contemplated because the functions of the media and journalists should be left for themselves to determine. If they want to become investigative reporters, if they want to--- If you remember, a journalist finding his way into the bedroom of the Queen in England in the pursuit of a story--- You do not want to close the door after the horses have gone. The world has moved on, and the time to recognize that the media and the exchange of information is what is driving the global scene in the world right now. And yet, I see the Government attempting to say, if you look at Clause 5(b), they are saying:-

"The functions of a Council are-

(b) promote and protect freedom and independence of the media;"

That is already protected by Section 79 of the Constitution and to the extent that this definition is shallow, it is completely in contravention of the Constitution! The Constitution, as framed, is superior to this attempt at defining the functions of the whatever!

Mr. Temporary Deputy Speaker, Sir, if you look at Clause 5(g), and that is the reason I say this law must be resisted with everything in our power. Clause 5(g) is saying:-

"The functions of the Council are to-

(g) ensure the protection of the rights and privileges of journalists in the performance of their duties;"

Have you ever heard of anything like that? Why would journalists require a Council for their protection when Section 79 has assured them that the only way that right can be taken away is if they consent the taking away.

Mr. Temporary Deputy Speaker, Sir---

An hon. Member: (Inaudible)

Mr. M. Kilonzo: Exactly! The protection of the Constitution is superior to this one, and I am going to tell this to the Government until I am hoarse and after that, I will continue speaking

once I drink water. The protection of the Constitution is superior to any legislation formulated by the Ministry of Information and Communications.

(Applause)

The Assistant Minister for Local Government (Mr. Muchiri): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. M. Kilonzo to continue saying that this Bill contravenes the Constitution when you have ruled that it does not? Is he in order?

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I believe I am in order---

The Temporary Deputy Speaker (Mr. M'Mukindia): Order! Order, Mr. M. Kilonzo! I think it is okay. Although the Chair ruled, he did not in any way impose his views on the views of the hon. Members.

(Applause)

Mr. M. Kilonzo, is free to have any opinion he may want on this Bill.

Mr. M. Kilonzo: Thank you, Mr. Temporary Deputy Speaker, Sir. I am still on Clause 5 and I want to draw the attention of the House again, and I say this with humility again, because hon. Members will sit on the right hand of the Speaker today and tomorrow, they might be on the left hand side. The time to listen to me is now, and it is this: If you look at Clause 5(f), it says:-

"The functions of the Council are to-

(f) promote high ethical standards among journalists and in the media;"

Once again, that is not an area where this country is required to legislate. That is a matter that should be left to those people in those professions themselves. All that the Government should do is to look at Section 79(2) and if they find it under this section, Government Ministers are people who should be protected or Assistant Ministers are people to be protected; they can bring a law here so that journalist can know when they write about Assistant Ministers or Ministers being idle and not being paid, those are people who can be covered by the exceptions in Section 79(2) of the Constitution.

Mr. Temporary Deputy Speaker, Sir, one of the most amazing things is Part IV of the Bill. That is where there is something called "Complaints and Dispute Resolution". The Bill, by Clause 29, attempts to say the following:-

"There shall be a Complaints Committee which shall consist of not less than five persons appointed by the Council, among whom shall be a journalist, an advocate of the High Court and a member of the public".

I would like to remind this Government again, that there is a law of defamation in Kenya. That law is total; it is complete and it is protected. That law allows, whenever there is a dispute about a misreporting, for that law to be used, and successfully too, for the protection of the reputation that the Government is now seeking to protect. There is no need to come and create a so-called "Complaints and dispute resolution mechanism" in an Act of Parliament on issues that are clearly outside the province of Government regulations.

But, Mr. Temporary Deputy Speaker, Sir, most importantly, allow me to refer to Clause 38. Clause 38(2) says:-

"The media shall keep and maintain high professional and ethical standards and shall, at all times,---"

You notice, Mr. Temporary Deputy Speaker, Sir, that is mandatory!

"The media shall keep and maintain high professional and ethical standards and shall, at all times, have due regard to the Code of Conduct set out in the Third

Schedule to this Act".

I submit without fear of contradiction that, that clause flies in the face of Section 79 of the Constitution of the Republic of Kenya. It is a hindrance to the practice of the right to freedom of information, communication, expression and all other freedoms that will contribute to the growth of this country as we move forward.

Mr. Temporary Deputy Speaker, Sir, it is for that reason alone that I will submit that this law should be rejected. The Code of Conduct appears on Page 754. Since other hon. Members have spoken about parts (a)(b)(c) and (d), I just want to deal with independence.

Mr. Temporary Deputy Speaker, Sir, you will find independence on page 755, and it says:-

"Journalists should defend the independence of all journalists from those seeking influence or control over news content. They should-

(a) gather and report news without fear or favour, and vigorously resist undue influence from any outside forces, including advertisers, sources, story subjects, powerful individuals and special interest groups".

Mr. Temporary Deputy Speaker, Sir, it is my submission that the entire part of the Clause again is superfluous, completely unnecessary and the sort of thing that would be used in a court of law for the prosecution of a journalist alleging that they have violated this so called independence. That applies to "integrity" on page 756 and "accountability," at page 757 and "misinterpretation."

Look at "unnamed sources" at page 758. It says that unnamed sources should not be used unless the pursuit of the truth would best be served by not naming the source who should be known by the editor and reporter. When material is used in a report from sources other than the reporters, these sources should be indicated in the stories. This is one method of killing journalism in this country because they are required to say their source even in advance and that would destroy the very confidentiality that has protected journalism for decades not only in this country but in many parts of the world. I can go on and on.

Mr. Temporary Deputy Speaker, Sir, my own conviction and considered opinion is that, this is an extremely bad law. If you look at "privacy" at page 760, they say that the public's right to know should be weighed against the privacy rights of people in the news. Then journalists should stick to the issues. Who is going to determine what issues a journalist should stick to? I do not think I need to go further. I, very humbly, urge this House to reject this Bill on the grounds that it is unconstitutional and extremely badly drafted and any attempt to amend it is going to be a complete waste of time, because you cannot amend that which is unamendable.

With those few remarks, I beg to oppose.

The Assistant Minister for Agriculture (Mr. Muiruri): Mr. Temporary Deputy Speaker, Sir, I stand to support the Bill. However, the Bill itself covers people like ourselves who are politicians and leaders, when it comes to slur. I remember sometimes in this House there was a publication on me by the gutter press.

The gutter is terribly notorious in slurs. When you go to look for them, you cannot find them. You do not know where they do their printing. One copy of that print will cost as little as Kshs20. Indeed, the daily sales comes to about 1,000 copies, which comes to about Kshs20,000 but it has no advertisement. But it contains a lot of slur and you can never get them.

The other problem is about journalism. Journalism is said to be a profession. But journalists are employed by the media owners. The way journalists are treated in this country is something very shameful. We know them and they are up there in the Press Gallery. I have never seen one driving a car. They live on hand-outs. That is what brings in a lot of corruption because how do they survive? They are poorly paid---

Mr. Raila: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think we need to be civil and respectful here. The hon. Member is really trying to demean the profession of journalism

saying that journalists live on hand-outs. Majority of journalists are employed by very reputable firms and they earn salaries.

(Mr. Sambu consulted loudly)

The Temporary Deputy Speaker (Mr. M'Mukindia): Order! Order, Mr. Sambu!

The Assistant Minister for Agriculture (Mr. Muiruri): Mr. Temporary Deputy Speaker, Sir, I am not going to reply to Mr. Raila.

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Muiruri!

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, the hon. Member is saying that he has never seen these journalists driving cars, they live on hand-outs and, therefore, they are irresponsible people. Is he really in order when we know that most of these journalists are employed by very reputable companies? Some of them sitting up there in the Press Gallery are employed by the *Nation* Media Group, the *Standard* and so on.

The Temporary Deputy Speaker (Mr. M'Mukindia): Order! I think we had occasion to talk about this issue earlier on. I believe hon. Muiruri was not in the Chamber at that time. The Chair made a ruling; first, that journalism is a honourable profession. Secondly, that you cannot impute improper motive on the character or conduct of anybody who cannot defend himself or herself in this Chamber.

(Applause)

I would, therefore, appeal to hon. Members that, irrespective of whatever difficulties we may have with our journalists, let us stick to the point and Bill, rather than deviate to other issues.

Hon. Muiruri, could you, kindly, withdraw your remarks?

The Assistant Minister for Agriculture (Mr. Muiruri): Mr. Temporary Deputy Speaker, Sir, what am I apologising for, when everybody knows that what I am saying is the truth of the matter? Journalists are very poorly paid. That is simply what I am saying!

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, hon. Muiruri! You are totally out of order, unless, you can prove to the House that, indeed, that is what you do. You should also tell us to who you have done it!

Could you either do that or withdraw your remarks? You cannot have it both ways!

The Assistant Minister Agriculture (Mr. Muiruri): Mr. Temporary Deputy Speaker, Sir, it is hypocrisy not to admit that journalists are very poorly paid. We have them in Thika, Nairobi, Mombasa--- I am just emphasizing the fact that our journalists are very poorly paid by the media owners. I cannot withdraw that remark!

The Temporary Deputy Speaker (Mr. M'Mukindia): Order! The issue is not whether journalists are paid well or not. Hon. Muiruri, I think it is important that you withdraw what you said; that journalists live on hand-outs! I think that is not correct. Please, do that and then we move on!

The Assistant Minister Agriculture (Mr. Muiruri): Mr. Temporary Deputy Speaker, Sir, I withdraw that remark; that journalists live on hand-outs.

Mr. Raila: Apologise!

The Assistant Minister Agriculture (Mr. Muiruri): For what? I have apologised. What else do you want?

What is wrong with my friend, Mr. Raila, over there? Where did you sleep?

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Muiruri! Please, address

the Chair!

Mr. Raila: On a point of order, Mr. Temporary Deputy Speaker, Sir. "Mr. Private Eye" knows very well the profession that he has been involved in, in the past. But we are not talking about his past. We are talking about the profession of journalism. He should withdraw the remark about hand-outs and apologise!

The Temporary Deputy Speaker (Mr. M'Mukindia): He has done that!

Continue, Mr. Muiruri!

The Assistant Minister for Agriculture (Mr. Muiruri): Mr. Temporary Deputy Speaker, Sir, I have done that, unless, hon. Raila is obviously deaf.

Prof. Anyang'-Nyong'o: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order, really, for the Members of the Front Bench on the other side, to systematically continue to be uncivil in this House? For example, that hon. "Private Eye" has said that---

The Temporary Deputy Speaker (Mr. M'Mukindia): Prof. Anyang'-Nyong'o, please, address the Chair!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, my point of order is as follows: Is it in order---

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

Prof. Anyang'-Nyong'o: I am on a point of order, Mr. Sambu!

Mr. Sambu: What is a "private eye"? We do not have "private eyes" in this House!

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Sambu! You cannot raise a point of order on top of another point of order. You should raise one point of order at a time!

Continue!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, is it in order for the hon. Muiruri to say, "unless the hon. Raila is deaf?" Is it a parliamentary language, to ask another Member of Parliament, whom you know is properly in this House with all the qualifications to be in this House, whether he is deaf?

The Assistant Minister for Agriculture (Mr. Muiruri): Mr. Temporary Deputy Speaker, Sir, I said that I had apologised, unless hon. Raila is deaf. I had done it!

My friend, Prof. Anyang'-Nyong'o, over there, will have to tell us, at one time, how he got that professorship, because I do not think he is a properly-qualified professor, given his utterances in this House!

Prof. Anyang'-Nyong'o: On a point of order, Mr. Temporary Deputy Speaker, Sir.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, hon. Members! Order, Prof. Anyang'-Nyong'o! We have to respect that Mace!

Before we adjourn, hon. Muiruri, you will have a balance of 22 minutes when the debate resumes tomorrow. Please, I hope that you will have a cooler debate tomorrow!

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 5th July, 2007, at 2.30 p.m.

The House rose at 6.30 p.m.