

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 30th August, 2007

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

PRAYERS

## ORAL ANSWERS TO QUESTIONS

*Question No.429*

### PROVISION OF CLEAN WATER TO BUMALA MARKET

**Prof. Mango** asked the Minister for Water and Irrigation:-

(a) what the Ministry is doing to supply residents of Bumala Market with clean water; and,

(b) how much money the Government has set aside for irrigation schemes in Ibanda, Neela, Irana, Burinda and Mundasi as a strategy for income-generation and increased food production.

**The Assistant Minister for Water and Irrigation** (Mr. Wanjala): Mr. Deputy Speaker, Sir, I beg to reply.

**Mr. Deputy Speaker:** Mr. Assistant Minister, I expected you to apologise, first, for not having been able to answer this Question yesterday!

**The Assistant Minister for Water and Irrigation** (Mr. Wanjala): Mr. Deputy Speaker, Sir, I had forgotten! I wish to apologise for not having been able to reach here by the time you called out this Question yesterday. I was held up in a traffic jam.

**Mr. Deputy Speaker:** Very well!

**The Assistant Minister for Water and Irrigation** (Mr. Wanjala): Thank you, Mr. Deputy Speaker, Sir.

I beg to reply.

(a) The residents of Bumala Market are currently supplied with clean piped water from Bujumba-Burinda Water Supply, which is managed by Bujumba-Burinda Water Users Association. The water supply will be supplemented by Funyula-Bumala Water Supply which will be rehabilitated and augmented under the ongoing Water and Sanitation Programme for Nzoia Cluster Phase II

(b) My Ministry has set aside Kshs3 million in the 2007/2008 Financial Year for development of Neela Irrigation Scheme, Ibanda, Burinda, Irana and Mundasi irrigation schemes in Butula Constituency have been identified for development and a feasibility study for these schemes and others in Busia District is ongoing.

**Prof. Mango:** Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for his answer. However, Bumala Market covers a bigger area than what he has given. Could he inform

the House about the workplan; as to when he will cover the remaining areas of Bumala Market?

**Mr. Wanjala:** Mr. Deputy Speaker, Sir, as I said, the Funyula-Bumala Water Supply which will be rehabilitated and augmented under the ongoing Water and Sanitation Programme for Nzoia Cluster Phase II, is ongoing. We have not reached Bumala.

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, last year, we were informed in this House, by the Assistant Minister, that there was a lot of money that had been set aside for sinking boreholes in all constituencies in the country. To date, we have not seen these boreholes. Moreover, we do not know the criteria which was used to sink these boreholes. All that we know is that there is a lot of work going on in certain parts of the country. What criteria is being used to sink those boreholes? When will this House know where and how that money will be spent on those boreholes?

**Mr. Wanjala:** Mr. Deputy Speaker, Sir, I think the hon. Member is not being fair. He knows very well that this Ministry has done quite a lot. There are areas that actually need boreholes more than others. In areas which are closer to rivers and lakes, we do provide them with piped water. The hon. Member knows very well that even his own constituency was supplied with piped water, which has spread even more than the way the borehole would have served. For example, the Sidindi-Malanga Water Project. Many other water projects are in his constituency. He must appreciate this. In fact, most of the money meant for water projects in Siaya District has gone to his constituency to fund water projects. We know that they believe in complaining!

**Mr. Ojaamong:** Mr. Deputy Speaker, Sir, the Assistant Minister says that the Water and Sanitation Programme for Nzoia Cluster Phase II is ongoing. Could he state which areas will be covered by this programme and when it will be effected?

**Mr. Wanjala:** Mr. Deputy Speaker, Sir, first of all, we started from the hon. Member's constituency and knows that very well. The programme was launched by His Excellency the Vice-President and Minister for Home Affairs. We are still continuing with it. Bumala is also covered. That means that the whole of Busia and Teso districts are covered under this project.

**Prof. Mango:** Mr. Deputy Speaker, Sir, I wish to thank the Assistant Minister and the Ministry for giving Neela Irrigation Scheme some money in the 2007/2008 Financial Year.

In Butula, we have a lot of rivers which could be used for irrigation. In so doing, we reduce poverty. I would like to know from the Assistant Minister what workplan he has for the remaining irrigation schemes, so that the people of Butula can reduce poverty.

**Mr. Wanjala:** Mr. Deputy Speaker, Sir, the first workplan is to identify the areas that are viable for irrigation in that constituency. Indeed, my Ministry has identified Ibanda, Burinda, Irana and Mundasi. For us to come up with a complete workplan, a feasibility study is being done. After the feasibility study, we will be able to have the workplan on how to undertake the projects. We are now ready to start work on the Neela Irrigation Scheme after a feasibility study was done on the same.

**Mr. Deputy Speaker:** Next Question by the Member of Parliament for Nakuru Town!

*Question No.197*

ACUTE WATER SHORTAGE  
IN NAKURU TOWN

**Mr. Deputy Speaker:** Is Mr. Mirugi not here? The Question is dropped!

*(Question dropped)*

**Mr. Deputy Speaker:** next Question by the Member of Parliament for Yatta Constituency!

*Question No.132*NUMBER OF NURSES RECRUITED  
BY GOVERNMENT SINCE 2006

the Minister for Health:-

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

**Mr. Deputy Speaker:** Is the Minister for Health not here?

**An hon. Member:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Could I hear from the Leader of Government Business?

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

(a) A total of 3,077 nurses have been recruited by the Ministry since the year 2006.

(b) I hereby table the list showing the number of nurses posted per district and constituency to date.

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

(c) I am aware that my Ministry has already operationalised 3,000 dispensaries built through the Constituencies Development Fund (CDF), as per Gazette Notice No.1640 of 23rd February, 2007. Another list of 370 dispensaries are contained in a signed Gazette Notice submitted to the Attorney-General for approval, before it is printed, to make them operational.

(d) I am aware that many operational dispensaries do not have laboratory technicians. Dispensaries are in Level II. According to Norms and Standards for Health Service Delivery, laboratory services, where laboratory technicians are deployed, are only offered in health centres which are Level III facilities, and not in dispensaries.

**Mr. Deputy Speaker:** Hon. Members, as you are aware, that this Question was substantially answered by the Minister for Health. The only issue that remained was the tabling of the number of nurses posted per district.

Mr. C. Kilonzo, have you seen that list?

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, when the Question was answered, there were no supplementary questions which were asked, purely because the list had not been tabled. Would I be in order to ask that, this time round, we be given the opportunity to ask supplementary questions?

**Mr. Deputy Speaker:** Go ahead!

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, this is the fifth time that this Question is being asked. The number of nurses that have been recruited is 3,077. I would want to know what criteria was used to post those nurses. This is because there are some constituencies which got 71 nurses while others got 44, 50 and 79 nurses. There are constituencies which have put up dispensaries and, on average, they need five to seven nurses. What criteria was used in the posting of the nurses?

**Mr. Awori:** Mr. Deputy Speaker, Sir, there is different population in different areas. The criteria that was used in assigning nurses to different dispensaries is the catchment areas and population.

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, I am really shocked that many nurses and paramedics were recruited and yet, five dispensaries and two health centres in my constituency never received them. Two of those dispensaries have got only one medical staff. The other is a messenger who cannot even dress a wound. When is the Ministry going to consider deploying his staff to all health facilities in this country, including those in Kitutu Chache Constituency?

**Mr. Awori:** Mr. Deputy Speaker, Sir, it is quite possible that the dispensaries in Mr. Angwenyi's constituency were not completed according to the standards required. Once they are certified that they are equal to the rest, we will make sure that he gets the required staff. That way, the messenger who cannot even dress wounds can no longer work there.

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, we are happy that now, after several sessions, we have got the list. But the issue raised by Mr. C. Kilonzo was: What is the criteria used to deploy nurses so that some areas have very many nurses while others do not have? Perhaps, this problem will be solved if we have a list of the new operationalised dispensaries and the list of the nurses who were posted to those dispensaries. The new dispensaries and health centres which were built using the Constituencies Development Fund (CDF) do not have staff. If we had a list showing which nurses were posted to which dispensaries, maybe, we can, at least, be satisfied that the distribution was reasonable.

**Mr. Awori:** Mr. Deputy Speaker, Sir, I can only repeat what I said. It is not possible for all dispensaries to have an equal number of nurses because the demand is different. As I said, it depends entirely on the number of people who are using those dispensaries.

**Mr. Khamisi:** Mr. Deputy Speaker, Sir, the shortage of nurses has been a perennial problem over the last four years. Could Mr. Awori tell us whether the problem is lack of trained personnel or it is the lack of money from the Government to employ qualified nurses in our health facilities?

**Mr. Awori:** Mr. Deputy Speaker, Sir, the hon. Member knows that, for a long time, there was a freeze on the employment of nurses and clinical officers. We have now started employing them. Of course, we employ them according to the financial resources that we have got. The number of nurses and clinical officers trained in this country is more than adequate. I believe that in the next budgetary allocation, there will be another amount of money that will enable this Ministry to employ more nurses.

**Mr. Ochilo-Ayacko:** Mr. Deputy Speaker, Sir, I heard the Vice-President and Minister for Home Affairs say that the posting of nurses was on the basis of population. From the list that has been given to this House, Dujis and Siakago dispensaries were given 77 and 75 nurses, respectively. I know for a fact that, in terms of population, the two constituencies are smaller than most of the constituencies. Rongo Constituency was only given 22 nurses. Was it population that was considered or there were other wind-assisted issues that were being considered, that we are not aware of?

**Mr. Awori:** Mr. Deputy Speaker, Sir, I am not aware of any other exigencies that brought the differences. But if there were, it is possible that, perhaps, there were more sick people in Dujis Constituency than in Mr. Ochilo-Ayacko's place!

**Mr. Deputy Speaker:** Last Question, Mr. C. Kilonzo!

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, the Minister for Health and her two Assistant Ministers have actually refused to show up in the House. The posting of those nurses does not end. My constituency, which has a far bigger population and has a district hospital like Dujis Constituency, was only given one nurse. But because I sit on this side of the House---

**An hon. Member:** And you are not politically-correct!

**Mr. C. Kilonzo:** The man who is politically-correct was given 71 nurses! Is that fair? We are talking about 3,777 nurses who were employed and my constituency was given only one! From the arithmetic, what they have given here as postings is 2,136 nurses. If we subtract that from the

number which was actually employed, there is deficit of 943. Where are the other 943 nurses? Indeed, if they were not posted, we need to have them posted! Could I be given 100 nurses in my constituency?

**An hon. Member:** You are not politically-correct!

**Mr. Awori:** Mr. Deputy Speaker, Sir, as a matter of fact, I will be in the hon. Member's constituency tomorrow. I will be visiting the area. I will talk to the Minister for Health to help the young man.

**Mr. Deputy Speaker:** Next Question by Mr. Ochilo-Ayacko!

**Mr. Ochilo-Ayacko:** Mr. Deputy Speaker, Sir, I have not been given a written answer.

*Question No.134*

GOVERNMENT EXPENDITURE ON CASE  
OF EALA MEMBERS NOMINATION

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

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

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

**Mr. Deputy Speaker:** Is the Attorney-General here? Mr. Awori, do you have something to say in his absence?

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Mr. Deputy Speaker, Sir, my apologies on behalf of the Attorney-General. I know he is busy with the next Order after Question Time. That is the reason why he did not send me the signed reply. He is not here. May I request that you put this Question on the Order Paper for Tuesday next week?

**Mr. Deputy Speaker:** Mr. Ochilo-Ayacko, what do you have to say about that?

**Mr. Ochilo-Ayacko:** Mr. Deputy Speaker, Sir, that is all right with me!

**Mr. Deputy Speaker:** Very well! The Question is deferred to Tuesday, next week.

*(Question deferred)*

*Question No.109*

ACUTE SHORTAGE OF TEACHERS  
IN TESO SCHOOLS

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

(a) what is the total number of teachers in both primary and secondary schools who have either died, resigned, absconded from duty or been transferred out of Teso District since the year 2003;

(b) whether he is aware that as a result of teachers deaths, resignations, absconding and transfers from Teso, there is an acute shortage of teachers in the district, thus, resulting in poor performance in most schools; and,

(c) what deliberate measures the Ministry is taking to improve academic standards in the district.

**Mr. Deputy Speaker:** The Minister for Education is not here! Your Excellency, what do you have to say?

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

(a) The total number of teachers in Teso District who have left the teaching service between the year 2003 and 2007 through deaths, resignations, dismissals and transfers is 256.

(b) I am aware that, through natural attrition, Teso District currently has a shortage of 551 teachers at the primary level and 43 at the secondary level. That is as at September, 2006.

(c) The Ministry has been replacing teachers who leave through natural attrition on an annual basis. Between the year 2003 and 2007, a total of 245 primary school teachers and 62 secondary school teachers have been recruited for Teso District.

**Mr. Ojaamong:** Mr. Deputy Speaker, Sir, indeed, the Vice-President and Minister for Home Affairs has confirmed that there is an acute shortage of teachers. A shortage of 551 teachers at the primary level--- I have around 500 primary schools. That means that each school has a shortage of about five teachers. What deliberate measures is the Ministry taking to ensure that there is proper staffing of teachers, apart from the normal annual replacements?

**Mr. Deputy Speaker:** Mr. Ojaamong, can you repeat your question?

**Mr. Ojaamong:** Mr. Deputy Speaker, Sir, what deliberate efforts is the Ministry taking to ensure that there is proper staffing of schools in Teso District, other than the normal annual replacements?

**Mr. Awori:** Mr. Temporary Deputy Speaker, Sir, schools in Teso District are not treated differently from other schools. As we know, there is a national shortage of teachers. There is understaffing everywhere. As we are aware, the Ministry recently employed 11,000 teachers. I am quite sure that there was equitable distribution in the recruitment of those teachers.

**Dr. Rutto:** Mr. Deputy Speaker, Sir, while answering the Question, the Vice-President and Minister for Home Affairs said that the Ministry replaces teachers who die on a yearly basis. That replacement process is terribly inefficient.

*(Mr. Awori consulted with  
other hon. Members)*

Mr. Deputy Speaker, Sir, let me request that Mr. Awori listens---

**Mr. Deputy Speaker:** Order! Can you ask your question?

**Dr. Rutto:** Mr. Deputy Speaker, Sir, I was saying that the procedure of replacing teachers yearly is terribly inefficient. What has the Ministry done to improve efficiency in the yearly recruitment of teachers by District Education Boards (DEBs)?

**Mr. Awori:** Mr. Deputy Speaker, Sir, there are, indeed, guidelines in the replacement of those teachers that are out of service because of natural attrition. Improvements are happening all the time, particularly since the introduction of performance contracting. There is, indeed, a great deal of improvement in the replacement of teachers who have left due to natural attrition.

*(Mr. Wanjala spotted Mr. Wako's  
document folder on the Front Bench)*

**The Assistant Minister for Water and Irrigation** (Mr. Wanjala): On a point of order, Mr. Deputy Speaker, Sir. It is common knowledge that hon. Members are not allowed to come in carrying handbags. That includes women Members of Parliament. I am surprised to see the Attorney-General, who is the Government Legal Advisor, coming in with a hand bag!

**Hon. Members:** It is a briefcase!

*(Laughter)*

**Mr. Deputy Speaker:** I can see! It looks like a file folder to me. It does not look like a

handbag. It does not even look like a briefcase. This is a matter of definition. I do not think that it is a hand bag in the first place. The Attorney-General will be coming to tell us what it is. But, certainly, it is not a hand bag!

**Mr. Bahari:** On a point of order, Mr. Deputy Speaker, Sir. That folder can carry a lot of things. It is capable of carrying so many things! In the past, Mr. Raila brought a similar folder here and it was thrown out!

**Mr. Deputy Speaker:** Order! I will look at it!

**Ms. Abdalla:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** What is it?

**Ms. Abdalla:** Mr. Deputy Speaker, Sir, in fact, the Speaker's rules do not talk about hand bags. They talk about any item that can be used as a weapon and can carry things that cannot be explained. The Attorney-General can be allowed to keep his papers, but the hand bag must be taken outside!

**The Minister for Planning and National Development** (Mr. Obwocha): Mr. Deputy Speaker, Sir, this bag does not---

**Mr. Deputy Speaker:** Order, Mr. Obwocha! You are out of order! That is not your bag! Just leave it there. I will deal with the Attorney-General when he comes!

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

**Mr. Deputy Speaker:** Order! Order! The matter of the bag will be left until the Attorney-General is in the Chamber.

Last question, Mr. Ojaamong!

**Mr. Ojaamong:** Mr. Deputy Speaker, Sir, when this Government came to power, it promised to pay the teachers what they had negotiated with the KANU Government. Could the Assistant Minister assure the teachers of Kenya that the Government is going to effect all the salary increment phases as it had pledged?

**Mr. Awori:** Mr. Deputy Speaker, Sir, in the first place, that question has no relationship, whatsoever, with the Question before the House. Nevertheless, I will answer it. Indeed, this Government has undertaken to pay teachers according to the agreement of the previous Government. I think the Government has done extremely well on that score.

**Mr. Deputy Speaker:** That is the last Question on the Order Paper. We, therefore, go to the next Order.

## POINT OF ORDER

### ALLEGATIONS OF IRREGULARITIES AT EQUITY BANK

**Mr. Angwenyi:** On a point of order, Mr. Deputy Speaker, Sir. I rise on a point of order to seek your guidance on a matter that I raised last Thursday, 23rd August, 2007.

You can recall that when hon. Kajwang was contributing---

*(Loud consultations)*

**Mr. Deputy Speaker:** Order, there! Prof. Oniang'o!

**The Assistant Minister for Water and Irrigation** (Mr. Wanjala): On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** But Mr. Wanjala, Mr. Angwenyi is standing on a point of order. The Chair has asked the ladies to consult quietly.

Order, Prof. Oniang'o! I expect the gracious ladies to remain gracious!

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, you can recall that when hon. Kajwang was contributing on the Statute Law (Miscellaneous Amendments) Bill, he made wild allegations on the probity of Equity Bank. When he was challenged to substantiate the claims that he had made, he purported to lay on the table some documents, which to date, we do not know their authenticity. It is only proper and dignified that the Floor of this House should not be used to score political mileage and destroy the character and honour of persons or institutions that cannot defend themselves on the Floor.

I am, therefore, respectively, requesting the Chair to make a ruling on the status of those documents; where they are and whether they are authentic and admissible in terms of our Standing Orders. Equally, the Chair has a duty and a responsibility to protect innocent citizens of this country and innocent business institutions from unwarranted attacks in disguise of parliamentary privilege.

I, therefore, would like to seek that the Chair gives a ruling on the authenticity of those documents. I also further seek that if those documents are not authentic and cannot be substantiated fully, all that matter that pertains to those wild allegations be expunged from the records of this House.

**Mr. Deputy Speaker:** Well, I have heard you, Mr. Angwenyi. I have not had the benefit of looking at the HANSARD of the proceedings of that afternoon. I will ensure to study the proceedings of the House on that afternoon. I will make an appropriate ruling as requested, probably, on Wednesday, next week. This will be after we have studied the relevant HANSARD.

Can I ask the Attorney-General to take a seat?

*(Mr. Wako took his seat)*

**Mr. Midiwo:** On a point of order, Mr. Deputy Speaker, Sir. Hon. Angwenyi has raised a very important issue. I am the one who brought that audit report to the House. As we await your ruling, could we also ask hon. Angwenyi to declare his interest in that particular matter?

**Mr. Deputy Speaker:** Let me deal with the issue raised by Mr. Midiwo first. Mr. Angwenyi, do you have any interest in the matter?

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, my interest is that I must protect innocent Kenyans. That is why I am a representative of the people of Kitutu Chache and the people of Kenya in general.

**Mr. Deputy Speaker:** Mr. Midiwo, what kind of interest are you talking about?

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, it is important because the issues which were brought to the Floor by Mr. Kajwang are injurious to the citizens of this country. I am the one who brought an audit report to this House by KPMG raising the irregularities at the Equity Bank. So, for Mr. Angwenyi to say that--

**Mr. Deputy Speaker:** Order, Mr. Midiwo!

**Mr. Midiwo:** So, for him to say that I did not mean well--

**Mr. Deputy Speaker:** Mr. Midiwo, you are pre-empting the issue! I have already said that I will have a look at the HANSARD. Maybe after I give a ruling, if you want to say something, you, probably can, but right now, I am really in darkness. I do not know what you are talking about. You raised the issue that Mr. Angwenyi declares his interest in the matter. I thought you would, probably tell us what interest you think he has in the matter.

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, I wanted him to declare his interest because on the said day when that particular issue was raised, he acted peculiarly strange. Today, he purports to protect the interests of Kenyans more than us, who thought that the bank was doing irregular things. So, as we await your ruling, it is very important for the hon. Members to be honest when



they contribute on such issues because when you cast aspersions---

**Mr. Deputy Speaker:** Order, Mr. Midiwo! Hon. Members, let me deal with this matter! I think you know the rules. Hon. Members are required to declare their interests on matters of this nature. For example, if Mr. Angwenyi was a director, a shareholder or something like that. Now, acting in a matter that you describe as "peculiarly strange", I do not think can be an interest.

Please, allow the Chair to study the HANSARD of that day, as it is, indeed, the parliamentary practice. Certainly, the Chair will look at that and will come up with an appropriate ruling or response to Mr. Angwenyi's point of order. Let us not debate the matter!

**The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje):** On a point of order, Mr. Deputy Speaker, Sir. First of all, hon. Angwenyi has declared that he has no interest in the matter. At the same time, I think the Chair must now protect Kenyans wherever they are. If a particular hon. Member has a vendetta with a particular institution in this country, this is a serious matter.

**Mr. Deputy Speaker:** Order, Mr. Mwenje! Mr. Mwenje, I have said and I want to repeat that, that matter is not to be raised until the Chair studies the proceedings of that day and makes a ruling. Now you are already pre-judging. It is like you already know what the decision is going to be and you have already started making a contribution. Please, can you hold your horses until Wednesday?

**Mr. Angwenyi:** On a point of order, Mr. Deputy Speaker, Sir. Mr. Midiwo has said that I acted strangely. Could he bring a substantive Motion here to discuss whether I have a special interest in that matter or if I have "eaten" something on that matter, so that I can clear my name? Otherwise, he must substantiate or withdraw those remarks until you have made your ruling and then we can discuss the matter here.

**Mr. Deputy Speaker:** By the way, Mr. Midiwo, if I were to ask you, how did he behave in a peculiar manner? I do not know how you can substantiate that.

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, on that day, since you have said that you were not here, hon. Kajwang was contributing when I begged to give him some information. I laid on the Table of the House that particular document, which was an audit report, and the Chair that day said that it was a public document and there was no problem with it.

When Mr. Angwenyi shot up, he said that Mr. Kajwang had no integrity because he was a deregistered lawyer. He also did not bring a Motion to cast aspersions on the integrity of Mr. Kajwang. He said how corrupt Mr. Kajwang is. He himself, has been on camera being paid in public!

**Mr. Deputy Speaker:** Order, Mr. Midiwo! I think the integrity of this House demands that, that kind of exchange does not belong here. Please, hon. Members, would you be honourable enough to refrain from casting aspersions against other hon. Members?

**The Minister for Planning and National Development (Mr. Obwocha):** On a point of order, Mr. Deputy Speaker, Sir. This is an honourable House. Hon. Members must be honest when they are talking to the Chair when he has made a ruling. Hon. Kajwang laid a document of one of the directors writing to somebody. This is a different report from the audit report.

So, hon. Members must be honest. You have said that you are going to study the HANSARD and we should wait for your ruling. We cannot impute improper motive on another hon. Member unless we have a substantive Motion on that hon. Member. I want to agree with you that we should wait for your ruling. Hon. Kajwang laid a different document from the one that was laid by hon. Midiwo.

**Mr. Deputy Speaker:** Mr. Obwocha, you just stood to re-affirm or reinforce the Chair's statement. Therefore, you are out of order!

No more on that matter! Next Order!

**The Assistant Minister for Water and Irrigation** (Mr. Wanjala): On a point of order, Mr. Deputy Speaker, Sir. It seems like the House is flouting the rules without your knowledge. After the Attorney-General having come in with a handbag, again I can see hon. Abdalla with a handbag right inside the Chamber.

Would the Chair now protect this House?

**Mr. Deputy Speaker:** Very well, let me now deal with this matter.

**Dr. Oburu:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Dr. Oburu, not on the matter raised by Mr. Angwenyi!

**Dr. Oburu:** Mr. Deputy Speaker, Sir, I have been standing up, but you have been giving---

**Mr. Deputy Speaker:** Order, Dr. Oburu! I expect, Dr. Oburu to behave in a different manner! What is wrong? I have already ruled that the matter that was raised by Mr. Obwocha was the last and there was not going to be any other point of order. You must respect that!

**Dr. Oburu:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order, Dr. Oburu! Is this the Dr. Oburu that I know?

*(Laughter)*

Order, Dr. Oburu!

**Dr. Oburu:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Dr. Oburu, not on that matter! Dr. Oburu, you are being declared disorderly!

Now, let me deal with the Attorney-General. Hon. Attorney-General, hon. Wanjala stood on a point of order when you were out and stated that, in fact, you came to the House with a bag, contrary to the rules of the House. What is that, that you have there, Mr. Attorney-General?

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, these are ordinary various legislations which are going to be touched on in the Statute Law (Miscellaneous Amendments) Bill, which covers very many Acts of Parliament. This is what I brought to this House.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. Clearly, this is a bag. The Attorney-General wants us to start coming to the House carrying similar bags and suitcases, and God knows what else. This is a clear proper small suitcase.

**The Minister for Planning and National Development** (Mr. Obwocha): Do you know a suitcase?

**Mr. Deputy Speaker:** Very well. Therefore, the Chair orders that the bag be removed from the Chamber. Similarly, the bag brought in by Ms. Abdalla should be surrendered to the Serjeant-at-Arms. The Chair expects those orders to be carried out immediately!

*(Ms. Abdalla and Mr. Wetangula  
withdrew from the Chamber  
with the bags)*

**Mr. Ojode:** On a point of order, Mr. Deputy Speaker, Sir. I will not go against your ruling. However, the Chair itself has a bag similar to that one of the Attorney-General. What will happen to the Chair's bag?

*(Laughter)*

**Mr. Deputy Speaker:** Order! The Chair happens to be the Chair!  
Next Order!

**BILLS***First Reading*

## THE CONSUMER PROTECTION BILL

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

*Second Reading*THE KENYA COMMUNICATIONS  
(AMENDMENT) BILL

**The Minister for Information and Communication** (Mr. Kagwe): Mr. Deputy Speaker, Sir, I beg to move that the Kenya Communications (Amendment) Bill (Bill No.22) be withdrawn from the Order Paper for purposes of re-drafting and inclusion of new clauses.

*(Bill withdrawn)*

**COMMUNICATION FROM THE CHAIR**PROCEDURE ON THE COMMITMENT  
OF THE MEDIA BILL

**Mr. Deputy Speaker:** Hon. Members, before the next Order is read, I want to explain the follows:

When we go to the Committee of the whole House, we will consider the Media Bill (Bill No.13), the proposed amendment as recommended to the House by His Excellency the President. As hon. Members are aware, there will be no need for Third Reading on this one. Therefore, we will dispose of this item first. The Chairman will report to the Chair before we move on to the Statute Law (Miscellaneous Amendments) Bill.

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. Arising from your ruling, that you will move to the Committee of the whole House and consider the two Bills, I want to request that you enlighten the House with regard to the procedure that will be followed when we are dealing with the Media Bill.

**Mr. Deputy Speaker:** I would like to oblige and enlighten the House on the procedure to be followed. The Chair did make this Communication immediately the memorandum was received from His Excellency the President last week. For the purposes of clarity, I want to read this procedure as follows:-

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

Standing Order No.111(1) provides that on recommitment of a Bill, the Committee of the

Whole House considers only those matters that are specifically referred to it for reconsideration. In this case, the President referred back to the House only Clause 35(4).

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

As soon as the Order for the Committee is read the House will proceed to the Committee. The Minister in charge of the Bill will then move a Motion for consideration of the Bill as recommended. The Committee will then consider the specific recommendation by His Excellency the President, as indicated on the Order Paper, and approve the same with or without amendments as they deem fit. That can be found on page two of your Order Paper. The rules on amendments to Motions and Bills will apply *mutatis mutandis*.

The Committee will then report its consideration to the House. In the event that the Committee adopts the Bill, with amendments, as recommended by His Excellency the President, then pursuant to the provisions of Section 46(5)(A) of the Constitution, a simple majority will suffice. However, if the Committee rejects the recommendation by His Excellency the President in total, a majority vote of more than 65 per cent, as already said, will be required for the Bill to be approved in its original form.

The Bill will not be read a Third Time. That was actually done and the Bill passed on 2nd August, 2007. It is, therefore, sufficient that the resolution of the House on the adoption of the report of the Committee of the whole House in accordance with Standing Order No.111(3) would satisfy Section 46(5) of the Constitution and will be in conformity with the rules of procedure on the committal of Bills as amplified by Standing Order No.111(1)(2).

Hon. Members, I hope that now clarifies the position. Therefore, as I have already said, we will deal with the Media Bill (Bill No.13) in the Committee of the whole House first and then the Committee will report to the House before we go to the next item.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Deputy Speaker left the Chair]*

### IN THE COMMITTEE

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

### THE MEDIA BILL

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members. As explained by Mr. Deputy Speaker, I will now request the Minister to move the Motion.

**The Minister for Information and Communications** (Mr. Kagwe): Mr. Temporary Deputy Chairman, Sir, I beg to move that as per the President's recommendation, having referred the Media Bill back to this Parliament, with the recommendation that we study it and remove Clause 38(4) and any other of its components that would be construed as a threat to the freedom of the Press and speech as guaranteed by the Constitution of Kenya, I now move that we delete the clause as per---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Minister! You should be moving your Motion on Clause 35(4).

**The Minister for Information and Communications** (Mr. Kagwe): Mr. Temporary Deputy Chairman, Sir, there is that confusion because on the Bill itself, it is indicated as Clause 38, but the one sent for approval by the President was basically Clause 35(4). So, that is why there is that confusion.

So, consequently, it is, indeed, Clause 35(4) that I am moving.

**The Temporary Deputy Chairman** (Mr. Khamasi): Precisely. That is the only matter that we will refer to here!

Proceed!

*Clause 35*

**The Minister for Information and Communications** (Mr. Kagwe): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do consider the Bill as recommitted:- THAT, Clause 35 be amended by deleting subclause 4.

*(Question of the amendment proposed)*

**Mr. Raila:** Mr. Temporary Deputy Chairman, Sir, I fully support this amendment. This side has caused this country unnecessary agony by introducing this amendment here. The Attorney-General who is the Government legal advisor was also present here and he failed to give the Government appropriate advice.

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. Member in order to say that I was present when the Bill was discussed when, in fact, I was in London on official Government business?

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Raila, are your facts right?

**Mr. Raila:** Mr. Temporary Deputy Chairman, Sir, I meant that the Attorney-General did not advise the Government. This matter was discussed---

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Temporary Deputy Chairman, Sir!

**Mr. Raila:** He may not have been present on that particular day---

**The Temporary Deputy Chairman** (Mr. Khamasi): Let us have some order in the House. Mr. Raila, you have said that the Attorney-General was here when the amendment was being moved and the Attorney-General says he was not. Are your facts right?

**Mr. Raila:** Mr. Temporary Deputy Chairman, Sir, I implied that the office of the Attorney-General was present here.

**The Temporary Deputy Chairman** (Mr. Khamasi): I want to accept that as having admitted that the Attorney-General's office might have been here.

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Temporary Deputy Chairman, Sir. Neither was the office of the Attorney-General present because it was not a Bill of the Attorney-General which should have required officers from my office to sit at those Benches. They were not present!

**Mr. Raila:** Mr. Temporary Deputy Chairman, Sir, the Attorney-General is the official legal advisor to the Government at all times on a 24-hour basis. Is he implying that on that particular day, the office of the Attorney-General was not available?

**The Assistant Minister for Foreign Affairs** (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. Raila in order to allege that the offending clause that is now being amended was introduced by the Government, when he knows very well the Bill did

not have that clause? The clause was introduced by a private Member and was passed by a resolution of this House and not by the Government!

*(Applause)*

**Mr. Raila:** Mr. Temporary Deputy Chairman, Sir, yes, the Bill did not have that clause at that time. However, it had even worse offending clauses in its original form as approved by the Cabinet which was advised by the Attorney-General. There had to be some negotiations with the Media Owners Association (MOA) to amend it. So, I am happy that after a lot of pressure has been applied by the civil society, and Kenyans in general, the President eventually yielded to the pressure and has agreed to the removal and rejection of that clause!

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Kiunjuri! Let hon. Raila finish his bit! I will give you your time if you want to contribute and if you differ with what he is saying.

Proceed, hon. Raila!

**Mr. Raila:** Mr. Temporary Deputy Chairman, Sir, what I am trying to say is that in the last two months, this Government has actually kept this county under a state of suspense very unnecessarily by introducing what could have been a very draconian law. So, I am very happy that the Government has finally bowed to the pressure by the people of Kenya and seen sense that we need to open the democratic space and not to compress it.

I support.

**The Assistant Minister for Energy** (Mr. Kiunjuri): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is hon. Raila in order to keep on criticising the Attorney-General and the Government and playing to the Galleries when his followers alone in the Opposition could have been able to pass that Bill even if the Government could not have supported it?

**Hon. Members:** That is an argument and not a point of order!

**The Minister for Housing** (Mr. Shitanda): On a point of information, Mr. Temporary Deputy Speaker, Sir. I think we should stop being hypocritical about that clause that is being deleted. When that clause was proposed in this House, there were a lot of hon. Members on both sides of the House and not one of them stood to oppose it. It was just after the members of the public and Press pressurised out there, that some hon. Members who were not present in the Chamber started pretending that they were also against that clause. However, the truth of the matter is that when the clause was proposed here, everybody supported it. Thank God it is being deleted now. We should not be hypocritical about it!

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I would like to support this amendment moved by the Minister. However, it raises very important constitutional matters. We, as a House, need to be told who is in charge of Bills. Is it the Attorney-General who is the Official Legal Advisor to the Government and this House or the Minister for Justice and Constitutional Affairs who actually supported the amendment by my dear friend, hon. Muriuki? I was here myself and I can tell you that amendment was opposed by hon. Ms. Ndung'u. Later on, many hon. Members opposed it out there. We should also take our responsibilities seriously in this House, so that the laws we pass here are not questioned.

**Eng. Muriuki:** On a point of information, Mr. Temporary Deputy Chairman, Sir. Thank you for giving me this chance to say a word or two having been the originator of this subclause which has brought a lot of debate.

Mr. Temporary Deputy Chairman, Sir, most of the debate which has been in the public

domain has been on that particular clause or purporting to be on it; whether or not the media should be asked to disclose the sources of their information. That too has nothing to do with my clause because my clause was asking that when there stories about me or you or somebody else and then there is a dispute as to who it meant. That is the time when my clause was to come in place.

Be that as it may, I think the media had raised one or two valid points which even to me, as the Mover of that clause, I am in support. They should not be asked where they get their stories from. However, I am also raising an important issue which I think they were also not agreeing to tell the public, so that the public is able to know for sure whether this is a good clause or not. That was never brought to the public domain; to the extent that some of the arguments which were being brought forward were that I may have had an interest in this particular matter. It is important for me to explain that if this House is, for example, dealing with a law to do with burglary, it does not mean that every hon. Member who has been burgled, therefore, has to stand there and say that he or she has an interest.

Mr. Temporary Deputy Chairman, Sir, the Attorney-General did give his views to the hon. Minister for Information and Communications and I got a copy of that letter. The letter explained that the Attorney-General agrees that the clause does not talk about the source. However, it could be misused for that purpose. The ideal situation would have been to leave my clause the way it is, and then have another clause specifically to outlaw the media from being asked to reveal their sources of information. As it is now, what is likely to happen is that we will get rid of this clause, but the whole Bill does not have anywhere where the media is safeguarded against being forced in a court of law, or otherwise, to disclose who their sources are. As a result, if you look at the Bill as it is now, Section 31 will make the media houses be forced to disclose their sources with or without my clause. So, under the circumstances, I do not feel like contesting the recommendations by His Excellency the President. I will, therefore, go by the resolution of the House.

Thank you.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I was one of the people who talked in support of hon. Ms. Karua that this amendment that was sought by my friend did not talk about the source. In fact, I was very surprised in the evening while listening to the radio and watching television that we were actually forcing the Press now to disclose their sources. What we said, and I have a personal interest in this matter because only last Friday there was a publication in a newspaper called the *Citizen* and they described a Member of Parliament as follows: "A very eloquent one. Every Sunday, he attends some radio show. He is a lawyer or an ex-lawyer. He lost an LDP election and threatened to quit the party. He comes from South Nyanza." Then they said that the name is withheld. Now, with that description, who were they talking about?

*(Laughter)*

**Hon. Members:** Hon. Kajwang! Hon. Kajwang!

**Mr. Kajwang:** The amendment was simply that if you want to talk about Kajwang, just say it is Kajwang! Do not go around things and then say "name withheld". They said many other worse things. They said that, because my political fortunes are dwindling, I am now consulting witchdoctors!

*(Laughter)*

That is a very serious allegation, but I do not want to go to court because I do not even know who *Citizen* is. I might never even get my money. They may not even have any insurance. Assuming it was *The Standard* or *Daily Nation*, who published that story, and then I went to court and said: "I

have been defamed", they would say: "We never mentioned Kajwang'. They did the same to Kiunjuri. They described Kiunjuri without mentioning his name.

**The Assistant Minister for Energy** (Mr. Kiunjuri): On a point of information, Mr. Temporary Deputy Chairman, Sir. What happened to me is exactly what Mr. Kajwang has said. I went to court within a month, but the case has been delayed for over three years, and Kenyans still believe that I and my brother, Mr. Midiwo, were at Koinange Street. Even today, if you go to my constituency, you will find that all those newspapers have been photocopied and are being distributed as materials to fight me. When I went to court two months ago, a news editor of *Daily Nation*, a Mr. Ondido, appeared before the court and informed the Justice Ojwang that they never mentioned hon. Kiunjuri in that story, whereas *Citizen* appeared before court and said: "We investigated and discovered that it was Mr. Kiunjuri. Our source was *"Nation"*. That is how dangerous the Press is today!

(Laughter)

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, therefore, the amendment that was brought by our friend was very genuine. We are simply saying: The Press should not hurt us without taking responsibility. They should comment on matters of public interest, but comment truthfully, and nobody will bother them. However, if they publish scandalous things about you and then hide behind the fact that you are not named - even after describing you as to leave no doubt that it is you - thus denying us compensation, or even an apology, what are we supposed to do? This amendment is very genuine. The Press has, deliberately, misled this country that we are talking about their sources.

I know that they may have heard from their sources that, maybe, I go to witchdoctors, I do not know, but I am not even asking them to say who told them that I go to witchdoctors. I am merely telling them: Please, you have said so about me. Do not hide behind the fact that Kajwang has not been named. That is all we are asking, as Members of Parliament, and as responsible members of Kenya's citizenry. The Press must be responsible. We cannot just let them do what they like. They can destroy us, if they like but, please, destroy us truthfully. That is all I am asking. So, this amendment is genuine. The President has been misled and we are refusing it.

**Mr. Sambu:** On a point of order, Mr. Temporary Deputy Chairman, Sir. When the Media Bill was being debated in the House, the *Daily Nation*, out of the blues published, one morning, that I had said unprintable things. I never contributed to the debate on the Media Bill at that time. What are these unprintable things? When I went home, I was told that I had said unprintable things in the House, and some women came to me and asked: "What are these unprintable things that you said?", yet in the whole of the HANSARD you cannot find a single line that I spoke. Are we going to let these people rule this nation?

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Sambu! You stood on a point of order!

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, are they in order? Simply because I have asked about them, they are now walking out of the House!

(Laughter)

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

**Mr. Muite:** Thank you, Mr. Temporary Deputy Chairman, Sir. It is now generally accepted that this clause is capable of different interpretations. The intention may have been genuine, but when the matter of interpreting a clause goes to court, it is for the court to decide what meaning to



give it. Evidence from us, as Members of Parliament, as to what we meant is inadmissible. The intention is to be gathered by the court purely on the basis of the language used. We know that, quite often, the media is not right. None of us can say that he or she has not been maligned, or reported incorrectly, but we do not throw away the baby with the bath water. The memorandum by the President is very well-argued. The clause can be interpreted to include disclosing sources of information. Therefore, I would urge hon. Members, through you, that we agree with the views expressed by His Excellency the President and delete this clause.

Thank you.

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

**Mr. Midiwo:** Thank you, Mr. Temporary Deputy Chairman, Sir, for giving me the chance.

Whereas the media, continuously, publish things that are adverse to members of the public and Members of Parliament in a lot of circumstances, we need the freedom of the media. So, I want to ask my fellow colleagues that if what Mr. Muite has said is correct - that this clause can be interpreted to mean that the media should disclose their sources - we should delete it. Where would we be if the media could have disclosed the identity of the persons who were telling this country about the Anglo Leasing scandal or the Goldenberg scandal? We need the freedom of the media. Anything that will gag the media is something we must not be party to, because it will turn round and hurt us. I have been so hurt by the media. With regard to the story that has been narrated so well by Mr. Kajwang, I was lucky that on that particular day, I was with my wife. If somebody says that you have been to Koinange Street, it is very difficult for you to give an *alibi*.

*(Laughter)*

Therefore, the media must be responsible. According to me, the problem is, really, not the media but rather the collusion between the Government and the editors. We must tell the Government to help us develop a responsible media. As we move towards a responsible democracy, we must accept the fact that without a free media, we cannot do it. I am happy that the Attorney-General is here. The problem is also with the court system. The day we will be disposing of court cases quickly, whereby if I am defamed by a media house, two months later I will have a judgement, nobody in the media will have any reason to lie about any hon. Member of this House, or any member of the public.

With those remarks, I support the President.

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

**Mr. Nderitu:** Thank you very much, Mr. Temporary Deputy Chairman, Sir. First and foremost, I have also been a victim of malignment by the media. However, Kenyans are not even interested in knowing the sources of information of the Press. What will happen is that, if the gravity and integrity of the information or the truthfulness of that information, cannot be protected, then newspapers will be like the gutter press. That means that even the entire Act should be withdrawn, leave alone that one statement. Let the Press operate completely freely. Let them say whatever they want to say about anything and anybody. We shall judge them.

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, during the stage of making amendments to this Bill, I stood to oppose the amendment that had been proposed by Eng. Karue. What I had stood to oppose was not the spirit of what he was talking about, or what hon. Kajwang was talking about. I was opposing the exact wording in which the proposal had been framed.

Mr. Temporary Deputy Chairman, Sir, wording is everything. As a law student, I was taught by my law professor that the mischief is always in the words, and we have seen it many times. We know that it has been a subject of discussion about the confusion in memoranda of understanding (MOUs). The problem with MOUs was confusion between the words "equitable"

and "equal". Therefore, the mischief will always be found in the wording. In the same way, with regard to this particular clause, its wording can always be interpreted by a judge to say that it includes sources. I would, therefore, like to urge my fellow Members of Parliament here that, while agreeing with what Eng. Karue meant, let us expunge this clause and, perhaps, time will come when we will move an amendment to the same law to capture what Eng. Karue would have liked captured.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Members! Order! Surely, I need to follow the debate and I think you can consult quietly for me to do so.

**The Assistant Minister for Co-operative Development and Marketing** (Mr. Mwenje): Mr. Temporary Deputy Chairman, Sir, can I proceed?

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Yes, Mr. Mwenje! No, let us hear the point of order by Mr. Maore first!

**Mr. Maore:** Mr. Temporary Deputy Chairman, Sir, I remember the Speaker elaborating on the procedure that we have to follow as we discuss this memorandum. Whether we debate the memorandum until the end of the day, it will not make any difference; we only need to have the numbers to delete this clause as recommended by the President, or to override it with a two-thirds majority. So, would I be in order to ask the Chair to put the Question?

*(Applause)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! I was just about to alert the House that, probably, I have heard enough from both sides. I was just about to put the Question. But, before I do so, let me hear from Mr. Mwenje briefly and then I will be in a position to put the Question.

**The Assistant Minister for Co-operative Development and Marketing** (Mr. Mwenje): Mr. Temporary Deputy Chairman, Sir, the House is in a serious dilemma. While I agree with the point that we should agree with the President, I must admit that we have also had a lot of problems. The Minister for Information and Communications must also find a way--- I remember a serious matter that took place. I saw some photographs of a child, born of an Asian, belonging to an hon. Member of this House. When you find yourself in such a situation, and you know that it is not true, what are you expected to do? As much as we have a lot of respect for the Press, I think there must be a way for them to report responsibly. The gutter press has been reporting a lot of things which are not true, and if you try to take them to court, you will be at a loss to tell who owns that gutter press. They never disclose the names of their directors. When you eventually tell them to apologise, they only put a very small paragraph somewhere inside the newspaper which says: "We inadvertently misreported and so we apologise". Nobody will ever see that apology! So, I think the Minister for Information and Communications must also come up with a way of protecting the public and leaders, because if a newspaper reports something like that, then what is the remedy?

However, at the same time, Mr. Temporary Deputy Chairman, Sir, I agree that sometimes they disclose who it is. It could be about a debtor or there could be quarrels and so on. Now, because that is put somewhere inside the newspaper--- While I agree with the President that we should agree to remove this particular clause, I think somebody somewhere must come and tell us how to deal with the Press when they get involved in those kinds of extreme cases.

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

want us to finish with this business, so that we can move on with other business.

*(Loud consultations)*

Order, Members! What is it Mr. Salat?

**Mr. Salat:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I would also like to bring to your attention something that appeared in the Press today. It is about one of the key media houses in the country. In the *Daily Nation* newspaper's headline, today, while reporting about the politics of Rift Valley Province---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Salat! You know the rules of this House! However bold the headline you are referring to was, we cannot accept that as a document on which you can rely when debating in this House. So, please, do not refer to what is contained in the newspapers. I mean, I cannot allow it!

**Mr. Salat:** Mr. Temporary Deputy Chairman, Sir, I am just drawing an inference!

**The Temporary Deputy Chairman** (Mr. Khamasi): No! You cannot refer to what has been carried in the Press.

**Mr. Salat:** Mr. Temporary Deputy Chairman, Sir, it is important! If we want to get to the bottom of a free Press and free information, I think we need to highlight areas on which we feel we should have some common meeting ground.

Mr. Temporary Deputy Chairman, Sir, I am a Member of Parliament in KANU. However, today I was presented as one of those who subscribe to the symbol "*rungu*". On the other side, they showed the orange and listed its supporters. I feel that my position was not properly presented in the media, in that my symbol is not the *rungu*. You know *jogoo* very well.

*(Laughter)*

So, they ought to have presented my position very well. If they have to describe my party, or what my position is, they should state: "Nick Salat and So-and-so subscribe to this particular symbol". Mine is *jogoo na kila siku itakuwa jogoo*.

**The Temporary Deputy Speaker** (Mr. Khamasi): What is it, Mr. Gumo? I want to put the Question!

**Mr. Gumo:** Mr. Temporary Deputy Chairman, Sir, I think the freedom of the Press is very important. Nearly 80 per cent of what is reported in the newspapers is correct. It is once in a while that individuals fail to write the right things. If we do not give them that freedom, we will not know what is happening in this country. The Press has, in many cases, disclosed what most of us were never aware of. Mr. Temporary Deputy Chairman, Sir, you are also aware that even some hon. Members in this House have taken some of the media houses to court for reporting lies about them, and they have been awarded a lot of money. You know that even hon. Biwott was once awarded Kshs10 million. So, as long as you have that freedom of taking them to court whenever they fail to report correctly, I do not see why we should squeeze them too much.

**The Assistant Minister for Local Government** (Mr. Muchiri): Mr. Temporary Deputy Chairman, Sir, as we conclude this debate, I would like to say one thing. The intention that Eng. Karue had was right in this way - and I want Kenyans to hear me. When a case goes to court for reasons of defamation or libel, the judge can award damages depending on who was negligent, and to what extent. If the Press does not disclose the information that is concerned in that particular suit and, perhaps it is not true, then the judge may award all the damages to the Press. I think Eng. Muriuki had all the good intentions. But that as it may, I am supporting the expunging of this

clause merely because I respect the President---

**Hon. Members:** Ahh! Ahh!

**The Assistant Minister for Local Government** (Mr. Muchiri): Mr. Temporary Deputy Speaker, Sir, the wisdom that the President is asking us to expunge this clause is, at the moment, right.

**The Temporary Deputy Chairman** (Mr. Khamasi): We now need to make a decision on this matter. I am going to put the Question! You can vote either side.

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

*(Clause 35(4) deleted)*

*(Resolution to be reported without amendment)*

*(The House resumed)*

## REPORT

*[Mr. Deputy Speaker in the Chair]*

**Mr. Khamasi:** Mr. Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered His Excellency the President's Memorandum on the Media Bill, that Clause 35(4) be deleted, and approved the same without amendment.

**The Minister for Information and Communications** (Mr. Kagwe): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Resolution.

**The Assistant Minister for Energy** (Mr. Muchiri) seconded.

*(Question proposed)*

**Mr. Deputy Speaker:** I was listening and I know that this matter has been debated! Eng. Muriuki, one minute!

**Eng. Muriuki:** I will not even taken one minute, Mr. Deputy Speaker, Sir. I just wish to give a piece of information that, that Bill does not have a single clause which safeguards what the media was fighting for. However, Clause 35(4) is now out.

*(Question put and agreed to)*

**Mr. Deputy Speaker:** Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Deputy Speaker left the Chair]*

IN THE COMMITTEE

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

THE STATUTE LAW  
(MISCELLANEOUS AMENDMENTS) BILL

**Mr. Cheboi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I want to seek your guidance on something I consider very serious. I sit in the Committee on the Administration of Justice and Legal Affairs although I cannot purport to be speaking on behalf of the Committee. However, I sat in various committees and subcommittees. There are quite a number of proposals which we made as a Committee. However, curiously some of the amendments are not appearing here. I will give an example of the Kenya Roads Board Act; the only amendment that is here was brought by the Attorney-General. The one we had proposed from the Committee which proposed to inter-change 24 per cent with 16 per cent is not included!

*(Applause)*

Mr. Temporary Deputy Chairman, Sir, if you look at the Anti-Corruption and Economic Crimes Act, there are quite a number of amendments by the Attorney-General. However, they are much watered down compared to those from the Committee. In fact, the ones from the Committee are not there!

Mr. Temporary Deputy Chairman, Sir, I would like to know who is responsible for not presenting the amendments as were proposed by the Committee?

**Ms. Ndung'u:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, let us deal with one point of order at a time!

Ms. Ndung'u, is it on the same issue?

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, I just want to add on to what Mr. Cheboi has said. I want to point out that some amendments from the Committee on Administration of Justice and Legal Affairs with regard to the Advocates Act and Penal Code, particularly the section which was proposing to delete the part which includes anyone who insults another as being disorderly, is missing from the Order Paper. What does that mean? Mr. Temporary Deputy Chairman, Sir, there is also an omission on the Industrial Property Act. It is also missing from the Order Paper. We have no consultations and do not know if this is a typographical error. We would like to know how we are going to proceed with these amendments.

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, you know the Chair is least involved and would, perhaps, like to hear from the Attorney-General.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I think we should hear from the Chair of the Committee, because the amendments which emanate from the Committee come to Parliament and if some of them are missing, it is between the Committee and the Clerk's Office. But from what I know, some of the amendments that are regarded as missing are actually there. For instance, the Industrial Property Act is there, but I do not know about the others.

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, the Committee on Administration of Justice and Legal Affairs actually prepared a comprehensive Report which it laid on the Table of the House. That Report contained all the amendments which the Committee was, and is, proposing. So, we would plead with you to permit those amendments which are on this Report, and which somehow were omitted when the Clerk's Office was preparing the Order Paper, to be proposed by

the various hon. Members of the Committee on Administration of Justice and Legal Affairs.

*(Applause)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members. I think, from the Chair, I am not really sure how we shall conduct this particular business, to be honest with you, because there are many amendments still flying in even as of now. You must appreciate that before any amendments are approved, they must be presented to the Speaker, and he must approve them before 2.00 p.m. before they come to the Floor of the House. With regard to what was agreed upon and is not here, I am at a loss as to how to deal with the issue, and the House may have to make a decision itself.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I think we are in a big problem, because a Committee meets, calls relevant Ministers and makes a very comprehensive report, which the House usually agrees with because they take a lot of time to interrogate some of these things. When it comes, and it is laid before the House, we expect that the Clerk takes it up so that, by the time we deal with the amendments, at least, it is on the Order Paper. But in a situation in which it has not been included, then we have to deal with this matter as a matter which is not provided for in the Standing Orders, and make a resolution that the proposals in the Committee be treated as part of the Order Paper, so that we can deal with them.

*(Applause)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Well, Mr. Kajwang, I appreciate what you are saying but it is not contained on the Order Paper. A few of you may be having what you are talking about but it is not in the general knowledge of every hon. Member of the House. So, how do you deal with it?

**Mr. Ochilo-Ayacko:** Mr. Temporary Deputy Chairman, Sir, I just want to add my voice to what Mr. Kajwang is saying, that the Committee has done very good work on behalf of the House. If the Order Paper does not capture what the Committee has done on behalf of the House, for a fault that does not belong to the Committee nor the House, I would beg that the Chair applies Standing Order No.1 and this debate be adjourned because the House is ambushed.

**Mr. Raila:** On a point of order, Mr. Temporary Deputy Chairman, Sir. While I support the proposal that is being made by the hon. Member, ordinarily, during debate on Motions, it is normal that hon. Members propose amendments on the Floor and hand over the written proposals to be approved. Once they have been approved, the Motion, as amended, is then read to the House. There is an omission, and the Committee's Report is available. I want to propose that the Chair does allow that the Report be given to hon. Members. They can have the copies of the Report and those amendments proposed allowed to be tabled here from the Floor.

*(Applause)*

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! All those hon. Members standing, please, as I said, there is too much confusion in what we need to be doing. I think we must be clear in our minds. Are the documents ready for everybody to be able to follow what we are doing? Therefore, in this particular respect, since even I am confused as the Chair, we

must now report progress and, perhaps, delay this debate until such a time as everything has been brought together and we all have the documents to be able to proceed.

*(Applause)*

**Mr. Maore:** I want to propose something!

**The Temporary Deputy Chairman (Mr. Khamasi):** What do you want to propose?

**Mr. Maore:** Mr. Temporary Deputy Chairman, Sir, pursuant to Standing Order No.129, we should adjourn debate and report progress to the House with intention to sit on another day.

**The Temporary Deputy Chairman (Mr. Khamasi):** Mr. Maore, I have already looked at Standing Order No.129. I have it!

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

Yes, Mr. Sungu!

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, Standing Order No.106(2) indicates the procedure in the Committee of the whole House. It says:-

"No amendment shall be moved to any part of a Bill by any Member, other than by the hon. Member in charge of the Bill, unless written notification thereof shall have been given to the Clerk before the commencement of the sitting---"

In this case we have a report of the Committee. One way of dealing with this would be to accept that the Report of the Committee be served as a notification of amendment according to the Standing Orders of the House. Once we accept that, then we will ask hon. Members of the said Committee to move the amendments as they come before the House. Since this is a very huge Bill, with many amendments, if we go through it meticulously, I am sure we could finish with it, with each hon. Member of the Committee coming with the various amendments and their Report serving as the written notification which is required under Standing Order No.106(2).

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

*(Messrs. Syongo and Wako stood up in their places)*

Hold on, Mr. Attorney-general! I can hear you, Mr. Syongo!

**Mr. Syongo:** Mr. Temporary Deputy Chairman, Sir, I need your guidance on this matter. While I appreciate that according to the Standing Orders the amendment should have been approved by the Speaker before 2.00 p.m. I want to draw your attention to the fact that the report of the Committee, which I also belong to, had already been tabled before this House and is, therefore, the property of the House. The only complication is that some of the contents of the report, which has already been tabled, was omitted while the Order Paper was being prepared. Would it not be right that, since a report which has already been tabled is a property of the House, it should be construed to have been sufficient notice, so that we can actually move amendments from the Floor of the House?

**The Temporary Deputy Chairman (Mr. Khamasi):** You are wrong!

**Mr. Sambu:** No!

**The Temporary Deputy Chairman (Mr. Khamasi):** Order, Mr. Sambu! We are not debating your report! We are debating part of your report, which is contained in the amendments on the Order Paper. That is exactly what we must be concerned with.

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

Yes, Mr. Attorney-General!

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

THAT, that the Committee Reports Progress and seeks leave to sit again.

My reasons for so moving are as follows:-

This House has witnessed a number of amendments which come from the Floor of the House debated. They are passed in a hurry and they create problems. Only this afternoon, we were debating such an issue under the Media Bill, which amendment was brought to the Floor of the House, quickly debated and then enacted. If one had time, he would have re-phrased that clause in a manner to reflect the intention of Eng. Karue; which intention was noble. But because we hurried, the Clause became wild to encompass sources of information. I can quote many instances in the past, even in the last Budget, where amendments came in a hurry and they were passed. They created problems later. I think that is why the Speaker has said that he has to approve those amendments in good time. Both sides of the House must look at them in good time, before we come to the Committee Stage and address those issues. It is, of course, unfortunate that some amendments that were already reflected in the Committee Report were not here. It is unfortunate! But the fact of the matter is that it has happened. We do not want to be caught unawares. I have been inundated also, just like you, with a number of amendments. People are drafting them in their own handwritings and bringing them to me. They are also amendments. Some of them are agreed amendments and so on. I think if we seek leave to sit again, it will now give time to the Clerks Office to put all those amendments properly on the Order Paper so that, when we come here, we can move with due speed.

So, I beg to move that the Committee Reports Progress and seeks leave to sit again.

**The Temporary Deputy Chairman** (Mr. Khamasi): Very well. I think I am completely in agreement with what the Attorney-General has said. I will then put the Question that the Committee do report progress and seek leave to sit again.

*(Question put and agreed)*

*[The House resumed]*

*[Mr. Deputy Speaker in the Chair]*

## **PROGRESS REPORTED**

THE STATUTE LAW  
(MISCELLANEOUS AMENDMENTS) BILL

*(Several hon. Members started  
withdrawing from the Chamber)*

**Mr. Deputy Speaker:** Hon. Members, you may take your seats.

*(Loud consultations)*

Order! Order, hon. Members! The House is in session!

**Mr. Khamasi:** Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole



House has considered the matter before the House and do report the progress and seek leave to sit again.

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

*(Question proposed)*

**Mr. Sungu:** Mr. Deputy Speaker, Sir---

**Mr. Deputy Speaker:** Sorry, Mr. Sungu! You are late.

*(Question put and agreed to)*

## BILL

### *Second reading*

#### THE PREVENTION OF ORGANIZED CRIME BILL

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move, that The Prevention of Organised Crime Bill be now read a Second Time.

Mr. Deputy Speaker, Sir, before I come to the contents of the Bill, permit me to state the context in which this Bill is being moved. I beg your leave to refer extensively to my notes because this is a very, very important Bill that this House is considering. The objectives of this Bill is to provide for the prevention, detection, investigation, criminalisation and punishment of organised crime; to provide for the recovery of the proceeds of the organised crime group activities; to provide for international co-operation and mutual legal assistance and to provide for matters incidental and connected therewith.

Mr. Deputy Speaker, Sir, organised crime---

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

**Mr. Deputy Speaker:** May I ask those hon. Members who are standing to sit down? Mr. Onyancha! That includes, Mr. Mwenje! Could we have some order in the House!

Mr. Attorney-General, you may now proceed.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, organised crime is the act of engaging in criminal activity as a structured, organised and disciplined group. Organised crime is characterised by some basic qualities, including but not limited to durability over time, diversified interest, hierarchial structure, organised and disciplined association, capital accumulation, re-investment, access to political protection and use of violence for such interests. Organised crime thrives mainly because members of such organisations keep their illegal actions secret, and operate and communicate discretely. In addition, many organised crime operations have legal fronts such as licensed business and real estate development, which operate in parallel with and provide cover for their criminal activities.

Mr. Deputy Speaker, Sir, the issue of organised crime is not just being faced by Kenya. But it is an international problem. It is being faced by the international community. No longer can crime be regarded as, more or less, an individual activity, or just one or two people in a very haphazard manner, carrying out a criminal activity such a robbery with violence. Criminal activities

have reached a sophistication of organisation. I think as the world has witnessed parallel economic and social development, that has also been reflected in the criminal world. That is why Kenya, together with the international community, is concerned with the menace of organised crime and activities which encompass many areas such as money laundering, corruption and economic crimes, drug trafficking, trafficking in human beings, arms trafficking, abduction, hostage taking, extortion and violent crimes. So, the international community came together and, through a United Nations system, developed and adopted the United Nations Convention against Trans National Organised Crime commonly known as the Palermo Convention in the year 2000. I am glad to tell this august House that, in fact, Kenya is party to that United Nations Convention. Under that Convention, which nearly all the countries are party to now, the partner states are required to put in place legislative and other measures to prevent, criminalise and punish organised crime-related activities, to provide for the seizure and confiscation of property, to provide for the forfeiture of proceeds of organised crime, to provide for international co-operation and mutual legal assistance and to provide for good governance.

Here in Kenya, we have also witnessed the development of such organised crime and organised criminal groups such as the *Mungiki*, the Saboti Land Defence Force, the Republic Revolutionary Council, the *Taliban*, the *Sungu Sungu*--- Not, undoubtedly, the hon. Member of Parliament, but *Sungu Sungu*. We have seen a proliferation of those type of criminal activities. There is organised crime, particularly not only in the so-called upper-market areas in Nairobi, but also in other areas of Nairobi. I do not need to remind hon. Members of the evils that those groups have imposed on our society. I only want to assure you that the Government law enforcement machinery is trying its best to address those issues. But it will address those issues even better, if it has a legal framework. Through the passage of this Bill, it will provide the necessary legal framework to deal effectively with those organized groups.

Mr. Deputy Speaker, Sir, under our current Economic Recovery Strategy for Wealth and Employment Creation, the Government recognizes the serious threat posed by crime on society in general, and development activities in particular. Secondly, I will be going into what we are doing to realize the objectives under that recovery strategy, particularly in the area of administration of justice. So, the enactment of this Bill will provide the appropriate legal framework.

Mr. Deputy Speaker, Sir, the Bill, itself, is not all that long. Most of the provisions in this Bill meet international standards, as required by the United Nations (UN) Conventions. We deal with the interpretation clause, where you can see that the Minister can declare an organized criminal group. Once it is declared, it has certain consequences which are provided for under the Act. The Minister to administer this Act is the Minister responsible for matters relating to internal security.

Mr. Deputy Speaker, Sir, "an organized criminal group" means a structured group of three or more persons existing for a period of time, and acting in concert with an aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit or any other advantage. So, there you are. What constitutes an organized criminal group is defined. Then, the Act provides for the various offences under the Act. To be a member of such a group is an offence. To be engaged in the activities of such a group is an offence. To train--- Because as I said earlier, criminal activities have also become very sophisticated. They also undergo intensive training. Just like we train magistrates, prosecutors and investigators, criminal gangs also train their own personnel and, therefore, the need to criminalize the training of persons for the purposes of an organized criminal activity. Fund-raising for such an organization is also being criminalized under this Act. There are very many other offences. I do not have to go through them. I know that hon. Members of Parliament have already read them. Then, of course, there is obstructing justice. There are many ways in which an organized gang can obstruct justice. They can obstruct justice by, say,

threatening witnesses, intimidating them using physical force, dissuading them or even inducing them to give false evidence. Inducement can also take the nature of being given some money in order to give false evidence. One can be induced to disappear with the evidence. We have seen a number of cases, even in relation to ordinary crimes where, on the relevant day, files just disappear from the courts! On the relevant day, a critical exhibit just disappears from the court. We have corrected it here. In the case of drug trafficking, the drugs, themselves, also disappear. There, of course, we have corrected it. But we need, under this Act, to emphasize the seriousness of interfering with the course of justice when dealing with organized crime.

Mr. Deputy Speaker, Sir, under Part IV, there is a whole chapter there on tracing, confiscating, seizing and forfeiting of property which those organized criminal groups may have. As I said earlier, we are dealing with organized crime involving a lot of money. They channel that money by having fronts that appear to be legitimate investments, businesses, industries, ownership of properties and so on. But those are just fronts. We need to be able, if we know that those are fronts, to pierce the veil and confiscate such properties. So, there are elaborate procedures here on confiscation of properties, all of which will involve the Attorney-General moving to the courts. We are a country under the rule of law. We cannot just go and confiscate a property. We shall move to the courts and obtain the appropriate orders of the court in confiscating that property. So, it is all here.

Mr. Deputy Speaker, Sir, you will also recognize that organized crime has an international dimension and, hence, the need for mutual assistance and expedition. We have a whole chapter dealing with how that can be effected. Then, we have the Miscellaneous Clause, and so on.

So, Mr. Deputy Speaker, Sir, I do not have to take too long on this. This is a Bill which is long overdue in Kenya. We have reached a level of sophistication where we now have to deal with sophisticated criminals who are well organized, and who always try to be one step ahead of law enforcement officers. So, in this Bill, we shall endeavour to enable the Government to be one step ahead of those organized criminal groups.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to move and ask my honourable friend and colleague in the Government, who is above all, my professional colleague, hon. Munya, to second it.

Thank you.

**The Assistant Minister, Office of the President** (Mr. Munya): Thank you, Mr. Deputy Speaker, Sir. I would like to take this opportunity to thank the Attorney-General for moving this very important Bill. I thank him for giving me the privilege of seconding it.

Mr. Deputy Speaker, Sir, this is the Bill that is going to give our law enforcement officers and our entire justice system teeth with which to bite. We have laws that have been dealing with crime generally, but we do not have specific laws that deal with this new phenomenon, not just in Kenya, but actually in the entire world. I am talking about organized crime.

Mr. Deputy Speaker, Sir, because of technology and sophistication, crime has, today, become a very organised business. Therefore, we need a very sophisticated law that can, adequately, deal with that challenge. This is the law. Just like the Attorney-General has said, in enacting this law, we are also implementing our obligations under the United Nations. That is because we are party to various international instruments such as the United Nations Convention Against Transnational Organised Crime, the so-called Palermo Convention of 2000. That convention requires us to come up with domestic laws that, not only deal with organised crime operating within our country, but also trans-border organised crime.

*[Mr. Deputy Speaker left the Chair]*

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

The Bill, specifically, defines what organised crime is. All you require is three people who come together in a structured manner, and with an intention to commit crime of whatever nature. So, that becomes an organised crime group and the law provides the framework within which such groups will be dealt with.

If you look at the characteristics of those organised criminal groups--- You can identify them through their characteristics. First of all, they operate within a long period of time. They come together, get organised and operate over a long period of time. They are also erratic in nature. They have structures that are erratic. They have leaders. They have cells. So, they are organised erratically. They are also, kind of, disciplined. They have their own values and discipline structures. They also have their own training. They train themselves and, most of the time, they also have ideologies. They are ideological in nature. They promote certain ideologies, when they are promoting crime.

Mr. Temporary Deputy Speaker, Sir, most of the times, all that is intended to help them to accumulate capital. Once they accumulate capital through extortion, levying fees from people and whatever other means, they invest that money. Sometimes, they seek political protection by recruiting people who are powerful in the society to be members. That is aimed at giving them covert protection and, sometimes, they use violence to intimidate people who may disagree or want to stop their activities. So, those are the characteristics of those groups that this law intends to deal with.

Mr. Temporary Deputy Speaker, Sir, it is important to know that organised criminal gangs are a danger to our society. They do not only impact negatively on our safety as the society, but also on our economy. They impact negatively on health and the well-being of our society by promoting crime.

Secondly, they also infringe on the fundamental rights of citizens and, especially, the disadvantaged citizens like children, women, and physically challenged. Most of the time, they abduct children so that their parents can pay ransoms to the organised criminal gangs. They also rape women. Since they get money without working for it, they also distort our economy and discourage investments. They do not want to work. If they can sit somewhere and organise characters to go and bring them money - making them wealthy without sweating - why would they work? That distorts our economy and discourages people from working and earning a living. It destroys our social fabric. That is why we need to have such a law to deal with such kind of situations.

I have already alluded to the fact that, the reason why this law has been brought up is because the existing legal framework does not effectively deal with organised crime and criminal group activities. That problem is also compounded by the fact that, it is usually difficult to prove that one belongs to a criminal group, without that person being directly involved in actual criminal activities. There are members of those gangs who do not get involved directly. They mainly organise crime from very far and direct the activities of criminal groups. They give leadership to those criminal groups. But they, themselves, would never get directly involved. That is why the existing legal framework was not able to, adequately, deal with them. However, the current Bill, once it is passed, will deal with those groups at whatever level. If you are involved in the actual activities of a criminal gang, this law will deal with you. If you are aiding and abetting those criminal activities, this law will deal with you. If you are providing leadership from a distance, this law will deal with you. If you are assisting them to invest their money, and you have a symbiotic relationship with them in the sense that when they earn their money, they bring it to you so that you

can invest it on their behalf, this law will deal with you.

This law also goes further than just taking you to court, jailing you and giving you penalties. It also provides for recovery of property; seizure of properties that have been acquired through organised criminal activities. This will ensure that nobody in our society will be allowed to thrive and benefit from proceeds of organised crime. So, this is a far-reaching Bill that will help us combat organised crime.

But, more importantly, it will also help us set a framework for us to co-operate with other countries. That is because most organised gangs are now trans-national. They do not just operate in Kenya. They have tentacles in our neighbouring countries and across the seas. Drug trafficking networks, for instance, are not national. They operate across the borders. If you do not have laws that will help you to track them from wherever they are and have them extradited back to the country to face the law--- Or give help so that they can face the law from wherever they are---The law now provides that you can get evidence from wherever you are, record it and use it in another country for the purposes of having members of those organised gangs convicted. That is the other very important aspect of this very key legislation. It is giving us teeth to reach across our borders to deal with whoever is involved in organised crime.

There are provisions for extraditing those criminals. There are also provisions of extraditing them from Kenya and take them to other countries where they have committed crimes to face the law.

The other important provision of this law is dealing with those who subvert justice and make it impossible for law enforcement officers to deal with organised gangs. The other important provision of this Act is dealing with those who subvert justice, or make it impossible for law enforcement officers to deal with those organized gangs by, for example, intimidating witnesses or police officers involved in tracking down members of organized crime. It also involves those disclosing information of the activities of the law enforcement officers, who are investigating those organized gangs. If you behave in any way as to suggest that you are preventing the law enforcement officers from dealing with this organized crime, then you also become a criminal and the law deals with you. The law also sets the penalties for members of those gangs, which include jail terms, ranging from ten years, 14 years to life imprisonment, depending on the level of participation. So, this is a very important legislation that the House needs to consider, and pass so that we could go on with the reforms of trying to make our law enforcement agencies work better, and have the necessary legal infrastructure to deal with crime that has been ravaging our country.

With those few remarks, I beg to second.

*(Question proposed)*

**Maj-Gen. Nkaiserry:** Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to support this very important Bill. First of all, I am very surprised that the Government side, although they are moving this very important Bill, are mixing issues. I entirely agree that we need a Bill to curb organized crime, specifically the mafia-like organized criminals like the *Mungiki*. The Government must come out and say that organized crime, mafia-like, *Mungiki* type, needs a law to ensure that it does not exist in this country. The Government is scared of mentioning organized crime.

The other reason for I supporting this Bill is the issue of drug trafficking. It has been a thorn in the flesh of this country. But where is the political will to fight it? We know that Kenya has become a conduit for drugs in this region, but the political will is not there. If we can pass this Bill, it will enable this country to curb this kind of crime. In fact, I expected the Government not to even move a new Bill. I am not a lawyer, I am a military general. You must deal with the enemy, and the

enemy here is the one committing crime in this country. First of all, we should have enhanced the laws that we have. We have the Police Act, the National Security Intelligence Service (NSIS) Act, the Fire Arms Act, the Anti-Corruption and Economic Crimes Act. So, if people are committing money laundering crimes, you should have enhanced the Anti-Corruption and Economic Crimes Act by putting in a chapter to deal with it. If you are dealing with illegal small arms--- As I stand here, I am the Vice-President of the International Parliamentary Forum on Small Arms and Light Weapons. So, I would like a law to be passed, not only for Kenya, but for other countries to curb proliferation of small arms in the Horn of Africa and the Great Lakes Region.

So, it is very important. We should have enhanced the Fire Arms Act in this country, so that if you are found with a fire arm without a licence, you go in for not less than ten years. That is the only message that can send shivers down the spines of criminals. If you eradicate illegal small fire arms from this region, you will reduce cattle rustling in the Horn of Africa, petty crimes, and other crimes like breaking into banks. If we provide that if you are found with a gun you will be taken in, without the option of a fine, for not less than ten years or 15 years. I am 100 per cent sure that we are going to reduce crime.

So, when you talk about the issue of money laundering, you should enhance the Anti-Corruption and Economic Crimes Act. Who is doing money laundering? What happened to the Goldenberg and the Anglo Leasing money? There was money which was said to have been transferred from an account somewhere in the blues and deposited to an account in the Central Bank of Kenya (CBK) and they do not know who sent in the money. We should have had a specific law to deal with that. That is what I am saying, we should have enhanced the Anti-Corruption and Economic Crimes Act instead of bringing here another Bill. The intra-agency coordinators in all the economic and law enforcement agencies would have sat down and talked about how to draft this Bill.

I have read this Bill and in some areas it looks like we are playing to the galleries of the international community. I would like to point out that, while international agreements are acceptable, we cannot sell our sovereignty. If a criminal commits a crime in Kenya, we should be able to deal with him. We cannot sell our sovereignty to another country. If somebody is going to demand that so-and-so, who has committed a crime in Kenya, be punished in another country, we cannot accept that. While we are looking into this Bill, we must never sell our sovereignty.

Mr. Temporary Deputy Speaker, Sir, cattle rustling is an organized crime. This issue is in the docket of the Assistant Minister, who just seconded this Bill. From time immemorial we have had a problem of people stealing cattle from other communities and selling them. So, it is a vicious cycle. So, this Bill should also target that particular area.

The other very important aspect is human trafficking. We have seen a lot of human trafficking of late. The other day, children were kidnapped. This is a problem which is starting. So, this law is coming at the right time. It should be refined and have specific chapters to deal with specific issues, but be without the provision regarding the surrendering of our sovereignty.

I spoke about money laundering and drug trafficking, but the political will is lacking. The law is there then we do not need another one and if it is there, then it will take its own course. That is why this Bill is fundamental.

Another organized crime, although it is part of income generating activities, is prostitution. Prostitution is a crime which must be dealt with. Unless it is properly licensed, it is a serious crime. This law must target it, so that we have a country free of prostitution. With this law, we will not have to hear of prominent members of our society being reported as having been seen in particular areas. That is also a very important aspect.

I want to emphasize that this Bill should target the mafia-like organizations like *Mungiki*, groups involved in money laundering, drug and human traffickers.

Mr. Temporary Deputy Speaker, Sir, we should be very serious and ensure that this law takes effect as soon as possible.

Mr. Temporary Deputy Speaker, Sir, I want to end my contribution by saying that this country has great potential, but is an under-achiever. The people who have been given the responsibility to ensure that it is a great nation in this region have failed.

With those few remarks, I support.

**Prof. Maathai:** Thank you very much, Mr. Temporary Deputy Speaker, Sir, for the opportunity to support this Bill. I commend the Attorney-General for bringing it before this House.

Mr. Temporary Deputy Speaker, Sir, this Bill reminds me of a situation that sometimes only becomes serious when the poor and marginalised people become involved. There has been a lot of corruption in this country. Corruption should be seen as organised crime. This is because it is perpetrated by people who are in positions where they can use their influence to literally rob citizens of their wealth. In the past, we have had people rob this country of its wealth and then launder that money somewhere. It is a shame that when such crimes are committed by the ruling elite and the rich, we admire their ability to do it. We do not see it as organised crime.

Mr. Temporary Deputy Speaker, Sir, partly because of that corruption and the mismanagement of co-operatives, especially the ones of farmers' co-operatives in this country, a lot of people became extremely poor. They were not even able to send their children to school. As a result, many children lost an opportunity to go to school because their parents were robbed by organised criminals who just happened to be among the more influential members of our society and so they went untouched. It is mostly those children who were denied the opportunity to go to school and, therefore, who could not find employment, who eventually organised themselves into organised criminal groups that the Attorney-General mentioned in his presentation. These are the so-called *Mungiki*, *Taliban* and so on. When you look at the composition of these groups, you will find that young people form their core, many of whom actually grew up in the streets and completely ignored by our society. This has especially taken place in the last ten to 15 years of our nationhood.

Mr. Temporary Deputy Speaker, Sir, I find it very unfortunate and almost unacceptable that after we, as a nation, went through a stage where we allowed so much corruption, poor governance, mismanagement of co-operatives which lead to so many farmers to be impoverished, so that they could not educate their children, that when these children are now adults, they organise themselves into criminal gangs, we have found it necessary to shoot them to death.

Mr. Temporary Deputy Speaker, Sir, I want to appeal to the Attorney-General that while we must deal with our children who have now turned themselves into gangsters and who are ready to kill, and I am not defending their actions, we must, surely, either arrest them, take them to court and charge them. We should give them an opportunity to defend themselves. However, for goodness sake, let us not shoot them to death because they too have a right to life.

Mr. Temporary Deputy Speaker, Sir, we know that it is virtually impossible to shoot people to death, without sometimes shooting innocent people. We cannot justify even one death if we are going to be a country which respects the rule of law and human rights. I am not trying to say that anybody has a right to kill or steal. We know of a lot of people in this country who have been taken to fora where they have been accused of stealing millions of shillings. They have been arraigned in front of magistrates and judges, but they have not been shot to death even though we suspected them. They were not shot because they were famous, rich and, therefore, protected.

Mr. Temporary Deputy Speaker, Sir, I want to say that if we want to be a society that will be respected internationally, we must also be seen to respect the rule of law and the rights of our people and not to shoot them to death because they cannot defend themselves.

Mr. Temporary Deputy Speaker, Sir, I think it is very important for us to differentiate

causes from symptoms. In my opinion, what we see, especially with *Mungiki* sect is almost a symptom rather than a cause. I think we need to remember that some of these children or youngsters come from communities whose cultural and traditional values and structures have been completely destroyed. They have very little guidance. Sometimes in their desperation, they may find ways of restoring self confidence and identity. So, instead of shooting them, we ought to find ways of rehabilitating them. Perhaps, we should form organisations to rehabilitate them. The State can create programmes, for example, like building roads, rehabilitating degraded areas by planting trees where these youngsters can work instead of shooting or taking them to jail and, consequently, overcrowding our jails and exposing them to hard-core criminals and activities like homosexuality which we understand are very common there. We also expose them to diseases. We can create programmes where these youngsters can be rehabilitated in the course of their working there.

Mr. Temporary Deputy Speaker, Sir, it reminds of a time when countries like Russia, when it was in the middle of its communism era, those people who were anti-communism were not shot dead. Many of them were taken to programmes in the far north of Russia like Siberia where it is very cold. These people could be sent there and spend a lot of time working instead of being shot. I have never seen the reason for sentencing our own children to death just because we suspect that they are about to steal or they are organised criminals. I am 100 per cent sure that, occasionally, a mistake is made, and an innocent person is killed.

Mr. Temporary Deputy Speaker, Sir, therefore, I want to support this Bill, but I also want to, strongly, appeal to the Attorney-General that we stop this killing of suspected *Mungiki* members, or any other organised criminal gang members, because they have the right to defend themselves before a court of law. That way, we shall uphold the rule of law and respect human rights. The Attorney-General can then advise the Government to come up with programmes through which we can rehabilitate these youngsters, instead of putting them into jail or killing them.

With those few words, I beg to support.

**Mr. Muturi:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to say a few words on this Bill. Every time we are called upon to debate legislation, one must try to read beyond the written words, especially when the Government comes up with certain proposals like those contained in this Bill.

Mr. Temporary Deputy Speaker, Sir, in the Memorandum of Objects and Reasons, the Bill says as follows:-

"The objects of this Bill are to provide for the prevention, detection, investigation, criminalisation and punishment of organised crime; to provide for the recovery of proceeds of organised criminal group activities; to provide for international co-operation and mutual legal assistance and to provide for matters incidental thereto and connected therewith".

From this opening paragraph of the Memorandum of Objects and Reasons, notwithstanding the very persuasive arguments advanced by the Attorney-General while moving this Bill, and the Seconder, Mr. Munya, I see that this Bill is not home-grown. I see an element of some foreign power. It may well be that even your foreign friends can help you, but it is important, at all times, to bear in mind that you must protect and safeguard the interests Kenyans, first and foremost.

If you go to Part V of the Memorandum of Objects and Reasons, you will see that Clauses 32-36 provide for co-operation between Kenya and other states in relation to the investigation of organised crime and the tracing, seizure and forfeiture of organised criminal group property. It also provides for the furnishing of information by the Attorney-General, the taking in Kenya of evidence and action at the request of other states, and for the making of similar requests by Kenyan authorities. One can talk about reciprocity but, of course, this Bill is for prevention of organised



crime.

Mr. Temporary Deputy Speaker, sir, under Part I, Preliminary, where we have the interpretation clauses, under Clause 2, "organised criminal group" is said to mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of-

(a) committing one or more serious crimes, or

(b) committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit or any other advantage.

In this, I am reading not just the desire by the Government to contain criminal gangs like *Mungiki*. The Government had better admit that this is not a product of the Government's sincere concerns about the extent of organised crime, or the need or desire to contain, prevent, investigate and punish. For that reason, in as much as I would not want to be seen to be opposing for the sake of opposition, I would want to urge that there must be caution.

Mr. Temporary Deputy Speaker, Sir, I have just read out the definition of "organised criminal group" on page 2151, appearing under Clause 2. On page 2152, "serious crime" is said to mean conduct constituting an offence against a provision of any law in Kenya punishable by a term of imprisonment of at least six months. This is now being called "serious crime". Obviously, the Attorney-General and Mr. Munya know that offences for which the penalty is imprisonment for a term of six months are, actually, misdemeanours. As I continue highlighting the contents of this Bill, they can see where they have gone wrong. When our American brothers came up with the proposal, they rushed to implement it. Crimes attracting six months imprisonment are very petty. If you commit a crime, under this proposed law, which is punishable by a term of imprisonment of six months, there will be a contradiction between this proposed law and what is provided for under the Penal Code.

Mr. Temporary Deputy Speaker, Sir, I can see that the Government side is in a hurry to conclude this debate. We must take our time. I want to take my time because, unfortunately, this bill is dated 27th July, 2007. I am sure that we have not had the benefit of a Report by the very able Department Committee on Administration of Justice and Legal Affairs because, as one would appreciate, its Members may not have had the time to look through it. I am sure, they could have given us some useful Report. It is for that reason that I feel that, in as much as the Government may be in a hurry to conclude this debate, we must be careful. We are passing laws for today and for posterity. We should not pass laws which we will regret sooner than later.

We have just seen very many amendments proposed in the Statute Law (Miscellaneous Amendments) Bill to the Anti-Corruption and Economic Crimes Act, Act No.2 of 2003. That Act was passed by this Parliament, and today there are major amendments being proposed to it. It is for that

reason that I feel that we should take our sweet time. As you can see, the Attorney-General did not want to take enough time to explain to hon. Members all these details.

## QUORUM

**Ms. Abdalla:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Bill that is being discussed is an extremely serious one. In fact, some of us think that is a short-cut to bringing in the Anti-Terrorism Bill and yet this House is empty. There is no quorum.

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Very well. Could the Division Bell be rung?

*(The Division Bell was rung)*

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Order, Members! Before we adjourn

because of lack of quorum, Mr. Muturi, were you speaking on behalf of the Opposition?

**Mr. Muturi:** No, I was not, Mr. Temporary Deputy Chairman, Sir.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Mr. Muturi, you will have another 20 minutes to go when we resume this debate.

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday, 4th September at 2.30 p.m.

The House rose at 5.25 p.m.