

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 10th November, 2009

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Committee on Implementation on the undertaking made by the Assistant Minister, Ministry of State for Provincial Administration and Internal Security on tabling of reports of Commissions in respect to Question No.182.

Report of the Committee on Implementation on the undertaking made by the Assistant Minister for Industrialization on 28th May, 2009 on the re-opening of Pan African Paper Mills.

(By Mr. Jamleck Irungu Kamau)

NOTICES OF MOTIONS

FORMULATION OF HERBAL MEDICINE POLICY

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

THAT, aware that the practice of herbal medicine and the use of herbal pharmaceutical products is widespread in Kenya today in spite of the lack of a clear policy and legal framework; appreciating the need to establish a policy and legal framework to facilitate the practice of herbal medicine and recognition of herbal pharmaceutical products; this House urges the Government to formulate a policy and legislative framework for the practice of herbal medicine and use of herbal pharmaceutical products including establishing the necessary institutional oversight and regulatory bodies, standards of practice and for matters incidental thereto and connected therewith.

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, I beg to give notice of the following two Motions:-

ADOPTION OF IMPLEMENTATION COMMITTEE REPORT IN RESPECT TO QUESTION NO.182

THAT, this House adopts the report of the Committee on Implementation on the undertaking made by the Assistant Minister of State for Provincial Administration and Internal Security on tabling of reports of Commissions in respect to Question No.182 laid on the table of the House on 10th November, 2009.

ADOPTION OF IMPLEMENTATION COMMITTEE REPORT
ON RE-OPENING OF PAN AFRICAN PAPER MILLS

THAT, this House adopts the report of the Committee on Implementation on the undertaking made by the Assistant Minister for Industrialization on 28th May, 2009 on the reopening of Pan African Paper Mills laid on the table of the House on 10th November, 2009.

QUESTIONS BY PRIVATE NOTICE

ALLOCATION OF RELIEF FOOD TO
SAMBURU DISTRICT

Mr. Letimalo: Thank you, Mr. Speaker, Sir. I would like to bring to the attention of the Chair that I have not been supplied with a written answer to my Question. However, I beg to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) How much relief food has been allocated to Samburu District per month since April 2009 to date and what was the population targeted? Could the Minister provide a breakdown of food distribution per location during that period?

(b) Under what circumstances did some locations like Ngare Narok, Ndonyo-Wasin, Uaso West and Engile Central miss out on relief food for up to four months?

(c) How many locations have not received the August 2009 allocation?

(d) Could the Minister also provide the membership of the District Food Distribution Committee and clarify whether or not it has been operationalized?

Mr. Speaker: Is anyone here from the Ministry of State for Special Programmes? We will revisit that Question a little later.

Next Question, Member for Gichugu!

DISAPPEARANCE OF MS. ASSUNTA
WANJIKU GICHUKI

Ms. Karua: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

What is the Government doing about the disappearance of Ms. Assunta Wanjiku Gichuki of Kibingo in Kerugoya Kutus Constituency who was taken away from her house by vigilantes on 11th of June 2009?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I beg to reply.

On the 11th of June, 2009, Mr. David Wachira reported to Kerugoya Police Station that his sister-in-law, Assunta Wanjiku Gichuki aged 50 years, had gone missing. The report was booked in the occurrence book No.19/11/6/09. Later on, a signal of missing persons was circulated to all police stations in Kenya vide OB.No.17/7/7/09.

Preliminary investigations reveal that the said Assunta Wanjiku Gichuki was picked from her residence in Kibingo Village by three persons whose identities are known, but are still at large. We cannot confirm whether they were vigilantes or mungiki. Following her disappearance a police case file No.221/270/09 was opened and investigations commenced immediately which has led to several people recording statements with the police. Emerging from the information laid before the House by hon. Karua that vehicles KAE 993P, KAP 023P and KAB 535B were used to abduct the victim Assunta Wanjiku Gichuki, the identities of the vehicles bearing these registrations have been traced with the Registrar of Motor Vehicles as follows: - Registration No.KAP 023P, the make is a Toyota saloon, white cream, the owner is Paken Impex Limited, Box No.82944, Mombasa, logbook No.C3002877, chasis No.AE910175465 and the Engine number for that particular vehicle is 5A/41000489.

Mr. Speaker, Sir, the other vehicle registration number KAB 535 B is an Isuzu lorry. The owner is Deborah Aomo Company of P.O. Box 44, Rongo. The log book number is C222685 while the Chassis Number is 3001515. The Engine Number is 482599. The last vehicle's registration number is KAE 993. It is a White Toyota Saloon owned by Habi Electronics Limited of P.O. Box 76286, Nairobi. Its Chassis Number is 0012283 while the Engine Number is 3132212. The identity of vehicle registration number KAB 535 B shows that it is a lorry and not a saloon car.

However, there is further information that the victim could as well be alive and in hiding out of fear of some family members and not vigilantes. In July, 2009, the victim was seen in Mbeere District, Kiambere Division, Mwatuwabere Village where she was residing with a relative whose name is Loise Wakio Wambui. She later left to stay with Mrs. Elizabeth Wangari, who is a neighbor to Ms. Loise Wakio Wambui. She stayed there for a week and later left the vicinity.

The son of the victim, Mr. Elias Mwangi Gichuki, had also intimated to the police that the mother was not actually running away from the vigilantes, but was fearful of her brother-in-law who wants to eliminate her due to a land succession dispute. The police are still conducting further investigations and once they complete doing so, the suspects will be arraigned in court.

Ms. Karua: Mr. Speaker, Sir, I think the police and the Government are not interested in investigating this matter. You will note, from the answer given, which is a repeat because the Question was deferred last time, that this matter was reported to the police by the brother-in-law who also wrote to the Minister – I tabled the letter – and the President. The police never investigated the matter until I asked the Question in Parliament. Now, the Assistant Minister claims that the lady was seen in Mbeere District. I had already given information from the relatives that a day after abduction, she was forced to withdraw money at the ATM. If, indeed, what the Minister is saying is true and is a result of serious investigation, and since this matter had been reported, what other investigations have the police undertaken other than to come and give us names of owners of motor vehicles? They are not telling us whether they investigated the whereabouts of those motor vehicles on that day or not! From whom is the Assistant

Minister claiming that this lady has been found when the relatives are the ones crying and writing to the Minister, the President and finally urging me to bring this matter before the attention of the House?

Mr. Ojode: Mr. Speaker, Sir, there is certain information I will share with the hon. Member without necessarily mentioning it here. This is because the information might jeopardize the investigation. I have the abductees' names with me which I will share with her. I have a statement written by the daughter of Ms. Wanjiku. I will read just one paragraph. It states thus:

“The daughter also mentioned in her statement that she saw the three kidnappers who were asking her mother where the title deed of their land was, why she had refused to cook for the son, David Wachira Gichuki and whether she was present when her late husband was issuing instructions to the brother-in-law with regard to subdivision of the land”.

I have the names of the people who abducted the lady and I will share that information with the hon. Member. I cannot disclose the names here simply because the police are making very good leads and are about to apprehend these fellows in order for them to appear before court. This is literally a family matter, but I will give her the information. I do not want to give it to her publicly.

Mr. Mbugua: On a point of order, Mr. Speaker, Sir. Is it right for the Assistant Minister to mislead this House? He is giving contradictory answers! He said that the lady was living in a relative's house, but she has now disappeared. The Assistant Minister does not have consistent answers. Is he in order to mislead this House?

Mr. Ojode: Mr. Speaker, Sir, I wonder whether the hon. Member, who is a friend of mine, understands what a contradictory statement is. I said very clearly that the lady stayed with her daughter and later on went to visit her son. After that, she disappeared. She was being taken to her relatives so that she could remove the title deed which the brother-in-law wants to take from her by force. “By force” means without negotiating. It is common knowledge that in that area, people are forced to give out their title deeds when it comes to issues of succession of land. So, that is the position as we speak.

Mr. Ochieng: Mr. Speaker, Sir, could the Assistant Minister tell us when the police are likely to conclude investigations in order for these people to be brought to book?

Mr. Ojode: Mr. Speaker, Sir, the issue of when should not arise as at now. This is because I have to first arrest the fellows who abducted this lady. They will then be taken to court. So, I cannot give a time frame; it could even be tonight or tomorrow morning. Both the councilor and the abductees are in hiding, but the police are making very good leads in order to arrest these fellows. We are going to do it.

Mr. Waititu: Mr. Speaker, Sir, the issue of people disappearing in Central Province is very common. In my constituency, two weeks ago, four people disappeared and they have not yet been traced. Could the Assistant Minister tell us when this matter of people disappearing will come to an end in Nairobi and Central Provinces?

Mr. Ojode: Mr. Speaker, Sir, we have said it on several occasions that if you know you are being targeted by kidnappers, you need to create a commotion so that members of the public can know that something unique is happening to you. We are dealing with the issue of *Mungiki* and we have done very well. These things that are happening now will be a thing of the past. As we are speaking now, we have arrested

people associated with a cartel that has been out to kidnap people. I have to congratulate my police officers for a job well done. We will never leave any stone unturned. I want to assure Nairobians that they are safe and they will have security at all times.

Ms. Karua: Mr. Speaker, Sir, it is important that the Assistant Minister becomes very clear. He has said that the lady was found in Mbeere in July, 2009. She was kidnapped in June, 2009. He is talking of investigating about her kidnappers. So, the Assistant Minister is agreeing that the lady was kidnapped. Are the police serious with investigations? The report about her kidnapping was made on 11th June, 2009. The police never bothered at all and only sent a signal when the matter was raised in Parliament. Is the Government condoning disappearance and extra judicial killings in Central Province, and especially in Kirinyaga?

Mr. Speaker: Order, Member of Parliament for Gichugu! This is Question Time! You have asked two questions, and you are continuing. The Standing Orders say that you ask one supplementary question at a time.

Ms. Karua: Mr. Speaker, Sir, it is one-and-half Question!

Mr. Speaker: I have given you that indulgence!

Yes, Minister!

Mr. Ojode: Mr. Speaker, Sir, from the investigations report, the lady was kidnapped or forcefully taken away by her family members. I am saying that the same lady, Wanjiku, visited her relatives. That gives us the very simple conclusion that Wanjiku is still alive. If nothing bad has happened to her, we are happy that she is still alive because she visited her relatives. She even managed to speak to her son and daughter. So, let us hope that she is still alive. If she is still being followed by the so-called "kidnappers", I would want her to report to the police station, so that we can accord her the necessary protection.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Next Question by the Member of Parliament for Ikolomani!

LEGALITY/VIABILITY OF NEWLY CREATED DISTRICTS

Dr. Khalwale: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

What is the legality and viability of the newly created districts in view of the recent judgement by the Kisii Resident Judge, declaring them illegal?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I would seek the indulgence of the Chair to defer this Question because my colleague had already started answering it, and he will be back on Thursday. So, I would request the Chair to defer the Question until Tuesday, next week.

Mr. Speaker: Member of Parliament for Ikolomani, do I have your concurrence to defer this Question to Tuesday next week?

Dr. Khalwale: Yes, but only if he has a plausible reason, because this Question has never been answered at any stage, Mr. Speaker, Sir.

Can he give a better reason as to why it is not being answered now?

Mr. Speaker: Yes, Assistant Minister!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, unfortunately, my colleague is travelling all the way from Samburu. He will be here by Thursday. So, I am only requesting the hon. Questioner to allow us to answer the Question on Tuesday next week. If my colleague will not be here then, I will be able to answer it.

(Dr. Khalwale stood up in his place)

Mr. Speaker: Order, Dr. Khalwale! That, to me, sounds plausible. In the Office of the President, Assistant Ministers are allocated duties. This particular Question, for the moment, is seized with the Hon. Lesrima. So, it is deferred to Tuesday next week.

(Question deferred)

Next Question by the Member of Parliament for Kisumu Town West!

DELAY IN APPOINTMENT OF PPOA
DIRECTOR-GENERAL

Mr. Olago: Mr. Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Finance the following Question by Private Notice.

(a) Why, in spite of the operationalization of the Public Procurement and Disposal Act nearly two-and-half years ago, the post of Director-General of the Public Procurement and Oversight Authority has remained vacant?

(b) How has the failure to appoint a substantive Director-General impacted on the Authority's national and international operations?

(c) When will the appointment be made?

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, I would like to beg the indulgence of the House on this particular Question because we are not ready with the answer. We had communicated already to the hon. Member. We will be able to give a comprehensive answer if this Question can be put off until Tuesday or Wednesday, next week.

Mr. Speaker: Mr. Olago!

Mr. Olago: Mr. Speaker, Sir, it is true that I got a telephone call from the Office of the Deputy Prime Minister and Minister for Finance this morning. However, this Question is by Private Notice, and it was posted on the Order Paper on the last day before we went on recess. After we left the Floor, Dr. Oburu Odinga informed me that he had got the answer. So, I was expecting that this afternoon, the answer would be brought to the Floor.

Mr. Speaker: Hon. Member for Kisumu Town West, I have heard your sentiments but the Chair is also aware that this House has kept the Deputy Prime Minister and Minister for Finance extremely busy over the past seven days or so. So, he has not quite had enough time at his desk.

Therefore, the Question is deferred to Wednesday, next week.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.285

IRREGULAR PROCUREMENT OF ENTERPRISE
RESOURCE PLANNING SYSTEM

Mr. Speaker: The Member of Parliament for Kitui West! Is Mr. Nyamai not here?

(Mr. I. Muoki stood up in his place)

Mr. Speaker: What is it, Mr. I. Muoki?

Mr. I. Muoki: Mr. Speaker, Sir, I understand that Mr. Nyamai is in Singapore for Parliamentary Business on the Constituencies Development Fund. Maybe, he did not leave word to that effect. Therefore, it would be appropriate for you to defer the Question until he comes back.

Mr. Speaker: On the face of it, that is a good reason but the Chair had no notice of the fact that he was part of that delegation. Nevertheless the Question is deferred to ten days after today.

(Question deferred)

Mr. Speaker: Next Question by the Member of Parliament for Lari!

Question No.034

DELAYED PAYMENT OF DUES TO
LARI DAIRY FARMERS

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

(a) why dairy farmers in Lari Constituency, who delivered their milk to Westlands Dairy Limited between 1999-2000, have not been paid; and,

(b) what steps the Minister is taking to ensure that the dairy farmers are paid their dues immediately.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Speaker, Sir, the Question is about dairy farmers, and was sent to the Ministry of Co-operative Development. So, I would like to have some advice as to whether I should address the Question as relating to dairy co-operatives or to dairy farmers?

Mr. Speaker: Assistant Minister, I think what is important is the content of the answer. If it answers the Question, then it does not matter to the House which Ministry gives the answer.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Thank you, Mr. Speaker, Sir. I will answer in the context of dairy co-operative farmers.

I beg to answer.

(a) Three dairy co-operative societies in Lari Constituency are owed Kshs4,110,511 by Westlands Dairy Limited, a private milk processor. This debt is still outstanding to the three co-operative societies because Westlands Dairy Limited was put under receivership and subsequently sold to a second owner.

(b) The three dairy co-operative societies owed money by Westlands Dairy Limited were advised to seek legal redress because the contract was between the co-operative societies and a private entity.

Mr. Speaker: The Member of Parliament for Lari!

Mr. Njuguna: Mr. Speaker, Sir, while I appreciate the positive answer given by the Assistant Minister on the three co-operative societies, my concern and interest was not on these three co-operative societies. My Question was based on 31 innocent farmers who supplied milk worth Kshs1,843,815 to Westlands Dairy Limited. There are 31 petitioners whose money, for the last ten years, has not been paid. This is the money I am asking the Assistant Minister to tell this House when those innocent farmers are going to be paid. I am not asking about the three co-operative societies indicated by the Minister. When the issue of the three co-operative societies arises, I will address it.

Mrs. Kilimo: Mr. Speaker, Sir, the Ministry of Co-operative Development and Marketing comes in only when it is Westlands Dairy Limited who have not paid money. The hon. Member should say who owes these farmers the money then. According to the way the Question is framed, it is asking about Westlands Dairy Limited, who owes money to three co-operative societies. We deal with co-operative societies in the Ministry. Kirita, Gatamaiyo and Kinale Dairy Farmers Co-operative Societies had supplied milk between the period 1999-2000; to Westlands Dairy Limited.

Mr. Njuguna: Mr. Speaker, Sir, I want to be understood very clearly by the Assistant Minister that her answer is very elaborate and very specific. However, my Question is about 31 individual farmers, and not the co-operative societies, who supplied their milk individually to Westlands Dairy Limited but who up to now have not been paid. The responsibility of giving authorisation to the management of this limited company is within the powers of the Ministry.

Mr. Speaker: Yes, Assistant Minister!

Mrs. Kilimo: Mr. Speaker, Sir, I can only advise my colleague to get the 31 farmers who supplied milk to Western Dairies to get legal redress. Maybe they need to see the Attorney-General. I talk on behalf of Dairy Cooperative Societies.

Mr. Speaker: Last question, Mr. Njuguna!

Mr. Njuguna: Mr. Speaker, Sir, in my very humble observation, the Assistant Minister is becoming evasive. It is the responsibility of the Assistant Minister to request the Attorney-General to prosecute this individual company for failure to meet its own legal obligation.

Mr. Speaker: Order! Assistant Minister, you need not respond to that.

Member for Lari, equipped with that information, I wonder why you did not then canvass this Question properly so that you would have asked the Attorney-General why he has failed to have these persons responsible for the non-payment to the 31 farmers to be arrested and charged for whatever offence they may have committed. So, I think the ball is in your court. Try and re-craft this Question so that it is properly directed to the authority with the power to take action!

Mr. Njuguna: Mr. Speaker, Sir, I oblige.

Mr. Speaker: Next question by Member for Eldama Ravine!

Question No.364

ALLOCATION/DISTRIBUTION OF RMLF
FOR 2008/2009

Mr. Lessonet asked the Minister for Roads:-

(a) to table the allocation of funds from the Fuel Levy Fund for the years 2007/2008 and 2008/2009 in accordance with the provisions of the Kenya Roads Board Act which requires equitable distribution of 24 per cent of such funds to all districts; and,

(b) the parameters used in arriving at the distribution.

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

Mr. Speaker, Sir, allow me to refer you to the HANSARD Report of Wednesday 16th September 2009 where I adequately answered this Question. It was however, referred for the purposes of the Member to study the tabled documents so that he may ask questions.

Would I be in order, Mr. Speaker, Sir, to request you to ask Members to ask their questions?

Mr. Lessonet: Mr. Speaker, Sir, I want to take this opportunity to ask supplementary questions.

Mr. Speaker, Sir, the Assistant Minister indicated in part "b" of his answer the parameters that determine the distribution to each district. Could he tell us how much the listed items contribute to the amount of money given? What, for example, does the area of a district contribute in determining how much a district gets?

Dr. Machage: Mr. Speaker, Sir, as the hon. Member has said, I have clearly indicated the parameters used to determine the amount of money that is used. They include, the district area, district population, road inventory for the district in kilometers, road surface type (whether paved or unpaved), the terrain (mountainous or hilly), rainfall, economic activities, traffic population and allocations from other sources.

Mr. Speaker, Sir, this will definitely determine the weight. For instance, Nairobi City roads are given first priority because over 60 per cent of the Roads Maintenance Levy Fund (RMLF) is collected within urban areas with the larger portion coming from Nairobi City whose population, as you know, is approaching five million. On the basis of this, Nairobi itself takes about 25 per cent of the levy collected leaving the rest; about 75 per cent of the 24 per cent of that allocation for the other districts.

Dr. Khalwale: Mr. Speaker, Sir, the Deputy Prime Minister and Minister for Finance in his Budget Speech issued a directive which was at variance with the Kenya Roads Board Act. Could the Assistant Minister for Roads tell us, in spite of that variance, what he is doing to ensure that the Constituencies Development Fund (CDF) is the agency for distributing those particular funds.

Dr. Machage: Mr. Speaker, Sir, although the answer should have been more appropriate from the Minister for Finance, I will however say that the Minister for Roads has undertaken to negotiate with the Ministry of Finance plus the Committee that oversees the road network building in this country, to come up with a proper formula on the constitution of the members of committees that will manage the funds that we allocated as per the instructions of the Minister for Finance. You will soon be informed of this formula. I think Members have already started receiving letters on this issue.

Mr. Lessonet: Mr. Speaker, Sir, I am definitely not satisfied with the response by the Assistant Minister so far. However, what parameters did he use? The Kenya Roads Board Act requires that he distributes these funds equitably to all districts; just like the CDF Act requires equitable distribution to all constituencies.

Mr. Speaker, Sir, I want to refer the Assistant Minister to his distribution in the year 2007/2008 when he decided to give Nairobi – I do not know whether Nairobi is a district – Kshs250 million against Kshs4 million given to Koibatek District. What parameters did he use to decide that it is equitable to give Nairobi Kshs250 million and Koibatek District Kshs4 million?

Dr. Machage: Mr. Speaker, Sir, I beg your indulgence that I use a few minutes to explain to the Member these issues.

The Kenya Roads Board Act provides broad guidelines for allocation of the projected collections of the RMLF to road agencies within any financial year. The equitable portion of the RMLF to be disbursed to districts is derived directly from the projected collections. After identifying the ceiling broadly, the equitable portion of the RMLF is allocated to:-

- (a) The Roads Department to complete on-going projects.
- (b) The Ministry of Local Government to fund maintenance of Roads.
- (c) The balance is equitably distributed to all the 71 districts as per the number of districts at that time.

It is anticipated, therefore, that with time, the equitable portion allocated to the roads department reduces the balances to direct disbursement and the Ministry of Local Government that he is querying about Nairobi, will increase with the counterparts contributions.

It should be understood that every local authority, and I mean the cities, municipalities and town councils, is found within a district. They form the economic centres of the rural communities. The district can contribute to poverty alleviation and wealth creation of the rural people. Funding, therefore, and improvement of infrastructure within these local authorities contributes to the socio-economic improvement of the rural communities and is very much governed by the parameters that I have already said. Certainly the population of Nairobi is far much higher than that of Koibatek and hence the difference in the amounts allocated.

Mr. Lessonet: Mr. Speaker, Sir, definitely he has not answered my question. Yes, he attempted to answer it on the basis of what I told him about Nairobi and

Koibatek. He says Nairobi is a city. Therefore, he allocated it Kshs250 million. However, I did not see Mombasa, Kisumu and Nakuru on the list. All these towns are also cities. How did he decide to give Kshs250 million to Nairobi City? Why not other towns and districts?

Dr. Machage: Mr. Speaker, Sir, I do not know which districts he is referring to. However, the way it has been calculated by the Ministry affects all districts and towns in this country. My list here shows Mombasa and Kisumu cities were allocated some money. Definitely, there is an amount of money allocated to all local authorities in the country. It is, indeed, important to note that every district in this country is allocated some money either through equitable distribution method or per district.

Mr. Lessonet: Mr. Speaker, Sir, the Assistant Minister says---

Mr. Speaker: Order! Mr. Lessonet, I think that settles that matter.

Member for Yatta Constituency, Mr. C. Kilonzo is away like Mr. Nyamai. So, his Question is similarly deferred to ten days from today.

Question No.398

ALLOCATION OF FUNDS FOR YATTA SCHOOL
FEEDING PROGRAMME

(Question deferred)

Question No.293

EVICION OF FAMILIES FROM MTWAPA CREEK

Mr. Yakub asked the Minister for Forestry and Wildlife:

(a) why the 29 families who have lived in Mtwapa Creek in Kilifi since 1963 are being evicted by a forest officer; and,

(b) Whether he could lift the eviction order or provide alternative land to the families.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Speaker, Sir, I beg to reply.

(a) My Ministry has issued an eviction notice to two families and not 29 families who have illegally encroached on part of the Mtwapa Forest. This decision has been taken to protect the fragile mangrove forest in the area which is currently under rehabilitation. It is expected that this move will deliver more benefits to the community through environmental conservation as the area is a renowned breeding site for fish and other marine wildlife.

(b) My Ministry does not intend to rescind the decision to evict the two families as the forest is intended to serve the common good of the whole community around Mtwapa Creek. On the issue of alternative land to resettle the two families, my Ministry will make recommendation to the Minister for land to give the two families a priority consideration to settle them on alternative land.

Mr. Yakub: Mr. Speaker, Sir, I am very satisfied with the answer given by the Assistant Minister.

Mr. Speaker: That then rests the matter!
Next Question, Member for Molo!

Question No.392

UNPAID DUES TO SUPPLIERS UNDER THE
OPERATION RUDI NYUMBANI PROGRAMME

Mr. Kiuna asked the Minister of State for Special Programmes what steps she will take to ensure that the suppliers of the materials used to construct the housing units for the IDP returnees in Molo Constituency under the operation *Rudi Nyumbani Programme* are paid their dues by the NGOs contracted.

Mr. Speaker: Anyone here from the Ministry of State for Special Programmes? Anybody holding brief for her? Yes, the Deputy Prime Minister and Minister for Local Government?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, I can only say that the Minister is not available and neither is the assistant Minister. I will ask the Chair to defer the Question to tomorrow afternoon.

Mr. Speaker: Deferred to when?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Tomorrow afternoon.

Mr. Speaker: Tomorrow afternoon!

Hon. Members, particularly members of the Front Bench, I think there is no gain repeating what we have observed previously that the House takes failure by Ministers to be present to answer Questions seriously in addition to the fact that it amounts to disorderly conduct. I hope that during the remainder of this session, this habit will cease and cease effectively. So that Question is deferred to Tuesday, next week. The Minister is on notice that she must come with a plausible explanation, failing which she will be subject to sanctions.

Next Question, Member for Mwea!

Question deferred

Question No.405

QUALIFIED COUNTY CLERK FOR KIRINYAGA
COUNTY COUNCIL

Mr. Gitau asked the Deputy Prime Minister and Minister for Local Government:-

(a) why Kirinyaga County Council has not had a qualified County Clerk for the last 12 years and when he will post one with requisite qualifications;

(b) why the posting of the clerk in June, 2009 was rescinded and what special interest the acting clerk has been serving for the last 12 years; and

(c) which other councils the officer has served since he was first employed at the Ministry.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the county council of Kirinyaga has not had a qualified clerk for over ten years. On various occasions, my Ministry has posted qualified clerks to the County Council of Kirinyaga, but local leaders have been contesting the transfers. A case in point is the transfer of Mr. Francis Maina Gathura to the council vide my office letter reference Number C1C58 dated 8th May, 2009. However, another qualified clerk was posted vide my officer letter dated 19th of August, 2009 and I have attached the copy to the Question.

(b) The posting of the clerks to the station was decided after an appeal by the local leaders. Further I wish to state that there are have been no special interests the officer has been serving for the last 12 years.

(c) The officer has only served in the county council since he was employed in the council in 1976.

Mr. Gitau: Mr. Speaker, Sir, I wish to thank the Deputy Prime Minister and Minister for Local government for the answer. How come that an officer has served for 33 years in the same council and in the same post for 12 years? The same council says the officer is actually not qualified to be a clerk. Is he conceding that the Ministry is being intimidated by the local leaders not to post a qualified officer to come and serve the residents of Kirinyaga who are also tax payers just like any other Kenyans?

Mr. Mudavadi: Mr. Speaker, Sir, the Ministry is not being intimidated. However, we have to take into account the fact that a local authority is also an entity which is led by politicians. We have to try and come to an understanding when we are dealing with some of these things. It is not a question of the Ministry being intimidated at all.

Ms. Karua: Mr. Speaker, Sir, could the Minister confirm to the House that under the stewardship of Mrs. Miano, Kirinyaga County council has been one of the better run councils? From a position of deficit, the council was steered to prosperity and that has annoyed land grabbers and those who intend to steal from the council. Could he confirm that the council is one of the better run in the country?

Mr. Mudavadi: Mr. Speaker, Sir, at this point in time, definitely, Kirinyaga County Council is one of the most stable councils in terms of the operations and management.

On the issue of land grabbing or anything of that nature, that becomes a different matter which can be a substantive Question in this House, where there is a dispute over something else. But in terms of stability within Kirinyaga County Council, that has been upheld so far.

Mr. Mbugua: Mr. Speaker, Sir, a Mr. Malinda was seconded to Nairobi City Council by the Public Service Commission. Could the Minister confirm if this particular officer has taken office?

Mr. Mudavadi: Mr. Speaker, Sir, that is a completely different Question. We are focusing on Kirinyaga County Council. If there is an issue about Nairobi City Council, I would request the hon. Member to bring a substantive Question.

Mr. Speaker: I agree, Mr. Deputy Prime Minister.
Member for Molo!

Mr. Kiuna: Mr. Speaker, Sir, I would like to ask the Minister whether he can instruct Nakuru Municipal Council to set aside land in Mau Narok Division at a place called Mwisho wa Lami to dump sewage. This is because we do not have any dumping site in that area and many businessmen are dumping all their dirt on the road.

Mr. Mudavadi: Mr. Speaker, Sir, I find myself in the same dilemma and I would really request that hon. Kiuna brings a substantive Question regarding Nakuru.

Mr. Speaker: You have my full agreement.
Dr. Khalwale!

Dr. Khalwale: Mr. Speaker, Sir, in the past, we have seen corrupt officers being promoted and rewarded when they are not working. Here is a lady officer who has achieved and been commended by the Minister. She has also passed her exams. Why has the Minister not promoted her? Is it because you are discriminating against women?

Mr. Mudavadi: Mr. Speaker, Sir, hon. Dr. Khalwale knows that I never discriminate against women, and have no intention of doing so. On a broader situation, the scheme of service under the Ministry of Local Government has not been very fair to many staff members in the Ministry in the sense that it has, over the years, led to a situation where officers are neglected and have not been upgraded or monitored in terms of performance, so that they can be promoted appropriately. The Ministry is taking some corrective action. We are in consultation with the Public Service Commission so that these anomalies can be corrected and people who are performers in the local authorities can be given their due respect.

Mr. Olago: Mr. Speaker, Sir, the issue of professional officers being placed on acting capacities in very many local authorities in Kenya is causing a problem. Why is it that lawyers, engineers, planners and valuers in many local authorities are in acting capacities, especially in Kisumu Municipal Council?

Mr. Mudavadi: Mr. Speaker, Sir, in terms of staffing, I would like to repeat that there has been an anomaly in the scheme of service under the Ministry of Local Government. In fact, one of the propositions we are making is to be able to have a Local Government Service Commission which will help us focus on the staff and professionals in the local authorities in our country. It is a big challenge as they say. I have no immediate response but to say that we want to have a long-term answer to this. This is because virtually every local authority has got very qualified professionals who have stagnated in particular positions for a very long time. This is the neglect that I have been talking about within the scheme of service that they have been working under. The only way we believe we can correct it is to have a clear Local Government Service Commission which will be able to focus on local authorities and help such officers.

Mr. Speaker: Last question, Member for Mwea!

Mr. Gitau: Mr. Speaker, Sir, 33 years in the same office and station is too long for somebody to serve and deliver services to the public as required. That should be somebody who is serving personal interests in that office. As I speak, the Minister has given us Kshs78 million to put up a bus park. Initially, the land was two acres. The

money is being misused on a-quarter-of-an-acre plot in Wang'uru Market. Could the Minister consider auditing the accounts that relate to this park so that we can get to the bottom of the matter, with regard to how money is being spent in Kirinyaga County Council?

Mr. Mudavadi: Mr. Speaker, Sir, I have received a letter from the hon. Member on the issue of this bus park. We are going to send a team from the Ministry to go and verify the issues that he has raised regarding the bus park. On the other hand, I want to say that the lady in question has not been in the same position for 36 years. Initially, she joined as a Revenue Assistant and then was promoted to Accountant III. She has been rising up to the position of Senior Administrative Officer, through the Public Service Commission. Now, she is the Acting County Clerk.

Mr. Speaker: Question by Member for North Imenti!

Question No.445

UNACCOUNTED FUNDS FOR TIGANIA
EAST CDF ACCOUNT

Mr. Ruteere asked the Minister for Lands:-

(a) if he is aware that one Mr. Muchiri, the District Land Adjudication Officer from Meru North District, who was given Kshs500,000 by Tigania East CDF Committee in August 2008, to buy equipment for use in land adjudication in Tigania East Constituency, was later transferred to another district but is yet to account for the funds to the Tigania East CDF Committee; and,

(b) what disciplinary action he has taken against the officer and to ensure that the money is returned to Tigania East CDF account.

Mr. Speaker: Minister for Lands! I have intimation that the Minister for Lands had requested that this Question be deferred to Tuesday, next week because he is not yet ready with the answer. But that intimation is not good enough. Ministers must be present in the House to answer Questions or give explanation as to why they are unable to do so, if that applies. So, somebody must hold brief for this Minister and ensure that those sentiments are conveyed to him.

Mr. Deputy Prime Minister and Minister for Local Government, this behaviour is not acceptable and this House is not prepared to condone it. Could you undertake that you will ensure that your Ministers attend the House and give explanations themselves, because it is their primary duty?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, I have taken note of your sentiments and will definitely convey this message to my colleagues in the Cabinet. Hon. Orengo will be ready to respond to this Question.

Mr. Speaker: Thank you, Mr. Deputy Prime Minister. This House is not prepared to be taken for granted. We will not allow that to happen!

This Question is deferred to Tuesday, next week!

(Question deferred)

Mr. Mbugua!

Question No.454

CRITERIA FOR SUPPLY OF ELECTRICITY
POLES TENDER AWARD

Mr. Mbugua: Mr. Speaker, Sir, I would like to request the Chair to defer this Question to next week, so that I can be provided with a proper answer.

Mr. Speaker: Order! Ask the Question!

Mr. Mbugua asked the Minister for Energy:-

(a) whether he could explain the process and criteria used to award the tender for supply of electricity poles in the Rural Electrification Authority; and,

(b) whether he could provide a list of the companies that won and were awarded the tender.

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

Mr. Mbugua: On a point of order, Mr. Speaker, Sir. The answer that has been provided here---

Mr. Speaker: Order, Mr. Mbugua! You may be having a written answer, but that does not, therefore, assume that the answer that will be given by the Minister is going to be restricted to the written answer which you have. That just gives you primary information. So, you must hear the Minister first before you can complain about the content of the answer!

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

(a) The tenders at the Rural Electrification Authority, like any other public sector organization, are awarded in accordance with the Public Procurement and Disposal Act, 2005, and the Public Procurement and Disposal Regulations, 2006. Section 64 of the Public Procurement and Disposal Act, 2005, clearly stipulates that successful tender should be the tender with the lowest technically evaluated price.

Tenders for electricity poles fall which the threshold of the international open tenders. These are usually advertised in the newspapers with a wide circulation to ensure a wider reach. The time for preparation for such tenders is set at a minimum of 28 days upon which the tenders are closed. The bids are then evaluated for technical compliance and the price is done by an evaluation committee appointed by the Chief Executive Officer (CEO) after which the evaluation report is then presented to the tender committee for consideration.

Mr. Speaker, Sir, on completion of the tender adjudication by the tender committee, the successful bidders are notified of the award while at the same time the unsuccessful ones are notified.

(b) In 2008/2009 Financial Year, Rural Electrification Authority floated three tenders for the purchase of electricity poles. The first tender that was advertised around August, 2008, was awarded to the lowest evaluated bidders in accordance with Section 66 of the Act. The other two tenders were procured directly within Section 74 (2) and (3)

of the Act and were awarded to seven bidders who satisfied the requirement of the tender at the lowest operated prices.

Mr. Speaker, Sir, the list of the companies that won and were awarded the tender for the supply of electricity poles for the three tenders are contained in Appendices I, II and III.

Thank you, Mr. Speaker, Sir.

Mr. Mbugua: Mr. Speaker, Sir, according to the answer that I have been given, Appendices I, II, and III have not been provided. So, I find this particular answer unsatisfactory. There is no answer here!

Mr. Speaker: Mr. Assistant Minister! Order, Mr. Mbugua! You know you must keep some decorum around here. This is not Karioko!

Eng. M.M. Mahamud: Mr. Speaker, Sir, according to my information, the appendices were attached to the answer submitted to the Clerk of the National Assembly.

Mr. Mbugua: Mr. Speaker, Sir, if the appendices were given to the Clerk of the National Assembly, I beg for time to have a look at them and then he can answer the Question comprehensively.

Mr. Speaker: Fair enough. Then you win a deferment on merit to Thursday this week. Mr. Assistant Minister since the hon. Member did not have this information timeously, so he needs time to acquaint himself with the contents. Question No.1 by Private Notice, for the same reasons as were given for Question 392, is deferred to Tuesday, next week.

QUESTION BY PRIVATE NOTICE

ALLOCATION OF RELIEF FOOD TO SAMBURU DISTRICT

Mr. Letimalo to ask the Minister of State for Special Programmes:-

(a) to state how much relief food has been allocated to Samburu District per month since April 2009 to date and the population targeted and provide the breakdown of food distribution per location during that period;

(b) the circumstances under which some locations like Ngare Narok, Ndonyo-Wasin, Uaso West and Engile Central have missed out on relief food for up to four months;

(c) how many locations have not received the August 2009 allocation; and

(d) could also provide the membership of the District Food Distribution Committee and clarify whether or not it has been operationalized?

(Question deferred)

ORAL ANSWER TO QUESTION

Question No.392

UNPAID DUES TO SUPPLIERS UNDER THE *OPERATION*
RUDI NYUMBANI PROGRAMME

(Question deferred)

Mr. Speaker: Next Order!
Any request for Statements? I have no notice of any Statements that have matured for delivery!
Next Order!

BILLS

First Reading

THE ANTI-CORRUPTION AND ECONOMIC
CRIMES (REPEAL) BILL

Second Reading

THE PROCEEDS OF CRIME AND ANTI-MONEY
LAUNDERING BILL

(The Deputy Prime Minister and Minister for Finance on 3.9.2009)

(Resumption of Debate interrupted on 3.9.2009)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, continuing from where I left before we went on recess---

Mr. Speaker: Order, Minister! You have 52 minutes to go.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, money laundering and corruption undermines the country's business reputation and stands in the way of investment.

Money laundering fields organized crimes which in turn fields money laundering. Money laundering similarly undermines the soundness and integrity of country's financial system by making it pay towards what is referred to as "hot money." The economic and political influence of criminal organization can weaken the social fabric of society, collective ethical standards and ultimately, the democratic institutions of the society.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, in response to the mounting concerns of money laundering, the G7 Summit in Paris established the Financial Action Task Force (FATF) on money laundering commonly referred as FATF in 1989 to develop a coordinated international response. One of the first tasks was to develop forty recommendations in all and nine special recommendations developed later which set out measures national government should take to implement effectively anti-money laundering programmes.

The forty recommendations were drafted in 1989 and published in April 1990, reviewed in 1996 and 2003.

Mr. Deputy Speaker, Sir, the forty recommendations fall into the following three main areas: One, legal systems; two, financial institutions and designated non-financial businesses and professions, and three, institutional and necessary measures to combat money laundering and terrorist financing.

Mr. Deputy Speaker, Sir, recommendations one to three address the legal system of a nation calling upon countries to:-

(a) One, criminalize money laundering on the basis of UN Convention against illicit traffic of narcotic drugs and psychotic substances of the 1998 Vienna Convention and the UN Convention against Transnational organized crime; Palermo Convention.

Two, implement a series of provisional measures aimed at the tracing, freezing, seizing and confiscating of property and instrumentalities used in the commission of money laundering offences.

(b) Recommendations Nos. 4-25 address the measures to be taken to combat money laundering by financial institutions and designated non-financial businesses and professions. The measures included the prohibition of secret, anonymous or fictitious accounts, routine and enhanced customers due diligence procedures and both account holders and persons who seek to conduct transactions of particular note to these recommendations---

(Loud Consultations)

Mr. Deputy Speaker: Order! The hon. Minister will be heard in silence! Proceed, hon. Minister!

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Persons who seek to conduct transactions of particular notes to these recommendations is extremely wide, breadth and rich of their application---

(c) Recommendations Nos. 26-34, address institutional and other measures aimed at such issues as domestic, co-operation, the collection, analysis and dissemination of financial intelligence, the adequacy of law enforcement powers and resources; compilation of comprehensive statistics and transparency of legal persons and legal arrangements.

(d) Recommendations Nos.35-40 relate to international co-operation including extradition, mutual legal assistance, co-ordination and recognition of foreigners at confiscation actions, sharing the proceeds of confiscated assets and the widest range of international co-operation.

Mr. Deputy Speaker, Sir, the nine special recommendations relate to measures to combat financing of terrorism. The nine recommendations call upon countries to implement a range of measures aimed at combating terrorism financing as follows: Special recommendation one calls upon states to immediately satisfy and implement the various United Nations (UN) instruments on terrorists financing. Special recommendation two calls upon states to criminalise the financing of terrorism and money laundering associated with it. Special recommendation three calls upon states to adopt and implement measures including legislation to permit the freezing and confiscating of terrorists' assets. Special recommendation four calls upon states to require

financial institutions to report suspicion of existence of terrorist related funds to competent authorities.

Special recommendation five calls upon states to engage in the greatest possible range of international co-operation and relation to combating terrorists financing including the denial of safe haven for suspected terrorists financiers. Special recommendation six calls upon states to license or register all alternative remittance dealers and their agents and to subject transgressions to sanctions. Special recommendation seven calls upon states to ensure enhanced customer due diligence on wire transfers. Special recommendations eight calls upon states to review the laws that relate to non-profit organizations while special recommendation nine calls upon states to detect the cross border transportation of cash and negotiable instruments and to impose sanctions on persons who transgress laws requiring declaration or disclosure of such movements.

Mr. Deputy Speaker, Sir, the Government of Kenya is committed to fighting the vice of money laundering and has towards this end joined regional and international bodies committed to fighting the vice and committed offences. Kenya is a signatory to a number of UN Conventions, has signed and ratified all UN Conventions, African Union and the COMESA protocols relating to combating money laundering, corruption and financing of terrorism. By signing and committing to implement these conventions, Kenya has joined the global partnerships to combating corruption, money laundering and terrorists financing.

Similarly, through its membership of the East and Southern African Anti-Money Laundering Group (ESAAMLG), we have committed ourselves, as a country, to implement the 40 plus nine anti-money laundering and terrorism recommendations. The ESAAMLG comprises 40 member countries namely; Botswana, Kenya, Tanzania, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Seychelles, Uganda, Zambia and Zimbabwe. At this stage, I would like to inform you that Kenya held the Presidency of the council of this group from August 2008 to August this year and I handed over the Presidency to my colleague from Lesotho last month during the Ninth ESAAMLG Council of Ministers meeting in Maseru, Lesotho.

Money launderers are continuously looking for new routes for laundering their funds. Economies with growing or developing financial centers but inadequate controls are particularly vulnerable as established financial centre countries implement comprehensive anti-money laundering regime. Some may argue that developed economies cannot afford to be more selective about the source of capital they attract. Money laundering not only damages the integrity of an individual institution, but it has severe adverse effects on direct foreign investment when a country's commercial and financial sectors are perceived to be under the control and influence of organized criminals.

Aware of the damages corruption and money laundering has caused to our economy and society, the Government has committed itself to fight corruption in all its manifestations and hon. Members are aware of the legal and instructional reform measures we have taken in this regard. Indeed, the Proceeds of Crime and Anti-Money Laundering Bill is intended to further the agenda and improve governance framework in our country.

The Bill is intended to provide strong legal and institutional framework generally and particularly criminalising money laundering in all its facets including provisions of a civil forfeiture regime. Under the Bill, predicated crimes of money laundering apply to all underlying unlawful activities both within and outside Kenya. This covers not only criminal offences but also other activities that contravene Kenyan law. The Bill contains measures to freeze and confiscate the instrumentalities of crime including confiscation and civil forfeiture provisions for property tracking, search and seizure powers.

In addition, the Bill provides preventative measures for financial institutions and designated non-financial business and professionals and establishes legal framework for the financial reporting centre and creates an asset recovery agency responsible for implementing the confiscation and forfeiture of proceeds of crime.

Mr. Deputy Speaker, Sir, provision is also made for international assistance in investigations and proceeds relating to money laundering and related crimes. Allow me to emphasize that the Bill has definitional clauses highlighting those acts that will be construed as money laundering and property that will be seen as having been acquired through criminal activities. It also creates the way to implement the objectives of the Bill. The agencies are the Financial Reporting Center, the Anti-Money Laundering Advisory Board and the Asset Recovery Agency---

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! The Deputy Prime Minister and Minister for Finance should be heard in silence!

Mr. Deputy Prime Minister and Minister for Finance, proceed!

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Thank you, Mr. Deputy Speaker, Sir. The Agency shall administer the Criminal Assets Recovery Fund that is also created by the Bill. The Bill obliges reporting institutions to report suspected criminal and money laundering activities to the centre. It also highlights the procedures for recovering and preserving proceeds of crime and money laundering. This is also the section that shall inform Kenya's efforts in seeking mutual legal assistance from foreign countries when dealing with the vice. Here below is a summary of the provisions of the various clauses of the Bill.

On definitional clauses - Part II Clauses 3-9, those activities that shall constitute money laundering and other related offences are defined in this part. They shall include assisting criminals hide properties acquired unlawfully as well as assisting other benefits from the proceeds of crime. It shall be a crime to acquire or to be in possession of proceeds of crime. Anyone who fails to report any suspicion regarding proceeds of crime will have committed an offence. To knowingly transport, transmit, transfer or receive a monetary instrument with the intention of committing an offence will be illegal. Tipping off those who are likely to be subject to a money laundering investigation, giving false information to officials or bodies regulating the Act shall be an offence. Transmitting more money than prescribed in the Act without reporting and failure to comply with a court order will be an unlawful act. There are penalties for each of these offences. The proposal seeks to overwrite sequence obligation as set out by other laws in Kenya, but those who exercise the duty set out in the Bill in good faith shall be immune from persecution.

[Mr. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Prof. Kamar) took the Chair]*

Implementing agencies fall under Part III, Clauses 4 and 6. The Bill proposes the establishment of the Financial Reporting Centre, the Anti-Money Laundering Advisory Board and the Assets Recovery Agency. It also seeks to establish the criminal Assets Recovery Fund. These bodies shall be the vehicles to implement the objectives of the Bill and shall complement each other's functions. The main objective of the Financial Reporting Centre shall be to assist in the identification of the proceeds of crime and combating money laundering. It shall also have the power to inspect the reporting institutions.

Information from reporting institutions and supervisory bodies shall be received by the centre and disseminated to investigating authorities and other bodies. The Anti-Money Laundering Advisory body shall advise the Director of the Financial Reporting Centre on how to perform his or her duties. The Asset Recovery Agency shall be the body responsible for the recovery of any proceeds of crime and laundered money covered in the Act. It shall be a semi-autonomous body under the stewardship of the Attorney-General. The agency shall also administer the monies of the Criminal Assets Recovery Fund which is to be established in Part IX.

Madam Temporary Deputy Speaker, anti-money laundering obligations of a reporting institution in Part IV provides for a number of obligations imposed on reporting institutions to ensure that any activities that appear suspicious and likely to be related to money laundering are reported to the financial reporting centres. These institutions are financial institutions, business and professional organizations. In order to ensure that they can perform this task, they shall be required to verify customer identity, maintain customer records, establish and maintain internal reporting procedures.

Procedures for recovering and preserving proceeds of crime and laundered money are covered in Parts VII, VIII, IX and X. These parts are set up in the criminal and civil procedures to be followed in the recovery of money acquired unlawfully or laundered money. These mechanisms shall include confiscation orders, restraint orders, bankruptcy procedures and winding up companies whose proceeds have to be realised. Part IX lays down the general provisions related to preservations and forfeiture orders. Part X empowers the police to acquire information and documents from persons who may be suspected to have committed any offence under this Bill and it shall be an offence if any person required to give this information fails to comply with the police order.

International assistance in tackling money laundering is covered in Part XII which says that the Attorney-General shall have the power under this part to seek help from foreign governments when investigating crime and money-laundering. He shall also be required to assist foreign governments who will be seeking similar information from Kenya. In arriving at this Bill, the National Task Force on Anti-Money Laundering and Combating the Financing of Terrorism which was formed in 2003 by the then Minister for Finance to come up with a comprehensive draft legislation on anti-money laundering involved several stakeholders including Members of the Parliamentary Departmental Committee on Finance, Planning and Trade and the Departmental Committee on Justice

and Legal Affairs in workshops held in 2004, 2005 and 2007 to make them understand and appreciate the provisions of this Bill. Suggestions made by the stakeholders were incorporated in this Bill. It is important to point out that The Proceeds of Crime and Anti-Money Laundering Bill was first published in October, 2006 and tabled in Parliament in November, 2006. However the Bill lapsed at the end of the Parliamentary Session on 7th December, 2006. The Bill was subsequently published in April, 2007 but lapsed when Parliament was prorogued on October, 2007.

Madam Temporary Deputy Speaker, as I mentioned earlier on, the Bill went through the Second Reading in May, 2008 but lapsed on 24th February, 2009. The new Bill was republished on 17th July, 2008. Let me assure hon. Members that this Bill generally meets the global standards and best practices. It is comprehensive in its scope and coverage with regard to institutions required to comply with its provisions.

In view of the problems that money-laundering causes to an economy and the society as I have, indeed, enumerated the debate should not be whether or not Kenya should establish an anti-money laundering regime but rather the quality of the legislative regime. Therefore, I request hon. Members to support this Bill so that we can achieve our shared vision to build a nation free of money laundering and corruption.

Madam Temporary Deputy Speaker, with those few words, I beg to move and request the Rt. Hon. Prime Minister to second this Bill.

The Prime Minister (Mr. Raila): Madam Temporary Deputy Speaker, this is a very important Bill and I would have liked to see a full House discuss it. I rise to second this Bill which is very important. It is not the first time that this Bill has been brought before this House. It has been brought before this House before and I know the reasons which have been advanced in the past to oppose it. We are meeting now against a background of a changed international climate in as far as international crimes and money laundering is concerned.

Last year, we went through a major international financial crisis. It started almost as a joke and then escalated and eventually caught the whole world. At first when it started, it was confined in the United States of America (USA) starting with the real estate. It then expanded to Europe then to Asia. Some people were predicting that Africa and the rest of Third World would be spared because these economies are not very much tied to the global financial systems. That was then but Africa, like many other parts of the world, was adversely affected by the global meltdown.

We suffered in this country when we saw the demand for our major exports slump. We also saw the prices of exports plummet. We also saw the number of tourists coming to our country reduce substantially. We also suffered when we saw that the remittances that come from Kenyans in the Diaspora also reduce substantially. That shows the inter-connectedness of the entire world today. We live in a global world.

Madam Temporary Deputy Speaker, many discussions took place in various parts of the world when the crisis struck. It has now been suggested that it is time to restructure the international financial architecture. It has also been suggested that it is time the Bretton Woods institutions were restructured. Against this background, we are today debating the Proceeds of Crime and Anti-Money Laundering Bill. We must accept that money laundering is a real phenomenon and that it negatively affects economies across the world. There may be temporary gains that are received but eventually the outcome is

negative. We are talking about proceeds that come from drugs, outright crimes like bank robberies, electronic thefts or proceeds coming from activities such as piracy.

As a Government, we have discussed and agreed that it is time for us to come back to this House and have this matter revisited and discussed seriously so that this Bill can be passed.

Madam Temporary Deputy Speaker, we, as a country, are now among the last countries on the continent which have not introduced this law. This law has now been introduced by virtually all countries in the African Union; Uganda, Tanzania, Ghana, Nigeria and South African. It is only Kenya and Somalia that have not introduced anti-money laundering law. We also do not live in a vacuum. We trade with the rest of the world. The G20 have actually now given a condition that by the February next year, countries which have not introduced this law, will suffer some sanctions in terms of trade. What are the implications? The implications are, for example, we will have problems with our letters of credit when want to trade with other countries. Credit cards coming from banks in countries that have not introduced these laws will not be honoured outside. So, we will become like a pariah nation. It is, therefore, very important that this law is introduced as quickly as possible.

We know how the proceeds coming from some of these criminal activities affect our economy. This country has been going through recession as a result of what we went through last year. First, we had the post-election crisis. Secondly, we had drought that seriously affected our economy. Thirdly, we had the global financial meltdown which all negatively affected our economy. We will expect that in such a situation, the real estate prices in our country will be going down. But against all the odds, the property prices in our country have been appreciating. It completely defeats all the economic logic. How is it because it is not difficult to explain? Proceeds coming from piracy activities are the ones which are swelling it here. We know how piracy in the Indian Ocean is affecting our trade. As a result of the dangers of piracy in our sea routes, insurance companies have increased their premiums being paid for goods that are destined to our country. So, it is making our trade much more expensive. But this money which ships are forced to part with through extortion by pirates is definitely finding its way into our country. That is the reason you find property prices in this City have skyrocketed. In some estates of this town, the locals cannot buy property anymore. You go to South C, Nairobi West, Eastleigh and most parts of the town, you will find that values of properties have gone up. Most Kenyans are not very happy about it. I know that there is so much tension in our country as a result of money laundering activities that are going on; proceeds of piracy. "Laundering" means that money that is ill gotten; that is the proceeds of piracy, drugs and sales and so on. Sometimes it is carried in boxes. It is used to purchase property. Then once it has been converted into a property, it has been laundered because then it can be sold. Then you will have sold your property.

Madam Temporary Deputy Speaker, time has come for us, as a country, to bite the bullet. Let nobody come and say we are trying to target a particular community. No! This is not targeting any community in our country. This is a law for all the Kenyan people. It is only the law against criminals. Countries that used to be safe haven for ill gotten wealth have been forced to introduce this law. Switzerland has introduced it. Jersey, Channel Islands, Dubai, Hong Hong, Cayman Islands and Andorra among others

have introduced this law. All those countries had to introduce this law. We will look very bad if we, as a country, refuse---

Dr. Khalwale: On a point of order, Madam Temporary Deputy Speaker. I am sorry to interrupt the Prime Minister. You will appreciate that we are not quite used to having a Prime Minister contributing on the Floor of the House. But be that as it may, he just told us that he is aware that a particular community is promoting money laundering by coming here with cartons of money and buying property. Could he substantiate?

The Temporary Deputy Speaker (Prof. Kamar): Dr. Khalwale, you are out of order! That is not what we heard the Prime Minister say. Continue Prime Minister.

The Prime Minister (Mr. Raila): Thank you, Madam Temporary Deputy Speaker, for protecting me. I never and I want to repeat that I could never have meant any particular community. I said that this law is not aimed at any particular community. Kenya has got 43 different communities or tribes. So, I said that this law is the law that will protect all the Kenyan communities.

So, I would like to urge the Member of the House to be patriotic enough and shun propaganda. I know there is the Anti-Terrorism Bill which was introduced here and was rejected for some other reasons. Then, it was said this was like introducing Anti-Terrorism Act through the backdoor. When the Anti-Terrorism Bill comes before this House we shall introduce it through the front door and state reasons for wanting to be passed by the House. But this time the Bill before the House is the Proceeds of Crime and Anti Money Laundering Bill which we are seeking approval from this House.

I would like to appeal to the sense of patriotism in Members of this august House, so that this Bill is approved unanimously.

With those few remarks, I beg to second.

(Question proposed)

Mr. Mungatana: Madam Temporary Deputy Speaker, I want to thank you for giving me this opportunity to also make a brief contribution to this Bill.

First of all, I want to congratulate the Deputy Prime Minister and Minister for Finance for bringing back this Bill which on several occasions has not been able to pass through this House because of various reasons. I also thank the Prime Minister for very good reasons to support this Bill.

I also wish to state that I wholly support this Bill. The Waswahili say: *Kutembea kwingi ni kuona mengi*. That is to say that when you travel, you see things that help you to understand where our country is and where we need to be. In a trip as members of the Inter-Parliamentary Union that we had recently, on the sidelines we were discussing the topic of organized crimes. One of the members that engaged me told me: "Kenya, what is wrong with you? Why have you not passed the Bill that fights the proceeds of crime?"

Previously, we had raised the question of terrorism. We showed concern that the issue of piracy was not being discussed in that forum. We only talk about terrorism and yet piracy affects us on this side of our border with Somalia. One of the hon. Members asked me, "What is wrong with you?" I felt embarrassed because I thought that we had passed this Bill. However, upon proper recollection, I realized that the Bill was debated at various stages, but it was never passed.

Madam Temporary Deputy Speaker, I want to urge all hon. Members that it is high time we passed this Bill. I remember when this Bill was introduced in 2006 in this House, the atmosphere and politics at that time was such that any form of rumors that circulated would defeat a Bill that was as important as this one. The rumor at that time was that this Bill was a USA project and that it was targeting a certain community, in fact, a certain religion in Kenya. So, it went down very badly with so many Members of Parliament. We did not look at the merits of the Bill. It did not see the light of day because of the existing politics at that time.

We are now at a different time. Now that the Deputy Prime Minister and Minister for Finance has introduced this Bill, people are able to see the reasons behind it. Everyone who has been out there and knows a thing or two about money laundering will know that we need this Bill and so we should not be left behind.

I would like to make two points very quickly. We need to support this Bill for various reasons that have been put forward. One of those reasons is that we need to understand that crime and criminology evolve. Crime takes its own form of life. Criminals are not sleeping wherever they are; they are inventing new methods of crime every day! As a State, we need to know that when crimes are committed, they are not committed against an individual. If a child suffers rape or defilement, the State prosecutes the perpetrator of that crime because it is all of us who have been wronged by the commission of that offence.

The offences in criminal law are evolving and are becoming very sophisticated. It is, therefore, the State's responsibility to evolve and come up with laws that are able to deal with these highly technological crimes. When we were debating the Kenya Communications (Amendment) Bill, we discussed crimes that are committed by use of computers. We passed that Bill. I want to repeat some of the arguments that we advanced then. Money laundering is a very complicated and intricate kind of crime. We need a new law that will address the infrastructure and the interconnectivities that exist from the source of money laundering down to the consumer. This Bill may not be perfect, but it is a first attempt and we need to support it. We have to start from somewhere.

Madam Temporary Deputy Speaker, we need to know that even as we want to be part of the international community, as a general point, let us not cut and paste the laws that we want to pass in this country. I am very worried that sometimes when we go for international conventions, we come back with ideas which we pass here wholesale. Because this Bill has support from all sides, we need to look at it again. I am pleading with my fellow legislators that we look at this law very clearly so that we do not just cut and paste. The Deputy Prime Minister and Minister for Finance said that stakeholders have looked at it. However, I want to plead again, particularly when we come to the Third Reading, that we look at the clauses in this Bill so that our people are not hurt. I am saying so for one reason.

We passed some law here in the last Parliament. It was like a whole convention had come to Kenya and it became impractical to implement that law. So, I am pleading that we need to look at this law again in the Third Reading. Let us look at the realities. During the Initial Public Offers (IPOs), Kenyans came out with a lot of money they had hidden under their pillows and elsewhere in their houses. These are honest people who have no faith in the banking system in Kenya. Somebody convinced them that if they invested in the IPOs, they would get some money and that, that was a better way of

generating income. That is why we had very successful IPOs. I remember that the first one of KenGen was very successful and people made money. We then had the second one of Safaricom. Again, Kenyans came out with a lot of money from somewhere. These people are not money launderers. They are honest people who, for a long time, have had no faith in the banking system that exists in this country. They have kept their money under pillows, in the kitchen stores and so on. These are our voters. They do not know anything about international conventions. They are our people.

Madam Temporary Deputy Speaker, I am, therefore, pleading that we do not pass a law here that will make that *mama* who has dug a hole and put her money there a criminal in this country. I am pleading that we look at these clauses again. This Bill has many pages and we should read it so that we can make those provisions that will protect our people against wholesale cut and paste international conventions that we bring to this nation. I am also pleading with the Deputy Prime Minister and Minister for Finance to go and look at the Bill again. This is because we need to protect our people. If we fail to do that, we will start arresting people claiming that they are money launderers and yet they do not even know what money laundering is all about.

I do not know how the relevant Departmental Committee has looked at this matter. We will, however, look at their Report when it is tabled here. We are urging that we protect our people so that we do not set laws that are going to make criminals out of our innocent people. With all that in mind, I still think that is a good law, but we must have those safeguards in place. I beg to support.

Mrs. Shebesh: Thank you, Madam Temporary Deputy Speaker for allowing me to support this Bill very emphatically. The reason is that I speak on behalf of the African Parliamentarians Network Against Corruption (APNAC). As we debate this matter, our chairperson is in Doha with another one of our hon. Members. They are representing Kenyan Parliamentarians in the debate on the UN convention against corruption.

Madam Temporary Deputy Speaker, it has been an embarrassment to sit amongst other states and listen to delegates from many countries that have passed these kinds of laws, when Kenya sits back and speaks about commitment to fighting corruption without putting any laws or legal systems in place that would show this commitment. That is why, on behalf of those Parliamentarians who are in Doha right now, speaking on our behalf, and Members of APNAC, I want to say that this is an issue we have been discussing amongst our caucus. We will have a breakfast meeting next Thursday, and we hope that the Deputy Prime Minister and Minister for Finance, who we are going to support wholeheartedly on this issue, will give audience to the Members of APNAC to give his input on this very important debate.

Unfortunately, the countries that surround Kenya have been in turmoil for a while. We are now speaking about Somalia but most recently, there was Sudan. At one time, it was Uganda. So, Kenya has been receiving a lot of this kind of money. Unfortunately for us, we have become kind of used to having this money floating around our systems. It is going to take some sacrifice amongst the Kenyan business fraternity and our leadership to see to it that we do not encourage this kind of practice because it is benefiting us as Kenyans.

Madam Temporary Deputy Speaker, I want to speak again on behalf of Members of the Pan-African Parliament (PAP). During the recently concluded PAP Session, we debated the issue of Somalia and piracy. We will, of course, condemn piracy and its

proceeds but we must be alive to the fact that as Africa, we have failed on the issue of the failed state of Somalia. You cannot have a failed state next to you and continue to hope that your country will go scot-free.

What am I saying? If in Kenya we have problems with young people who have no jobs and, therefore, becoming criminals in the names of unlawful groupings, can you imagine a state whose government is not allowed to operate? The young people who live across our border with Somalia are engaging in this activity because Africa has neglected this state. I say this because this is something that can easily happen even within our own borders.

Madam Temporary Deputy Speaker, we must start looking into creating jobs. This is a Bill we might pass but we will not be able to implement it if young people in this country continue to have no jobs. They will continue to engage in crime because crime has become their easy way of making money. If up to today, as Government, we have no national policy of creating jobs for young people, then all that we are doing is in futility because 70 per cent of our generation is sitting out there, idle, looking for ways of feeding their young families. There is no point in us speaking big words when we do not deal with the basics.

For me, the basics is for us to work hand-in-hand as Ministries. There is no point of having a Ministry dedicated to youth affairs, whose Youth Enterprise Development Fund is failing. There is no point of having a *Kazi kwa Vijana* Programme that is also failing. We are failing our young people but at the same time, we are saying that we must enact a law like this one. We will have all our young people in prison. I am telling you this without any doubt, as a person who works with young people. Most of them are engaging in crime because they have no jobs. Let us create jobs for them as we put such laws in place. The Government's commitment on the fight against corruption will only be seen if the Government works together, and not at variance.

With those remarks, I beg to support the Motion wholeheartedly.

The Minister of State for Defence (Mr. Haji): Madam Temporary Deputy Speaker, I wish to support this Motion with a lot of reservations. The reservations that I have weigh more than the support that I am going to give to this Motion.

In the first place, history always guides human beings. The idea of having this kind of legislation was mooted in the western world and imported to Africa, Kenya included. The whole idea of having such an Act then was to target Islam simply because people like Osama Bin Laden and others were suspected of money laundering in order to support the cause they are following and yet over 99 per cent of the Muslims are not in support of what Osama Bin Laden and his group are doing, including whatever is happening in Somalia under *Al Shabaab*.

Madam Temporary Deputy Speaker, the fact remains that many Islamic NGOs in this country were disbanded immediately when this kind of Motion was mooted. Up to this time, in Isiolo, there are institutions that were looking after orphans, which have been closed. Go to Garissa and many other places where these NGOs were supporting the communities. They were sent away. Admittedly, maybe, the people these NGOs were employing to come and run them were people of dubious character but the question is: There were very capable Kenyans who could have run those institutions. Why were those people given work permits to come and run those NGOs?

If those people were to be sent away, why were Kenyans not allowed to take over those institutions, so that they could help the less fortunate people? It is a fact that other religions have such institutions, and they have never been closed. So, nobody should say that this is propaganda. It is not propaganda. It is a fact. Anybody can read newspapers and find out the registration status of those institutions.

Madam Temporary Deputy Speaker, piracy is an international issue. It is not only for Kenya. The ransom money earned through piracy is said to be coming into Kenya, even though up to now nobody has proven that this money, indeed, comes directly to Kenya. It might be finding its way to other places. What we know is that there were so many refugees from Somalia, Rwanda, Burundi, Sudan and Uganda, as well as many Kenyans from all tribes, who took advantage of the arrangement by the United States of America (USA) to send away the Somali Bantu people from Somalia. They all claimed to be Somali Bantu and found their way into Somalia as refugees.

It is these people, including Kenyan Somalis, who might have taken advantage of the opportunity to go and work in the USA, because the USA Government was airlifting them, who are sending money to buy properties in this country. That is a fact. We would like the Treasury to find out from commercial banks where the remittances are coming from, particularly now that there is the problem of economic recession affecting the whole world. Those Kenyans would like to come back. That is why they would like us to change the law to introduce dual citizenship. They want to have properties here. So, it is not piracy money that is being used to buy properties in Kenya.

Madam Temporary Deputy Speaker, this country is ailing from drugs money. There is a lot of drugs money coming into this country. If you watch television, you know that women in Mombasa are crying. They are demonstrating because drug barons are in Nairobi, Mombasa and even in this House! What is the Government doing about it? It is doing nothing!

Mr. Mungatana: On a point of order, Madam Temporary Deputy Speaker. A very serious allegation has been made – that there are drug barons in this House of hon. Members. I would want the Minister to substantiate that allegation or withdraw it. Please, give us their names because we want to deal with them.

The Temporary Deputy Speaker (Prof. Kamar): Mr. Haji, can you substantiate your allegation?

The Minister of State for Defence (Mr. Haji): Madam Temporary Deputy Speaker, I will substantiate. You only need to look around and see the best-dressed hon. Member in this House.

So, I have substantiated. If you ask me, I will continue to name names.

With those remarks, I beg to support.

Dr. Khalwale: On a point of order, Madam Temporary Deputy Speaker. This House must be taken seriously. Mr. Mungatana asked for substantiation because of the weighty nature of the problem of drug addiction amongst our youth and the consequences that bedevil our society. This hon. Member is a Minister of Government. Could he substantiate what he is talking about?

The Temporary Deputy Speaker (Prof. Kamar): Mr. Haji, could you substantiate and name the person who is best-dressed?

The Minister of State for Defence (Mr. Haji): Madam Temporary Deputy Speaker, the only question that one would ask is: Where are the 210 Members of this House?

The Temporary Deputy Speaker (Prof. Kamar): Mr. Haji, you have not substantiated. If you do not have clear evidence to support your allegation, you should withdraw. If you have evidence, produce it. So, you should either substantiate or tell us when you will bring your evidence for tabling in this House.

The Minister of State for Defence (Mr. Haji): Madam Temporary Deputy Speaker, for the meantime, I withdraw. However, I am going to bring a Motion for discussion--

The Temporary Deputy Speaker (Prof. Kamar): Apologise to the House!

The Minister of State for Defence (Mr. Haji): I do apologise.

The Minister for Trade (Mr. Kimunya): Madam Temporary Deputy Speaker, thank you for this opportunity to support this very important Bill on control on money laundering activities.

By the very name, money laundering, we are basically talking of taking dirty money to the laundry to clean it and pretend it is clean money. That is basically what money laundering is. Hence, the first thing we need to be clear about as a House is that there can never be any dirty money that comes from any good intentions. I believe that even when arguments have been made; that bringing anti-money laundering legislation will affect people of certain faiths, that it will be anti-Muslim, I have been assured by Muslim colleagues that Muslim as a religion, does not condone theft at all or use of dirty money. Hence, cleaning of dirty money should not be seen in the light of any religion. Nobody would be supporting that.

Madam Temporary Deputy Speaker, I also want to mention that this Bill is perhaps the most discussed Bill in this House. This is the fourth time it is coming here. I have had the honour and privilege of presenting it twice and taking it all the way to await House Committee stage. Just because of technical hitches, it either lapsed because the House went on recess or some other reason. There has been total agreement on this Bill. Indeed, I would be surprised if this House does not pass it in record time today or very soon hereafter.

This House has been very clear, categorical and very vocal on issues of corruption. However, when we now look at the fundamental Bill that would sort out corruption in this country once and for all, I would have expected the House to be full as a signal that this House is clear on fighting corruption.

Corruption only thrives if somebody who has taken away money through corrupt means has an avenue for cleaning it and hiding it; then it comes back into the economy as clean money. There is only one way of discouraging people from being corrupt in the first instance by denying them the route to channel the ill gotten wealth, clean it and bring it back to the economy as if it was good money. That is, stopping the laundering of ill gotten wealth. This Bill has been about that. However, it will be good to see how many Members of Parliament would stand up and say: "I want to be counted as having supported efforts to sort out corruption". This can be done by cleaning up the avenues where people who have taken it through corruption and eventually end up making it look as if it was money from clean operations.

Madam Temporary Deputy Speaker, I do not want to say much. I think I have said so many things on this Bill. It is not a cut and paste job. I can assure Mr. Mungatana because I have had the opportunity of going through it several times. I have had to sponsor it and debate it before committees. I can assure you that it is a homegrown Bill, as has been explained by the Minister for Finance. Really, by passing this Bill, we would be sending a signal not just to the rest of the world but particularly to our region. The message is that Kenya is not a haven for ill gotten wealth. Kenya is a place where people want to do clean business. Kenya is a place where we support only those who have clean money to invest and we all make money together without quick hot money that comes into the economy and by the time it goes out, it goes with our good money. It never leaves without taking away what it found. That is the real disaster created by this.

We saw that happen globally. It happened in the United States of America (USA) and the United Kingdom (UK). We saw Iceland being declared bankrupt. It was the first country ever to be declared bankrupt. This was because she entertained money finding its way into her economy. When the money eventually left without having been anchored on proper fundamentals, the economy collapsed. We would not want this country and economy to collapse. The impact it would have is far reaching and is bigger than Kenya. It would affect the entire East Africa. It would destabilize the entire Africa. I think we owe a duty, as this House, to protect the economies around us by ensuring that we have the necessary safeguards to ensure that corruption does not get cleaned and benefit anyone. Nobody should benefit from the proceeds of corruption. This House has a duty, this afternoon, to send that signal and say: "Nobody shall benefit from corruption in this country".

With those few remarks, I beg to support.

Mr. Lessonet: Madam Temporary Deputy Speaker, thank you for this chance you have given me to contribute to this Bill.

The Assistant Minister of State for Provincial Administration and Internal Security (Mr. Ojode): On a point of order, Madam Temporary Deputy Speaker. It seems that we are in agreement that we pass this Bill. There is no need of repeating ourselves. Would I be in order to call upon the mover of the Motion to reply?

(Applause)

Mr. Lessonet: Madam Temporary Deputy Speaker, I want to object because there are so many things---

The Temporary Deputy Speaker (Prof. Kamar): Please, continue!

Mr. Lessonet: Madam Temporary Deputy Speaker, I want to appreciate that this is a very good Bill. This Bill is about us as a country stopping this town called Nairobi from becoming a dry cleaning industry for dirty money.

You will realize that in the last one year or so, property prices against all expectations are doubling every year. You will even realize that very soon, we will be foreigners in our own land. We are actually almost being chased out of town. I would like us, as a country, to go beyond what shall be written in this Anti-Money Laundering Bill in the sense that we need to address issues like ownership of property. In Kenya, to what extent should we allow foreigners to own property in Kenya?

Madam Temporary Deputy Speaker, to what extent should we allow foreigners to own financial institutions in Kenya? You will realize that in this country, one investor can come in with billions of shillings to invest in a bank or a micro-finance institution and walk away tomorrow. Even with the presence of this Anti-money Laundering law, if we do not go back to assess the owners of various investments like banks and property in this country, all this will be in vain.

I would like to highlight one thing about the implementation once this Bill is passed. You will realize that we already have the Kenya Anti-Corruption Commission (KACC) which was set up by this House. However, we want to ask ourselves to what extent has it performed?

Madam Temporary Deputy Speaker, can we say it has even addressed one per cent of the corruption cases in this country? Definitely, the answer is “no.” That is why this House decided to make sure that the hon. Ringeria actually got out of the Kenya Anti-Corruption Commission (KACC).

We still have other officers who must pave way. We, as a House, will do our part. Ours is to pass laws. We know other people are in charge of implementing those laws. However, with the current Attorney General, Mr. Wako, will people who flout these laws be prosecuted? Mr. Wako being the AG, are we going to see prosecution of people who flout this law? With the current Chief justice and other judges, how many people will be taken to court for flouting the provisions of this Bill we are about to pass.

Madam Temporary Deputy Speaker, I want to believe that there is a lot we need to do. As I said, we, as Parliament, will do our part. There is a lot that needs to be done in this country in terms of reforms. We have talked about judicial reforms. This law will be nothing without judicial reforms in this country. We should look at the current judicial system in this country. Who appoints judges in this country? Without judicial reforms, this law will remain in the paper to impress us, as a House. It will impress us in the eyes of the international community that we have passed the anti money laundering Bill. We need to do more than just passing this Bill. The Executive must ensure that there are reforms in judicial system in this country. It must make sure that we have the right people in the office of the Attorney General. Otherwise, this will remain on paper. We pass good laws in this country. We have the KACC in place, but nothing much is happening.

With those few remarks, I beg to support.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Thank you very much Madam Temporary Deputy Speaker for giving me the opportunity. I want to go on record as having opposed this Bill. It is, probably, not expected of me because I am in the Government, but my conscience tells me otherwise. Hon. Haji indicated clearly the direction we are coming from in terms of implementing laws that we have not even enacted in this House. When the debate was on---

Mr. Mbadi: On a point of Order, Mr. Temporary Deputy Speaker. I do believe that the member is an Assistant Minister in this Government; is he in order to oppose a Government Bill?

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Madam Temporary Deputy Speaker, I need your protection. I am debating from my conscience. I represent the same communities that still have the perception that this particular Bill is not in their interest. I have, therefore, to express the wishes of the people

that I represent in this House. I came here as a Member of Parliament before I was appointed as an assistant Minister.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Madam Temporary Deputy Speaker, there is what we call collective responsibility. This is a Government Motion. We have to pass it as a Government. If he has any contradicting issues, he is allowed to say so, but not as loudly through Parliament as he is doing. He is allowed to speak not through this House, but in his constituency. Would I be in Order to call upon the Mover of the Motion to reply?

The Temporary Deputy Speaker: (Prof. Kamar): Hon. Ojode, I had ruled that you were out of order until we give chance to those who feel like they must contribute while I consult on the issue of his collective responsibility because the Ringera debate brought this to fore and I remember that we allowed Ministers to debate as they wished. This happened only a month ago. I will allow him to contribute while I consult further.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Thank you very much madam Temporary Deputy Speaker. The Anti-Terrorism Bill which eventually never saw the light of day, certain communities in this country were facing a lot of subjugation, a lot of harassment for actual implementation of laws that were not in existence at that particular time.

I understand the theme of this particular Bill. It has a very good theme, but my concern is implementation. I fear that this will actually be legitimizing what has been happening in the past. Quite a number of orphans and religious institutions today have collapsed in North Eastern Province. This is simply because legitimate sources of funds that were coming to them, philanthropically, have now been cut. How do we differentiate the legitimate and dirty money that will be coming into this country? I feel there are enough laws in this country now to actually contain dirty money and money laundering. If we are serious in implementing, the Member who contributed before me here was right when he said we have enough laws if we only seriously implement to contain dirty money in this country.

The question is, what is the purpose of this? As far as I am concerned, we are only implementing this to serve external interests. This will only target the specific areas which we have expressed today here. Many of us, will not target.

It is the double standards that I fear for implementation that will go against the interests of many communities in this country. There are so many small businesses that are run in this country, but which are clean. I feel that this Bill when enacted as a law, will victimize those businesses. It is through this conscience or feeling that I have expressed what I have expressed.

I beg to oppose.

Dr. Eseli: Thank you, Madam Temporary Deputy Speaker, for giving me a chance to contribute to this Bill. I am going to be as brief as possible, just by mentioning a few things.

I would like to say, by way of supporting this Bill that as Kenyans, we have been told that inflation is going up, yet when you go out there, the Kenyan does not have much money. We know that inflation is too much money chasing a few goods. So, how come there is inflation and Kenyans do not have too much money? Where is this too much money coming from if it is not through avenues like proceeds of crime and money laundering?

Madam Temporary Deputy Speaker, I have listened painfully to a number of contributors actually demonizing a community and doing a serious disservice to the proud and patriotic community of North Eastern Province; by implying that laws coming up against crimes and money laundering are targeting that community. It is not possible. I have heard very painfully somebody saying that the Non-Governmental Organizations (NGOs) in North Eastern have been shut down and that this law is aimed at people like those. Nobody has actually shown us which clause in this Bill is aimed in that direction. I think we should not make sweeping statements like those and cast aspersions to a proud and patriotic community from North Eastern Province. This Bill is not aimed at them. It is aimed at criminals. The people of North Eastern Province are not criminals. Please, do not paint them as criminals. It is not true, right and just!

Madam Temporary Deputy Speaker, I do not understand when you have not quoted the exact parts of the Bill that you find to be offensive and you just say "the whole Bill." That is not possible! This country is facing a problem of corruption. Corruption is not just about the Kenya Anti-Corruption Commission (KACC). Corruption involves money laundering, drug peddling and such things. Are we telling those mothers and parents who have lost their children to drugs and our brothers and sisters who are dying from drugs that, yes, they can go on dying from drugs, because we, as a House, are scared to put a law in place? I do believe that when we enact this law, in fact, hardly anybody from Islam is going to suffer.

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

The Assistant Minister for Livestock Development (Mr. Duale): Madam Temporary Deputy Speaker, I rise to support this Bill. As hon. Kimunya said, this Bill came to this House several times with a lot of suspicion. But I want to say that it is a good homegrown piece of legislation. It is coming at a time when we must be part of the global financial system.

Madam Temporary Deputy Speaker, this Bill comes as a result of something called integration. The process by which criminal money ultimately becomes or is absorbed into the economy is the issue we need to discuss in this Bill. Criminal investigations lead to money laundering. So, how do we address that?

Madam Temporary Deputy Speaker, this country must have legislation that will come as a result of criminal investigations by security agents, which are likely to be disclosed. There are three ways under this Bill that money laundering can be a reality. The first one is placement; where criminal money gets into any financial system. Billions will go into our banking system and that placement itself is money laundering.

Then, there is layering, which is a process of moving money from one institution, area or side of the country or global system to the other. That itself, again, is the process of money laundering. The last one is integration where, again, after the first two systems, the money becomes part of the economy. So, money laundering is real.

Madam Temporary Deputy Speaker, I want to say it here very clearly that the Bills we are going to pass in this House are not meant for particular communities, and the law is very clear. We must live as a nation and respect the laws that we create. If every community represented in this House will oppose a law, then where are we heading to?

Madam Temporary Deputy Speaker, many people, including the Rt. Hon. Prime Minister alluded that there is some money laundering by some particular communities, through other systems and that the property being bought in South C and Eastleigh---

The Prime Minister (Mr. Raila): On a point of order, Madam Temporary Deputy Speaker. The hon. Member did not hear me correctly. I did not and could not have alluded that a certain community is associated with money laundering. I said that this is not against a particular community. I also said that proceeds of money laundering are being used to buy property all over the City, not by a particular community, but by those who are involved in that business.

The Temporary Deputy Speaker (Prof. Kamar): Thank you, Mr. Prime Minister. I heard you well!

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Prime Minister, I also agree with you. But there is an assumption in this country – out in the media and very remotely in this House – that when a Kikuyu or Somali has US\$1 million, it is criminal money and when an Indian or white man comes with Kshs10 million, it is clean money and he is an investor. That must be very clearly defined in this country. We want to agree because the Kenyans who have property in this country and most parts of the City are living within the parameters of the Kenyan law. If there is anybody who feels that there is a certain group in this country which is doing business and making the real market forces go up as a result of money laundering, we want him or her to provide that information to the Central Bank and security agents of this country.

Madam Temporary Deputy Speaker, we have many side effects of money laundering. One of them is that money laundering provides a unique infrastructure, both domestically and internationally, to people who are in organized crime. So, if we abolish that infrastructure that money laundering gives both domestically and internationally, then crime and more so, organized crime will be reduced.

Madam Temporary Deputy Speaker, the other major side effect of money laundering is that it threatens financial stability in the world and more so, in our country. This is because the moment we cannot ascertain where the money is coming from, then we cannot regulate or monitor our financial institutions.

Madam Temporary Deputy Speaker, the other side effect of money laundering is that it gives undue profits and incentives to people when they get money that they have not worked for. We have put in place a Bill, and I want to congratulate the Minister for Finance, but we must look at the following:

We must look at compliance evidence. I am not a lawyer but for us to say that, that particular business is as a result of money laundering, compliance evidence must be provided. Also, circumstantial, forensic or any other evidence must be provided. Why are we saying this? We do not want a situation where as a result of business rivalry or political influence, somebody will come and say: “Company X’s or individual Y’s money is from money laundering.”

Finally, this is for the Deputy Prime Minister and Minister for Finance and the Committee. We need to consider the following areas in this Bill at the Third Stage and at implementation. We must consider the cost of implementing the anti-laundering regulations. I want the Minister to borrow the example of the Swedish Government. The Swedish Government has one of the best legislation that is implemented in that part of the world in terms of cost. We must know how much as country are we going to pay for it. We must look at the compliance rate both in our country and in the world. So we borrow experiences. What is our compliance rate? We must get experiences from the world and here, I had looked at the United Kingdom anti-money laundering and asset

recovery law. We must borrow a lot from that and see the extent to which other countries have done. Some countries have done it very successfully. This is what has been done and which we had a problem in its implementation stage. It must reflect, look and must show that it is Kenyan and homegrown.

Finally, as my parting shot, I want to say it here that this Bill is not about terrorism financing. We are not tracing the terrorism financing. It must be very clear. That is why 33 Members of Parliament from the Muslim community sit in this House. We are in Government and in the private sector as well. We are in a country where the rule of law is respected. So, I want to tell my colleagues that we support the Bill and we must dispel any rumors.

The Temporary Deputy Speaker (Prof. Kamar): Let us have hon. Shakeel to contribute and then I will dispose of the Motion with hon. Ojode.

Mr. Shakeel: Thank you very much, Madam Temporary Deputy Speaker, for giving me this opportunity. I stand to strongly support this Bill. The proceeds of crime and money laundering are not different from corruption. It is not that it came after 9/11, although people feel that this money laundering started when the so called war against terrorism started. The money laundering took root at the time of the Goldenberg Scandal when there were tonnes of money coming into the country, much of it was laundered to the extent that the inflation rate in this country was over 75 per cent, yet nothing happened. Now when it came up here, people start targeting communities and start targeting religions. Bad money is bad money and that is the end of it. A bad tree will always give bad fruits. This money laundering is a virus that must be stopped. It is a virus in our financial system. But I think we must go back to see what happened when everything was thrown open. There are some people who are here and who benefited greatly from the Goldenberg scandal. That was money laundering in its own truest form. The main thing was money laundering and we will not go back that way.

Madam, Temporary Deputy Speaker, I would like the Deputy Prime Minister and Minister for Finance to kindly just hear what I want to say. As I said, when the Foreign Exchange Act was thrown open, nobody worried about where money was coming from; that is when the Goldenberg Scandal started. We need to reinstate a form of foreign exchange control. If there are genuine people who want to invest in this country, they will say that I am bringing you 10 million or 100 million dollars and here it is. This is where it is coming from; please record it because when I want to take it back out of the country, I will not have a problem. The difficult here is because any Tom, Dick and Harry can bring in money and take it out.

Madam, Temporary Deputy Speaker, I sometimes receive money through the Money Gram and the Western Union. Because my name is Shakeel Ahmed or Ali, or Mohammed, it is always blocked. My small money that comes in is always blocked. Where? In the United States of America. So, we are wondering that the systems here, as it is happening, are hitting those people who are small and genuine transmitters of money. What is happening is that somebody comes with a billion dollars in here and gets away with it!

As much as we thought that our financial foreign exchange control should be done away with, it is very important that it comes in. I want to state one thing and, I want to clearly say that I am a Muslim. I am not very informed or I am not an intellectual in the Muslim laws, but I know one thing, that the very tenets of Islam forbid money

laundering. In its form and in the Koran, it actually talks about money laundering. So, I think this whole thing has been taken for granted and I would really like to go back to the Deputy Prime Minister and Minister for Finance and urge him to look at that anomaly. We are getting money honestly through Money Gram and it is being blocked by Americans, by the way and not the Kenyan Government. I would not mind the Kenyan Government stopping my money and asking me, where did you get that money from? What we need to do is localize this. We want to look at it ourselves, we want a localized solution and, I would like to hear the Deputy Prime Minister and Minister for Finance localizing it and taking those people to task who we can prove handle dirty money.

Thank you, Madam Temporary Deputy Speaker, I beg to support.

The Temporary Deputy Speaker (Prof. Kamar): Before I ask hon. Ojode to repeat what I cut him short on, I would like to allow the Chairman of the Committee on Justice and Legal Affairs, in the absence of the Chairman of the Committee on Finance, Planning and Trade, because they worked on this Bill together, to make a statement.

Mr. Abdikadir: Thank you very much, Madam Temporary Deputy Speaker, for your indulgence. First of all, I want to thank the Deputy Prime Minister and Minister for Finance for the work that has gone into the Bill since we saw it the last time. I want to thank the task force through him for inputting quite a number of suggestions from the Committee in terms of the Bill. I support the Bill this time round.

Madam Temporary Deputy Speaker, it is a major improvement to the Bill than the last time. I will be very brief and I want to indicate that there are a number of issues that are still outstanding which we will take up with the Minister as the Bill comes to Committee Stage. One; the legal profession is a very critical component of the administration of justice in the country. The confidentiality between the lawyer and client is sacrosanct under our justices system. We, therefore, request that the legal profession be removed from reporting institutions because of the importance of the administration of justice and the confidentiality. That has been done in terms of the body but a number of the definitions still have that.

Madam Temporary Deputy Speaker, we already have a criminal justice system in place and this Bill ought to be part of that process. There is no doubt that money laundering is a major crime, but there is nothing special about money laundering in terms of client. Indeed, in terms of the hierarchy of crimes, it is nowhere near the very top. The International Criminal Court deals with the worst crimes in the world like genocide, crimes against humanity and all those kinds of crimes. All those crimes offer or link with the rest of the criminal system very well. For example, all the principles of justice known are anchored in our system and this Bill needs to fit in well with those principles. For example, one must be innocent until proved guilty. There is nothing special about money laundering that requires you to prove that you are guilty until you prove yourself innocent.

Madam Temporary Deputy Speaker, the other one is the whole issue of self-incrimination. We will look at the issue of self-incrimination and see whether you will be forced to incriminate yourself. Then there is the burden of proof. The fact that he who accuses you must prove, if you are accused of laundering money or handling criminal proceeds, whoever is the accuser must be the one to prove. Not for one to say, "You are the one who is holding this money, therefore, prove that you are not a criminal.

Finally, we have multiplicity of institutions and we fear that there is a major risk or rent seeking in this process where you have a police officer stopping you and seeing two hundred thousand shilling cash in your car and taking it to the police station and say, "it will be forfeited until you confirm that this is not the proceeds of crime". In the process, you have another gate-keeping process. So, we will look at those and we will propose amendments to those issues. But overall, there is absolutely no doubt that money laundering is a crime that needs to be fought.

Secondly, this country must have a lawful way to deal with money laundering and thirdly, this is a major improvement from the previous Bill and we will improve it further.

Madam Temporary Deputy Speaker, I support this Bill.

The Minister of State for Defence (Mr. Haji): On a point of order, Madam Temporary Deputy Speaker. I request that the Mover be called upon to reply?

The Temporary Deputy Speaker (Prof. Kamar): You have already contributed. Therefore, you are not the right person to request for the Mover to be called upon to reply!

The Assistant Minister for Defence (Maj-Gen. Nkaisserry): On a point of order, Madam Temporary Deputy Speaker. Would I be in order to request that the Mover be called upon to reply?

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

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Madam Temporary Deputy Speaker, I thank my colleagues, the hon. Members, for all the contributions they have made. I would like to very briefly respond to the issues they have raised.

First, I assure all hon. Members of this House that this Bill is not targeted at any community, individual or NGO. This is especially those NGOs that have supported our people in different parts of this country. We also know that a lot of money from very genuine sources is brought to our country. This includes Kenyans who live and work in various parts of the world. These Kenyans have supported our economy greatly and the families they left behind. There are genuine investors who have participated in the development of this country. As Mr. Mungatana has said, we also know and understand that a great part of our country still remains unbanked. As a Government, we are making major headways in ensuring that we bring that part of our population into the mainstream banking system through branchless banking and other such reforms that we are undertaking in the banking sector. I would also like to assure the hon. Member that this Bill is not aimed at that segment of our society. This Bill is targeted specifically at those who engage in corruption. This Bill also targeted those who wish to engage in drug dealing, organized crime, bank robberies and kidnappings that we have seen take place in this country. These are the people who should be concerned by this Bill and not genuine businessmen and women and Kenyans. This Bill is targeted at a specific grouping in our society we would like to get rid of. This Bill will not, in any way, as it has often been said, result in a net loss of inflows into our country. However, it will result in a net loss of inflows of illegal and corrupt money. I am confident that this Bill will result in an

increase of inflows of legitimate money that will be of benefit to the majority in this country.

All we seek to do is to give confidence to fellow Kenyans and to the world that Kenya has a secure and stable financial sector and a secure and stable economy. I equally assure hon. Members that this Bill, as has been mentioned by the Chairman of the Departmental Committee on Justice and Legal Affairs, has been worked on by Kenyans, for Kenyans and for the benefit of this nation. So, this Bill has not been imported from any part of the world but one that has been made in Kenya, by Kenyans and for Kenya.

With those few words, I beg to move.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

THE COMPETITION BILL

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, I would like to inform the House that I have received information from the Deputy Prime Minister and Minister for Finance that he is not ready to move this Bill. We were informed this morning that he has been kept busy by this House for the last two days.

(Bill deferred)

Let us move on to the next Order!

MOTION

ADOPTION OF REPORT ON PERSONS KILLED BY VIGILANTE GROUPS

THAT, this House adopts the Report of the Committee on Administration and National Security on the number of persons killed by Vigilante Groups in the months of April and May, 2009 laid on the Table of the House on Thursday 30th July, 2009.

(Mr. Kapondi on 27.8.2009)

(Resumption of Debate interrupted on 8.9.2009)

The Temporary Deputy Speaker (Prof. Kamar): Is there any hon. Member who would like to contribute to this Motion? If there is no Member willing to contribute to this Motion, I will put the Question. Where is the Mover, who is also the Chairman of that Departmental Committee? He not is present!

Yes, Mr. Mungatana!

Mr. Mungatana: Madam Temporary Deputy Speaker, I am a Member of the Departmental Committee on Administration and National Security. Sincerely, we did not

expect this Motion to be discussed today. However, the Motion that was moved by my Chairman, Mr. Kapondi, has been thoroughly debated. We have----

QUORUM

Mr. Keya: On a point of order, Madam Temporary Deputy Speaker. Is there a quorum in the House?

The Temporary Deputy Speaker (Prof. Kamar): No, we do not have a quorum. Ring the Division Bell.

(The Division Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, we are unable to raise the requisite quorum. Therefore, the House stands adjourned until tomorrow, 11th November, 2009 at 9.00 a.m.

The House rose at 5.30 p.m.