

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 8th May, 2007

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

COMMUNICATIONS FROM THE CHAIR

CONDOLENCES TO BEREAVED FAMILIES OF KQ507 CRASH VICTIMS IN CAMEROON

Mr. Deputy Speaker: Order, hon. Members! May I ask hon. Members who are coming in to take their seats.

Hon. Members, as you are all aware, on Saturday, 5th May, 2007, we received with shock the tragic news of a Kenya Airways Flight KQ507 that went missing shortly after departure from Douala International Airport in Cameroon with 114 passengers and crew on board. It has now been confirmed that the aircraft crashed after take-off and the wreckage has been found.

Hon. Members, may I take this earliest opportunity on your behalf, and on my own behalf, to send our deepest sympathies and condolences to the relatives and friends from the 20 nations who lost their beloved ones in this tragic air accident. May the Almighty God rest their souls in eternal peace. As a nation, we are proud of the achievements of the Kenya Airways in an otherwise very competitive market and hope and pray that despite this temporary setback, our national airline will continue to offer efficient and safe services. As a Parliament of Kenya, we stand in solidarity with the directors, management and staff of our national carrier during this moment of grief. I expect, from the Chair, that the hon. Minister for Transport will take the Floor at an opportune time and issue a Ministerial Statement to the nation on the circumstances that led to this tragedy.

Hon. Members, may we in our tradition rise for a minute in silence to honour the departed souls.

*(Hon. Members stood for
one minute in silence)*

I thank you hon. Members.

VISITING DEPUTY SPEAKER OF
ZAMBIA NATIONAL ASSEMBLY
IN SPEAKER'S ROW

Hon. Members, I wish to welcome the hon. Mrs. Winter Katembwa Mutale Nalumango, MP, and Deputy Speaker of the National Assembly of Zambia, who is seated in the Speaker's Row.

(Applause)

The hon. Deputy Speaker is on a one week official visit to Kenya to familiarise herself with our Parliamentary procedures and practices. She will also visit some constituencies to see for herself the work being undertaken through the Constituencies Development Fund (CDF).

May I take this opportunity on behalf of all hon. Members and on my own behalf to wish the hon. Deputy Speaker a fruitful stay in Kenya.

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Orphans and Vulnerable Children Committee on Parliamentary Partnership for Africa's Economic Development in the Framework of New Economic Partnership for African Development (NEPAD) and Millennium Development Goals (MDGs) held under the auspices of the rotating European Union (EU) presidency for sustainable economic development for Africa at the Finnish Parliament, New Hall, Annex V, on 23rd November, 2006, to 24th November, 2006.

(By Eng. Okundi)

The Fourteenth Report of the Public Investments Committee on the Accounts of State Corporations, Volume I.

Treasury Memorandum on the Implementation Status of the Thirteenth Report of the Public Investments Committee on the Accounts of State Corporations, Volume III.

(By Mr. Muturi)

NOTICES OF MOTIONS

Mr. Deputy Speaker: Do you have a Motion?

Eng. Okundi: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Well, you have to give a notice first. Go ahead!

ADOPTION OF REPORT ON PARLIAMENTARY PARTNERSHIP FOR ECONOMIC DEVELOPMENT

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

THAT, this House adopts the Report on the Orphans and Vulnerable Children Committee on Parliamentary Partnership for Africa's Development in the Framework of NEPAD and the MDGs under the auspices of the rotating European Union (EU) presidency for sustainable economic development for Africa held at the Finnish Parliament, New Hall, Annex V, on 23rd November, 2006 to 24th November, 2006.

ADOPTION OF THE FOURTEENTH

PIC REPORT

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

THAT, this House adopts the Fourteenth Report of the Public Investments Committee (PIC) on the Accounts of State Corporations, Volume I, and the Treasury Memorandum on the implementation status of the Thirteenth Report of the Public Investments Committee (PIC) on the Accounts of State Corporations, Volume II laid on the Table of the House on Tuesday, 8th May, 2007.

**COMMUNICATION FROM
THE CHAIR****MR. MIDIWO'S NOTICE OF MOTION TO CENSURE
THE VICE-PRESIDENT NULL AND VOID**

Mr. Deputy Speaker: Hon. Members, in relation to Motions, I have a further Communication from the Chair. Hon. Members, in accordance with Standing Order No.40(3)(a)(b)(iv), Members are expected---

(Loud consultations)

Order! Order!

Hon. Members, in accordance with Standing Order No.40(3)(a) to (d) and 40(4), hon. Members are expected to give notices of Motions that are duly approved by the Speaker. On Thursday, 3rd, May, 2007, the hon. Member of Parliament for Gem Constituency, Mr. Midiwo, gave notice of a Motion in terms that were not approved by my office.

I have perused the HANSARD and confirmed that the notice given by Mr. Midiwo varies, to a large extent, to the Motion that I had approved. Under the circumstances, the notice of Motion as given on Thursday, 3rd, May, 2007, is, therefore, declared null and void. The hon. Member may wish to give notice of the Motion in the terms I had approved.

Mr. Midiwo, do you have the Motion?

Mr. Midiwo: Mr. Deputy Speaker, Sir, I do not have any Motion that was given to me by the Clerk. However, I want to protest against that Communication from the Chair.

Mr. Deputy Speaker: Order, Mr. Midiwo! It may not be your mistake.

Mr. Midiwo: Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: Order, Mr. Midiwo! Will you sit down? It may not be your mistake. I just want you to go to the Clerk's office, pick the Motion that was approved and give notice. You can give the notice now. If you cannot do so now, I will give you the first chance tomorrow morning.

Mr. Midiwo, that issue is finished!

Next order!

QUESTIONS BY PRIVATE NOTICE

Mr. Deputy Speaker: The first Question by Private Notice is by Mr. Owino! Mr. Owino is not here and, therefore, the Question is dropped!

MEASURES TO DEAL WITH
MUNGIKI TERROR GANGS

(**Mr. Owino**) to ask the Minister of State for Administration and National Security:-

What steps has the Minister taken to conclusively deal with the proscribed *Mungiki* sect which has been terrorizing the public in Banana, Githunguri, Kiambu and parts of Thika in the last three weeks?

(Question dropped)

EXPLOITATION OF HAWKERS
BY NCC ASKARIS

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Local Government the following Question by Private Notice.

(a) Could the Minister confirm that hawkers along Ngara Road, Nairobi (opposite the chief's camp) are currently being compelled to illegally pay City Council employees every Friday to be allowed to operate, in addition to the Kshs30 legal hawkers' fee payable on Tuesday and Friday?

(b) What steps is the Minister taking to ensure that the hawkers are not exploited or harassed by City Council askaris?

The Assistant Minister for Local Government (Mr. Muchiri): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I cannot confirm that I am aware of any illegal payment of hawkers' fees to City Council employees at Ngara.

(b) The Ministry of Local Government does not enforce any harassment or exploitation of hawkers directly. I will act decisively in specific cases that are reported to me.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, it is public knowledge that hawkers are harassed every time by City Council askaris and forced to pay fees. Hawkers are willing to go to the Assistant Minister's office to prove that they are asked to pay illegal fees.

Mr. Deputy Speaker: What is your question?

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, given that hawkers are harassed, what kind of protection would the Ministry give them?

Mr. Muchiri: Mr. Deputy Speaker, Sir, it is not possible to act on rumours. However, I would like to confirm that the Nairobi City (NCC) has established a Complaints Desk. Customers and members of the public should report any complaint, harassment or corruption to this desk.

Secondly, the NCC has established 32 telephone lines through which each Head of Department can be reached. Apart from those telephone lines, there are specific ones for reporting corruption-related complaints. These are 0725-624488/9 and 020-344194. In addition to them, my number is 0722-514825. These numbers could be used to report such complaints.

Mr. Ndolo: Mr. Deputy Speaker, Sir, this Question was asked last week although in a different way. The Minister himself was here and he answered that he was aware of the Kshs30 fee paid to the askaris. Now, the Assistant Minister says he is not aware of this fee. How are we sure that they will take care of hawkers in the City? They have even promised to build hawkers' markets throughout the country.

Mr. Muchiri: Mr. Deputy Speaker, Sir, I said I am not aware of any corruption or illegal fees being levied against the hawkers. If there are such fees, we shall act accordingly. However, may I also confirm that hawkers are charged Kshs25 daily. This is in the Council's Fees and

Charges Schedule. To that extent, any other payment is illegal and nobody should pay it! We all know it takes two to tango. If the allegation by the hon. Member is true, then we will take action against the two parties involved.

Mr. Omondi: Mr. Deputy Speaker, Sir, Members of Parliament in Nairobi Province are faced with this problem every time. Whenever this Question is raised, hon. Ministers do not appear to take it seriously. Hawkers who sell their wares outside the designated market hardly make Kshs50 per week. When the President addressed us during the Official State Opening of this House, he directed that 400 licences be cancelled. Could I know from the Assistant Minister if this levy of Kshs25 was also scrapped?

Mr. Muchiri: Mr. Deputy Speaker, Sir, there were no licences cancelled as alleged by the hon. Member. The Government was categorical that it will not allow hawking within the City Centre. For purposes of cleanliness and order in the City, we have provided designated areas outside the City Centre.

I also confirm that the City Council of Nairobi is currently carrying out the Rapid Result Initiative programme. We have Harmonisation and Coordination Committee of Hawkers charged with hawkers' affairs. The Jua Kali sector and other service providers are included in the committee. We are having dialogue with the hawkers. Therefore, they should not be unduly harassed. That is the position of the Ministry. They should be free to do their business in designated areas. They are only prohibited to carry out their businesses in the City Centre.

Mr. Deputy Speaker: Last question, Mr. K. Kilonzo!

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, the Kshs25 paid by hawkers everyday is very high. Could the Assistant Minister, in the spirit of empowering those who do not have enough, consider reducing it?

Mr. Muchiri: Mr. Deputy Speaker, Sir, the Ministry looks at the fees proposed by the NCC. If the NCC deems it fit to revise the fee schedule, we shall consider it.

Mr. Deputy Speaker: Next Question!

ORAL ANSWERS TO QUESTIONS

Question No.074

TERMINATION OF SERVICES OF KNH PROCUREMENT OFFICERS

Prof. Olweny asked the Minister for Health:-

(a) whether she is aware that seven procurement officers namely; Patrick Mwaura, Kepha K. Maina, George O. Otung, Nashon I. Muse, Joseph Marwanga, A.M. Mathu and Samuel Mwangi, former employees of Kenyatta National Hospital (KNH), had their services terminated in 2003;

(b) why their services were terminated instead of being re-deployed as was the case with other procurement officers; and,

(c) given that the service termination was unprocedural, whether the officers could be re-instated.

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

(a) I am aware that seven prominent procurement officers, as named above, former employees of KNH had their services terminated in the year 2003.

(b) The services of the cited seven procurement officers were terminated due to numerous

adverse reports, including poor work performance and general conduct. Established offences of misconduct included the falsification of documents and information, colluding with suppliers for personal gain, habitual alcoholism and absenteeism without due permission among other shortcomings.

(c) As stated above, the Board found them unsuitable and terminated their services effective 29th September, 2003. However, two of the ex-supplies officers namely; George O. Otung and Nashon M. Muse have since sued the hospital and the Attorney-General for wrongful dismissal.

Prof. Olweny: Mr. Deputy Speaker, Sir, I thank the Assistant Minister for that answer. However, these procurement officers were sent home in 2003 when all the procurement officers in the Public Service were sent on compulsory leave. Actually, their employer did not have a problem with them until they were sent home with the others.

I have a document here to that effect, if you could allow me to table it. These are letters from the Permanent Secretary, Ministry of Finance and Office of the President advising the Director of KNH not to dismiss those people but re-deploy them the way others---

Mr. Deputy Speaker: Order, Prof. Olweny! Whenever you are given an opportunity to ask a question, you go into lecturing.

Prof. Olweny: Mr. Deputy Speaker, Sir, let me ask the question now.

Mr. Deputy Speaker: Order! We cannot communicate because I am talking to you while you are also talking. Please, confine yourself to Parliament and ask the question.

Prof. Olweny: Mr. Deputy Speaker, Sir, I am asking you to allow me to table the letters which advised the Director of KNH not to dismiss those people. The question is---

Mr. Deputy Speaker: Prof. Olweny, I want you to ask the question, then you can table the letters later.

Prof. Olweny: Mr. Deputy Speaker, Sir, why did the hospital not sack those officers before all the procurement officers were suspended?

Dr. Machage: Mr. Deputy Speaker, Sir, as I had just mentioned, there is a case now pending in court where the hospital and the Attorney-General have been sued. I request that I do not answer any more questions because that would be *sub judice*. The cases are CMCC No.10763 of 2004 and CMCC No.10762 of 2004.

Mr. Deputy Speaker: Well, you have heard what the Assistant Minister has said.

Mr. Bahari: Mr. Deputy Speaker, Sir, it is quite clear now that the management of KNH took advantage of the situation to dismiss those officers. Although that matter is in court, it does not stop the Assistant Minister from reinstating them. Could he consider reinstating them, because those are two separate matters?

Mr. Deputy Speaker: Mr. Assistant Minister, let me understand this issue. Are you saying that the persons named in this Question are already in court over this matter? Prof. Olweny, is it true that these people are already in court?

Prof. Olweny: Mr. Deputy Speaker, Sir, only two people went to court but others did not.

Mr. Deputy Speaker: Are they named here?

Prof. Olweny: Yes, Mr. Deputy Speaker, Sir. But he can deal with the cases of the others who have not gone to court.

Mr. Deputy Speaker: No! No! If some of them have taken the course of going to court, unless you ask another Question removing those names, we cannot isolate the two names from the Question. Therefore, I rule that the matter would be *sub judice*.

Mr. Omingo: On a point of order, Mr. Deputy Speaker, Sir. This Government is fond of punishing Kenyans and hiding behind the rule of *sub judice*. Would I be in order to request the

Chair to order the Assistant Minister to go back to KNH and save those Kenyans who are now suffering because dismissal procedures which the law upholds were not followed?

Mr. Deputy Speaker: That is not a point of order!

Question No.223

WITHHOLDING OF PATIENTS' IDS
BY MOI REFERRAL HOSPITAL

Mr. Sambu asked the Minister for Health:-

(a) how many national Identity Cards (IDs) are being held by Moi Teaching and Referral Hospital, Eldoret, belonging to patients or guarantors who are unable to clear their hospital bills;

(b) why the hospital is allowed to disenfranchise Kenyans by taking away their ID cards;

(c) how many land title deeds are held by the hospital under similar circumstances, and;

(d) whether she could direct the management of the hospital to immediately release all ID cards and title deeds to the respective owners.

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

(a) There are 3,961 national ID cards being held by Moi Teaching and Referral Hospital belonging to patients or guarantors who are unable to clear their hospital bills.

(Loud consultations)

Mr. Deputy Speaker: Order!

The Assistant Minister for Health (Dr. Machage): Thank you, Mr. Deputy Speaker, Sir.

(b) I am aware that the national ID cards are left at the hospital by the owners at their own free will with a promise to settle their bills in due course or request to be allowed to leave the patients and come back to sort out the waiver or credit requirements later with the hospital.

(c) I am also aware that 1,500 title deeds are being held by the same hospital for the same reasons.

(d) I am aware that the title deeds and national ID cards were left by the patients or guarantors who promised to later appear and fulfil their requirements of waiver, credit or cash payments. The hospital committee meets weekly and as often as need may be, to handle deserving cases respectively.

Mr. Sambu: Mr. Deputy Speaker, Sir, the Assistant Minister says that the ID cards and the title deeds are left by the patients or the guarantors at their own free will. Under the Registration of Persons Act, Cap.107, Section 14, Subsection 1(c), it clearly states:-

"Any person who unlawfully deprives any person of an ID card issued to him under this Act shall be guilty of an offence and liable to a fine not exceeding Kshs10,000 or imprisonment to a term not exceeding 12 months or both."

How does this Government feel when a director of a hospital disenfranchises Kenyans? Could he advise the Director of Moi Teaching and Referral Hospital to return the ID cards and the title deeds immediately?

Dr. Machage: Mr. Deputy Speaker, Sir, whereas the hon. Member has eloquently read the

law, I would like to say that the ID cards were not forcefully taken away from the clients. It is the clients who requested the hospital to have mercy on them and release their patients. Therefore, they either put a title deed or a guarantee and promise to come back at a later date to pay and then the hospital releases the patients to go home. Which is better of the two evils; to retain the patients or release them? I think here, I differ with the hon. Member.

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

Mr. Deputy Speaker: Order, Mr. Sambu! Will you, please, respect order in the House? I expect hon. Members to behave in a more honourable manner than I can see on my left hand side. Proceed!

Prof. Oniang'o: Mr. Deputy Speaker, Sir, a national identification card and a title deed are very important identification items for these people. We are robbing the poor of their identity. Could the Assistant Minister tell us whether this is a national policy and how many such items are being held by Government institutions in this country?

Dr. Machage: Mr. Deputy Speaker, Sir, whereas I agree with the Member on the importance of identity cards in this country, she also should agree with me that these identity cards are given on request by the owners of the patients, or guarantors, in order for them to be allowed to take the patients away so that hospital bills do not increase. Let me stress here that the Waiver Committee usually assesses each patient individually. In most cases, these are patients whose relatives have been found to be able to pay but, for some reason, this money is not available.

Let me give you very brief statistics on this. Since 2001 to date, the hospital has slightly over Kshs81 million tied to the clients of the hospital who requested favours and then disappeared. What do I do?

Dr. Manduku: Mr. Deputy Speaker, Sir, the Government policy in place now is such that we give free medical services. A very small fee is being charged to discharge patients. It has got a policy that the poor ones have their medical bills waived. How do you decide a person is poor? These poor people came and said they had no money, but the Waiver Committee did not waive their bills! Holding those identity cards also affects the people elsewhere. So, does the policy of providing free medical services work in Kenya?

Dr. Machage: Mr. Deputy Speaker, Sir, I totally agree with the Chairman of the Departmental Committee on Health, Housing, Labour and Social Welfare. The hospital gains nothing by holding these identity cards. But the owners of these identity cards should go back to the hospital and be assessed individually. If they have had a problem in raising the funds that they promised to give to the hospital at a given time, then they should make a formal request for reassessment.

Mr. Deputy Speaker, Sir, for those that are able to pay and wish to take away their identity cards, then they should substitute a different security for them.

Mr. Sambu: Mr. Deputy Speaker, Sir, rich people like Lagat can afford to pay!

Mr. Kipchumba: Lagat ni mama yako?

Mr. Deputy Speaker: Order, Mr. Kipchumba! You are out of order! I heard you very clearly. I order you out of the Chamber!

*(Mr. Kipchumba withdrew from
the Chamber)*

Mr. Sambu: Mr. Deputy Speaker, Sir, I asked the same question last year. In the year 2003/2004, the Government gave this hospital Kshs417 million. In the year 2004/2005, the hospital got Kshs555 million from the Government. In 2005/2006, it received Kshs724 million. Unfortunately, it uses all the money to employ people, drivers and sweepers. It does not buy

medicine, nor does it pay consultants. Because these people are keen on retaining identity cards, I want a categorical answer from the Assistant Minister as to whether the identity cards turn into legal tender? What happens to the Government money given to this hospital?

Dr. Machage: Mr. Deputy Speaker, Sir, the answer to my colleague is certainly "no". Actually, being a leader of repute, instead of asking this Question, he should help to encourage these people to pay this hospital. It is true that the Government gives some money to the hospital. The hospital's budget is about Kshs1.7 billion per year, of which the Government gives only 42 per cent. It must raise the balance from its clients. You cannot have medical services without personnel, and that is a fact. So, the money is well used.

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

Mr. Deputy Speaker: Order! You may not like what the Assistant Minister is saying, but that is enough.

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

Mr. Deputy Speaker: Order! Mr. Sambu, you are going to follow your friend!

Question No.245

EXPOSURE OF HORTICULTURAL
WORKERS TO TOXIC PESTICIDES

Prof. Ojiambo asked the Minister for Labour and Human Resource Development:-

(a) whether he is aware that many workers in the horticulture industry are exposed to toxic pesticides and work under no written contracts;

(b) when he will table the report of the task force appointed in 2003 to review the labour laws; and,

(c) whether he could inform the House if the recommendations of the task force have been implemented.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that workers of the horticulture industry are exposed to toxic pesticides, particularly the sprayers and those working in chemical stores. I am also aware that some of the employees are working under no written contracts as this is legally acceptable. The Employment Act, Cap.226 Laws of Kenya, Sections 2 and 4(1) provide for contracts of service to be either written, implied, expressed or oral.

(b) The Labour Laws Review Task Force finalised its work and handed over the draft Labour Laws Bill to the Attorney-General on the 28th of April, 2004. I tabled The Labour Relations Bill and The Employment Bill for debate in this august House on the 18th of April this year. The remaining Bills, that is The Occupational Safety and Health Bill, The Labour Institutions Bill and The Work Injury Benefits Bill are in the process of being tabled.

(c) Once the Bills are debated and enacted, they will be implemented immediately.

Prof. Ojiambo: Mr. Deputy Speaker, Sir, I am surprised that the Minister is acknowledging that he knows all this. Considering that Kenyans who go to seek employment in the horticultural industry are ignorant of the law and do not know that exposure to those sprays is toxic and, therefore, injurious to their health, why has the Minister not considered giving public education to Kenyans about the dangers of working in the horticultural industries and also forcing the employers to take insurance covers for the lives of those ignorant Kenyans who go to work there? A majority of them have already died from these toxic pesticides!

Dr. Kulundu: Mr. Deputy Speaker, Sir, I will begin with the last part of her question; that, "the majority of these workers have died". It is not simply true! I have been associated with the flower industry for some time as a doctor, and I can assure the hon. Member that continuous education is part and parcel of the flower industry. Wearing protective gear is something that is emphasized time and again. It is just that workers do not comply with the rules and regulations here. But it is true that some of these cases manifest long after workers have retired. It is for these reasons that we have instructed flower companies not only on the use of chemicals, but to avoid using toxic chemicals, especially in the countries in which they originate.

Mr. Mwandawiro: Asante sana, Bw. Naibu Spika. Ni wazi kwamba tangu Uhuru upatikane mpaka sasa, Wizara ya Leba na Ustawi wa Wafanyakazi haijakuwa ikitilia maanani maslahi ya wafanyakazi katika nchi yetu ya Kenya. Bwana Waziri huyu anakumbuka kwamba, mwaka uliopita, niliuliza Swali hapa. Alienda Taita Hills Lodge, Salt Lick Lodge na Taita Sisal Estate, ambako hali kama hii iliyoulizwa na Prof. Ojiambo inatendeka, na hakuchukua hatua yoyote. Je, ni hatua gani halisi anayoweza kuchukua kupambana na uvunjaji wa haki za kibinadamu katika mashamba ya maua, makonge na mahoteli?

Dr. Kulundu: Mr. Deputy Speaker, Sir, the following steps have been taken by the Minister for Labour and Human Resource Development:-

(a) We have required that periodic examination of workers who are exposed to pesticides, due to the nature of their work, as required by Medical Examination Rules, Legal Notice No.24 of 2005, be done. This includes taking commensurate tests every three months or less on workers who are exposed to organophosphates and carbamate pesticides. These categories of workers are sprayers and the chemical store attendants. (b) Over 60 medical practitioners have been approved by the Ministry to undertake periodical medical examinations. Those medical practitioners work under the supervision of seven doctors who are employed by the Ministry of Labour and Human Resource Development.

(c) Records held by the Director of Occupational Health and Safety Services indicate that between August, 2006, to the end of the year, 68 workers handling organophosphate pesticides were redeployed as a way of intervention.

(d) To facilitate improved and efficient monitoring of workers in health, the Ministry has procured hygiene and medical equipment to the tune of Kshs40 million this financial year.

Mr. Deputy Speaker: Hon. Members, the answer which the Minister is giving, recently, a lot of it has been said in a lot Bills which have already been published on this issue. Therefore, I do not see any reason why we should belabour on this issue as we are going to be debating those Bills very soon. Therefore, I would like to ask Prof. Ojiambo to ask her last question on that issue.

Prof. Ojiambo: Mr. Deputy Speaker, Sir, why has it taken the Minister so long to bring the Bill to the House when the task force had made recommendations? Do we have to wait for the Bill to come to the House for us to implement the recommendations of the task force?

Dr. Kulundu: Mr. Deputy Speaker, Sir, horticulture was introduced in this country very many years ago; maybe, about 30 years ago when KANU was in leadership and it takes time to formulate a Bill. This Question here simply coincides with the work of the Ministry and, in fact, we have five Bills which are pending, and the first one will be launched today.

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

Mr. Deputy Speaker: Mr. Angwenyi, will you relax?

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

Mr. Deputy Speaker: What is it, Mr. Angwenyi?

Mr. Angwenyi: Is the Minister in order to mislead this House that this problem arose because there was a KANU regime, when we know that this Ministry is like a "toothless bulldog"? Its instructions are never obeyed by anybody! Is he in order?

(Laughter)

Mr. Deputy Speaker: Surely, Mr. Minister, did you hear his question?

Dr. Kulundu: Mr. Deputy Speaker, Sir, if he can repeat his question without being emotional---

Mr. Deputy Speaker: Next Question by Prof. Oniang'o!

Question No.031

CAUSE OF FREQUENT POWER
BLACKOUTS IN THE COUNTRY

Prof. Oniang'o asked the Minister for Energy:-

- (a) why there are so many power blackouts in the country in the recent past;
- (b) whether he is aware that this is causing damages to property and loss of revenue when the businesses go without power; and,
- (c) whether he could inform the House about the plans that the Government has to expand power base so that all Kenyans have access to electricity.

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

(a) There have been many power blackouts in the recent past due to rampant theft of transformers and conductors by vandals and also due to overloading of conductors as a result of rising demand as more and more consumers are connected.

(b) Yes, I am aware that this is causing damages to property and loss of revenue to businesses and this has been of great concern to my Ministry.

(c) As hon. Members may recall, both the Kenya Power and Lighting Company Ltd (KPLC) and KenGen have, since 2005, been implementing a Kshs17.5 billion multi-donor funded project to enhance both the quality of supply and availability of power. The power supply quality is, therefore, expected to improve as the project continues to be implemented.

Prof. Oniang'o: Mr. Deputy Speaker, Sir, if we are going to realize Vision 2030, electricity is a very important component of energy. The Assistant Minister has already talked about vandalism. Could he tell us what he plans to do to curb vandalism? What other measures is he putting in place to make sure that electricity and energy rolls out to the rest of Kenya?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, we have taken several measures to correct that. One of them is to enhance aerial and ground patrols of transmission lines. We are also replacing transformers and conductors that are already overloaded.

Mr. Bett: Mr. Deputy Speaker, Sir, the Assistant Minister has said that transformers are, sometimes, stolen. Is there another competitor who uses the same transformers?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, transformers are stolen for several purposes. First of all, they contain aluminium. The people who use aluminium to manufacture various items steal them. They also contain oil. Some people are interested in that oil. There are other materials that constitute a transformer.

Mr. Lesrima: Mr. Deputy Speaker, Sir, every Sunday, between 8.30 a.m. and 7.00 p.m., Mararal District has been experiencing a total power failure for the last three months. Could the Assistant Minister explain why that blackout occurs every Sunday? Could he also give us a schedule of when that power outage will take place? He should reduce those hours of darkness, particularly on Sundays!

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, we have some problems. Most of our power generating projects like Gitaru and Kiambere are very old. They have not been properly maintained for a long time. We have closed them down for several months to ensure they generate enough power. We have already closed down the Kiambere unit for the next six months. The Gitaru I and Gitaru II units will start power generation this month. It has been very difficult for us to maintain those units. But we want to assure hon. Members that those blackouts will be history in the next two years.

Mr. Deputy Speaker, Sir, by the end of this year, we will commission the Sondu Miriu Power Project which has a capacity to generate over 60 megawatts. By the end of Financial Year 2008/2009, we shall be in a position to generate 440 extra megawatts. That will be able to mitigate the outages that we have.

Secondly, that is also a very good sign of economic growth. It shows that Kenyans are now utilising the existing power capacity to maximum. Therefore, we must be competitive to make sure that the demand is met. That will be attained by a maximum production of power, a status which will be achieved in the next two years.

Mr. Deputy Speaker: Last question, Prof. Oniang'o! We are pressed for time!

Prof. Oniang'o: Mr. Deputy Speaker, Sir, we are aware that the Government intends to instal power in all public institutions in this country, including schools. Could the Assistant Minister tell us whether the supply of electricity to all secondary schools in the country will be free of charge? How many of those schools have been supplied with electricity?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, we are almost supplying electricity free of charge, considering the high costs that were there before. We are only charging public institutions Kshs100,000. That is almost free.

What I can assure hon. Members is that we shall try to connect all the secondary schools that we have, especially those that lie within our national grid.

Question No.144

SUPPLY OF ELECTRICITY TO
LAISAMIS SCHOOLS

Mr. Deputy Speaker: Hon. Members, Mr. Lekuton is out of the country. He is out on official duties. Therefore, this Question is deferred. I ask the Minister for Education to bear with us.

(Question deferred)

Question No.196

NON-REGULATION OF MULTI-
LEVEL MARKETING COMPANIES

Mr. Mirugi asked the Minister for Trade and Industry:-

(a) whether he is aware that there is a proliferation of multi-level marketing companies in the country;

(b) whether he is further aware that those companies operate in an unregulated business environment; and,

(c) what measures he is taking to protect the public against exploitation by such companies.

The Assistant Minister for Trade and Industry (Mr. Miriti): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) Yes, I am aware.

(c) The following measures are being taken in order to protect the public against exploitation by multi-level marketing companies:-

(i) Formulating a trade and industrial policy in which the distributive trade framework will be addressed.

(ii) Educating the public to be aware of unscrupulous people who are out to make money by converting multi-level marketing companies into pyramid schemes, which they are not.

(iii) Investigations and prosecutions where complaints have been made to the relevant departments of Government.

Mr. Mirugi: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for that answer. In the last three months, we have witnessed cases where people who have joined some of those pyramid schemes have complained of non-payment of their dues. Now that the Ministry is aware that those businesses are going on, could the Ministry consider giving a guarantee, like banks do, in cases where those companies are not able to pay the money they have taken from the public?

Mr. Miriti: Mr. Deputy Speaker, Sir, that will be considered.

Mr. Deputy Speaker: Mr. Mirugi, last question!

Mr. Mirugi: Mr. Deputy Speaker, Sir, those businesses do not pay any taxes or licences and yet, they collect billions of shillings from Kenyans. Could the Assistant Minister, with immediate effect, consider a stop-gap measure and, maybe, gazette some regulations that will ensure that those companies are accountable to Kenyans in case they go under?

Mr. Miriti: Mr. Deputy Speaker, Sir, currently, the Ministry is formulating a policy. All those issues will be taken into consideration.

Mr. Deputy Speaker: Next Question by Mr. Lesrima!

Question No.039

NUMBER OF BOREHOLES DRILLED
IN SAMBURU IN 2005/2006

Mr. Lesrima asked the Minister for Water and Irrigation:-

(a) how many boreholes were drilled in Samburu District in 2005/2006;

(b) whether he is aware that Logorate, Nkere and Ngilai boreholes did not yield water; and,

(c) when the Ministry will post an hydrologist to the district.

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

(a) In the Financial Year 2005/2006, nine boreholes were drilled in Samburu District.

(b) I am aware that two boreholes, Logorate and Laibor Nkare were dry. Ngilai borehole has a low yield of 0.85 cubic metres per hour. It can be equipped with a hand pump to serve consumers.

(c) The services of a surface water specialist in Samburu District are offered by the Ewaso Nyiro Water Catchment Regional Office, which is based in Nanyuki. The current regional manager is an hydrologist.

Mr. Lesrima: Mr. Deputy Speaker, Sir, the Ministry drilled nine boreholes and three of

them failed. That translates to a 33 per cent failure. Is the Assistant Minister satisfied with that kind of performance? Could he also explain to the House what the problem is? That is because one set of engineers said that they saw some water. Another set drilled and said that there is no water! Did they go to the same school?

Maj. Sugow: Mr. Deputy Speaker, Sir, it is not always 100 per cent that we get water from areas where initial exploration exercises indicate that there is water. In this case, out of the nine boreholes that we drilled that year, only two are dry. One has lower yields. That indicates a reasonable percentage for us to have incurred that cost. Therefore, whenever we explore areas for water, it is not always that we get 100 per cent results. Sometimes, we explore areas which do not have water. We move to other sites to ensure that people living in those areas get water.

Mr. Deputy Speaker: Mr. Lesrima!

Mr. Lesrima: Mr. Deputy Speaker, Sir, could the Assistant Minister consider re-visiting the same areas in the next financial year with a view to doing other sites?

Maj. Sugow: Mr. Deputy Speaker, Sir, we have about seven boreholes and eight pans in the Forward Budget for Samburu District. Some of the priority areas are those where right now we have dry boreholes. We will give those areas priority.

Mr. Deputy Speaker: Thank you, Mr. Assistant Minister.
Next Question by Mr. Ochilo-Ayacko!

Question No.146

REMUNERATION/QUALIFICATIONS
OF SPECIAL PROSECUTORS

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

- (a) how the "Special Prosecutors" hired by the State Law Office were identified;
- (b) what their qualifications and remuneration packages are; and,
- (c) how their remuneration was determined.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Special prosecutors are hired whenever the need arises. The Attorney-General determined the need. The Ministry of Justice and Constitutional Affairs has only been involved in assisting the Attorney-General in hiring of special prosecutors to expedite the prosecution of the cases arising from the Goldenberg Inquiry and the Ndung'u Report pursuant to a Cabinet decision. The prosecutors were hired competitively, and in accordance with the procurement law. Bids were invited publicly through advertisements and evaluated by a special technical committee, comprising of officers from my Ministry, the State Law Office, the Kenya Law Reform Commission as well as the Ministerial Tender Committee.

(b) The qualifications are a solid background and practical knowledge of constitutional and criminal law, demonstrated by an outstanding career in criminal law practice, spanning a minimum of seven years, demonstrated commitment to the cause of justice and public interest litigation.

(c) The remuneration package per special prosecution counsel ranges from Kshs600,000 to Kshs750,000 per annum, inclusive of all taxes, depending on the individual qualifications of the advocates and also in accordance with the Advocates Remuneration Rates. The remuneration package was determined by the Ministerial Tender Committee after consideration of the special prosecution counsel bids, and the comments of the technical vetting committee appointed by the

Government on 25th July, 2006, comprising of technical officers from the State Law Office, my Ministry and the Law Reform Commission.

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, under part (b) of the Question I expected the Minister to give the House the qualifications of each special prosecutor, his or her remuneration and, particularly, their names. I hope that, that information will be given as she responds to the supplementary question. I want to find out why these special prosecutors are earning more than Permanent Secretaries and the Director of Public Prosecutions, and why they are more important than people prosecuting sexual offences.

Ms. Karua: Mr. Deputy Speaker, Sir, the answer to that question is obvious. These are people hired specially. Therefore, they are not being paid in accordance with the rates obtaining. I want to stand here and say that these are very moderate sums considering previous and even current trends, where there are negotiated contracts. These are absolutely well-thought-out packages.

Mr. Ochilo-Ayacko: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Ochilo-Ayacko, could you let your colleagues also ask questions on the matter? I will come back to you later, so that you can ask your supplementary question.

Mr. Muite!

Mr. Muite: Mr. Deputy Speaker, Sir, I agree with the Minister that, perhaps, those scales are fairly moderate considering the professional qualifications of the lawyers in private practice. However, has the Minister considered the likely conflict this is likely to bring with the State prosecutors, who are in the office of the Director of Public Prosecution?

Secondly, the House is surely entitled to have the list of the special prosecutors laid on the Table of this House.

Ms. Karua: Mr. Deputy Speaker, Sir, the list was not asked for and, therefore, I do not have it. With regard to the issue of the special prosecutors, it is for the Attorney-General to consider---

*(Mr. Raila was applauded
as he entered
the Chamber)*

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

Ms. Karua, you may continue!

Ms. Karua: Mr. Deputy Speaker, Sir, it is for the Attorney-General to consider whether there is conflict of interest. I do not superintend over State Counsel.

Mr. Marende: Mr. Deputy Speaker, Sir, given that there have been no results out of the appointment of the special prosecutors in the sense that so far, there has been no conviction of the perpetrators of the Goldenberg and the Ndung'u scandals, could the Minister tell the House when these prosecutors were appointed and why they continue to draw those large amounts of money without any performance record?

Ms. Karua: Mr. Deputy Speaker, Sir, I do not know what the hon. Member means by "without any performance record". As the hiring authority, we are quite satisfied. Secondly, they were hired on diverse dates. One was hired last year. Three started working this year. They are all progressing. They do not manage the courts. They merely prepare and prosecute cases. Therefore, they have no control over when the cases will end.

Mr. Muturi: Mr. Deputy Speaker, Sir, from the answer read out by the Minister, it was mentioned that part of the reason as to why the special prosecutors were hired was to facilitate the prosecutions, purportedly emanating from the Goldenberg Commission of Inquiry Report and the

Ndung'u Report. The Ndung'u Report was declared to be purely advisory. As far as we are concerned, the courts have already ruled that even the Goldenberg Commission of Inquiry Report did not require any further pursuing. What is the *raison d'etre* for the continued hiring of special prosecutors when the country is actually in dire need of ordinary prosecutors all over?

Ms. Karua: Mr. Deputy Speaker, Sir, coming from a lawyer, the question is perplexing, but I will answer it. All reports of commissions of inquiry are, indeed, advisory. In fact, after a commission finishes its work, an investigator has to put together an investigation file, and if he is not satisfied with the commission's report, he goes further into investigation. That is what has been happening. Even in the case of the few Goldenberg prosecutions that are going on, further investigations, upon the leads given by the commission of inquiry, had to be conducted. In the case of the Ndung'u Report, I know for sure that the Kenya Anti-Corruption Commission (KACC) has several civil cases running, and there are investigations going on into criminal cases. There has been some minimal recovery. So, the process is on. It is not that we have hired counsel who are doing nothing. The process is on. We are doing what a responsible Government ought to do.

Mr. Waitthaka: Mr. Deputy Speaker, Sir, from the Minister's answer, it is clear that the issue has not been determined, having heard about remuneration as one of the terms of the contract. Have the special prosecutors been hired on contract or on permanent basis? Nobody seems to know when these cases will be over. They may, deliberately, delay the cases!

Ms. Karua: Mr. Deputy Speaker, Sir, they are not in a position to delay cases, because they are working under the supervision of the Attorney-General, Director of Public Prosecutions (DPP) and where there are civil matters, under the Civil Department. But they are hired for a fixed period. I know in the case of the one who was hired last year, it was a contract for one year. I do believe that even for the ones that are there now, it is a fixed-term-contract which can be renewed or not, depending on the need.

I must say that I am aware, as a Member of Government, that the Attorney-General is reviewing the establishment in his office, with a view to hiring permanent staff, so that we will no longer have the need to hire on an *ad hoc* basis.

Mr. Raila: Mr. Deputy Speaker, Sir, to my knowledge, the Ndung'u Commission recommended the establishment of special tribunals to investigate. But so far, no such tribunals have been set up. Why are special prosecutors being hired when the Government has failed to set up these tribunals?

Ms. Karua: Mr. Deputy Speaker, Sir, we are coming up with a policy on how to deal with the Ndung'u Report. But in the meantime, what can be done is being done with these special prosecutors. All matters are going to be looked into, including the molasses plant.

(Applause)

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

Mr. Deputy Speaker: Order, Mr. Raila! I do not want exchanges here! I gave you an opportunity to ask a question.

Mr. Raila: On a point of order, Mr. Deputy Speaker, Sir. I asked why the Government has not set up the tribunals. The Minister knows very well that this Government is now on its way home. It is actually now living on injury time. Is she, therefore, in order to mislead the House that they are in the process of implementing a Report that was presented to the Government three years ago, when now they only have six months to go home?

(Applause)

Ms. Karua: Mr. Deputy Speaker, Sir, I have no comment on that. The Government will continue to do what it can, according to its best judgement, and not on the basis of imagined judgement of others.

Mr. Deputy Speaker: Last question, Mr. Ochilo-Ayacko!

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, the House has patiently been waiting for the Minister to give us the names and qualifications of these special prosecutors, but she has not done so. Would I be in order to ask her to give us the names and qualifications of these prosecutors, or table them? Could she also indicate the cases in which they are involved, so that the public is satisfied that there is value for the money that is being expended?

Ms. Karua: Mr. Deputy Speaker, Sir, as we will notice, the Question does not ask for the names. I think it is totally undesirable to bring individuals on trial. I thought it was a policy Question, asking how they were hired and the general qualifications and passages of such people. Unless a fresh Question is asked, I do believe that I have answered the Question before the House.

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

Mr. Deputy Speaker: Order, Mr. Ochilo-Ayacko! Please, sit down! In a way, the Minister is right because you may have asked for the names, through a supplementary question, but if she has not given the names, there is nothing much I can do. This is because part "a" of the Question asks for their qualifications and remuneration package, while part "c" asks how their remuneration was determined.

I think that brings us to the end of Question Time!

Mr. Ochilo-Ayacko: On a point of order, Mr. Deputy Speaker, Sir. This House desires information. Part "b" of the Question asks: "What are their qualifications and what is their remuneration package?"

Now, qualifications are specific and not general. So, a knowledgeable and very efficient Minister like the one answering this Question - unless there is something to hide - should avail the same information to the House.

Mr. Deputy Speaker: I will leave that to the discretion of the Minister. But according to the Question on the Order Paper, there was no obligation for the Minister to provide the names. But if she has them and she wants to give them, I have no objection to that.

Ms. Karua: Mr. Deputy Speaker, Sir, I have nothing further to add.

Mr. Deputy Speaker: Hon. Members, that is the end of Question Time! Before I give to hon. Members a chance to request for---

Mr. Owino: On a point of order, Mr. Deputy Speaker, Sir. If you will recall, last week I had asked a Question on the return of Government vehicles, as per the Minister's Budget Speech last year. He challenged me to provide evidence that some vehicles had been given to some certain outlawed members of this society. I have that evidence now. Can I table it now?

Mr. Deputy Speaker: Yes, please, do that!

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

NOTICE OF MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.18(1)

**UNSATISFACTORY REPLY TO QUESTION NO.237: STATUS OF ANGLO LEASING-
TYPE FINANCING PROMISSORY NOTES**

Mr. Deputy Speaker: Before I give the hon. Capt. Nakitare and hon. Mukiri permission to seek Ministerial Statements, I want to say the following: I have received a written notice from the Member of Parliament for Gachoka Constituency, Mr. J. Nyagah, of his intention to rise on a Motion of Adjournment at the end of Normal Sitting Day, pursuant to Standing Order No.18(1) and 18(2), on a matter contained in the reply to Question No.237, concerning the status of the Anglo Leasing and Financing promissory notes, answered on Wednesday 2nd May, 2007, during the afternoon sitting.

I have considered the matter and have acceded to the request. I will, therefore, call on the hon. Member, to move the Motion of Adjournment at the time of the interruption of business tomorrow, Wednesday, 9th May, 2007, in the morning sitting.

Thank you. Yes, Capt. Nakitare!

POINTS OF ORDER

ESCALATION OF INSECURITY IN TRANS NZOIA DISTRICT

Capt. Nakitare: Thank you, Mr. Deputy Speaker, Sir. At the beginning of this sitting, we gave a standing ovation and you, on our behalf, sent condolences to our departed professionals in the aviation industry. As a pilot, I also join the bereaved families regarding what happened in Cameroon.

But on Thursday I was in this House, supporting the Government as a Back-bencher. On the same day, I was to drive for about 800 miles to my constituency. On the same day, at 8.00 p.m., ten of my constituents were gunned down by members of a clandestine movement. I, therefore, seek for a Ministerial Statement from the Minister for Administration and National Security over the escalation of insecurity in Saboti Constituency, which formerly was represented by the Late Vice-President, and other parts of Trans Nzoia District.

Mr. Deputy Speaker, Sir, on Thursday at 8.30 p.m., at Matisi, which is on a highway, where the displaced people as a result of the 1992 clashes, carry out their businesses, ten people were shot dead at close range, by unknown people who came in three vehicles. They were camouflaged in police uniforms. This was an act of execution, reminiscent of what happened in 1992. The distance from the scene of the crime to the police station is a mere one-and-a-half kilometres. The Division has an Officer Commanding Police Division (OCPD), District Criminal Investigation Officer (DCIO) and officers from the National Security Intelligence Service (NSIS). That is the headquarters of Trans Nzoia West District, where the District Commissioner (DC) is only three kilometres away from the scene of crime.

Mr. Deputy Speaker, Sir, tension is high in Trans Nzoia District. Last year, we held several meetings in Harambee House and demanded that---

Mr. Deputy Speaker: Order, Capt. Nakitare! When you ask for a Ministerial Statement, you want the Minister to make a statement on this matter. Therefore, you must be specific on what you want the Minister to address!

Capt. Nakitare: Mr. Deputy Speaker, Sir, I would like the Minister to tell this House what steps he is taking to remove all police personnel from the district. He must tell us why he has not armed the Kenya Police Reservists (KPR) in Saboti Constituency. He must also tell this House who is the first respondent when it comes to a national crisis.

Mr. Deputy Speaker: When is the Minister of State for Administration and National Security likely to come up with that Statement?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Deputy Speaker, Sir, we intend to give a statement next week on Tuesday. I would like to tell the hon. Member that these issues are under very intense investigations right now. We will bring a comprehensive statement. We would also not like to bring politics into these matters. Let us deal with them as the criminal matters that they really are. Let us not politicise them so that we can be able to deal with them conclusively!

An hon. Member: It is politics!

(Applause)

Mr. Deputy Speaker: Mr. Assistant Minister, when are you likely to bring the statement?

The Assistant Minister, Office of the President (Mr. Munya): On Tuesday, next week, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Very well! It is an urgent matter and I thank you.
Mr. Mukiri!

CIRCULATION OF LEAFLETS
IN RIFT VALLEY PROVINCE

Mr. Mukiri: Mr. Deputy Speaker, Sir, I rise to request a Ministerial Statement from the Minister of State for Administration and National Security over some leaflets that are circulating in the Rift Valley Province. I have a copy of one of the leaflets. It is warning members of a certain community to vacate the Rift Valley Province. It is a leaflet that can be ignored. However, the propensity with which it is being distributed, in an expanse of about four districts, I think this is something that cannot be ignored. What I want the Minister to tell the House is who is doing this? These people are using vehicles and they are able to do this in an area covering about four districts. He should also tell us why the Government has not taken action against those people. It is creating a lot of tension within that region.

Mr. Deputy Speaker: The Minister of State for Administration and National Security!

The Assistant Minister, Office of the President (Mr. Munya): Mr. Deputy Speaker, Sir, this is another matter that is under investigation. We will give a statement on Tuesday next week. However, I would like, again, to say that we all treat this matter as a criminal matter so that we deal with whoever is involved in those leaflets as a criminal. So, let us not cause any despondency on this matter. We would also like to assure the residents of the Rift Valley Province that the Government is there and it will deal with anybody who might want to cause insecurity there.

*(Mr. Angwenyi and Maj. Madoka
stood up in their places)*

Mr. Deputy Speaker: Order, Mr. Angwenyi! I have already recognised one person called Maj. Madoka!

Maj. Madoka: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to keep on telling us that we should take this matter as criminal, and at the same time he is saying he is investigating? How can you conclude that it is criminal before you finish the investigations?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Deputy Speaker, Sir, throwing leaflets warning citizens to vacate certain areas is a criminal activity. The aspect we are investigating is the identity of the individuals involved.

Howe, as to whether that matter is criminal is very clear; it is criminal.

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

Mr. Deputy Speaker: Hon. Members, hold your horses until Tuesday when the Statement is going to be given. Sorry! Now we are debating nothing! The hon. Member has sought a Ministerial Statement from the Assistant Minister. The Assistant Minister has promised to give such a statement on Tuesday. Now, what is the debate all about? Wait until Tuesday!

Mr. Oloo-Aringo: On a point of order, Mr. Deputy Speaker, Sir. I respect your ruling. However, earlier, the Assistant Minister referred to such issues as political and should not be discussed here. You know very well that everything under the sun is political.

Mr. Ochilo-Ayacko: Particularly in this House!

Mr. Oloo-Aringo: Particularly in this House, Mr. Deputy Speaker, Sir! Therefore, could you tell us what is political and what is not?

Mr. Deputy Speaker: Mr. Assistant Minister, did you say that the matter is political and should not be discussed here? Did you say that?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Deputy Speaker, Sir, the nominated hon. Member may not have been listening when I said---

Hon. Members: No!

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

Mr. Deputy Speaker: Order! What is it, Mr. Angwenyi!

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. This is a matter which is political. We know from history; from 1992, many of our people have been killed politically. It always comes during an election year, which is political. So, the Assistant Minister should not avoid to investigate the political angle of this matter! That is all I wanted to say.

Mr. Deputy Speaker: The Assistant Minister will use his judgment in the investigations. Next Order!

BILLS

Second Reading

THE CONSTITUTION OF KENYA REVIEW BILL

*(The Minister for Justice and
Constitutional Affairs
on 3.5.2007)*

*(Resumption of Debate interrupted
on 3.5.2007)*

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, the Government---

*(Mr. Oloo-Aringo stood up
in his place)*

Mr. Deputy Speaker: Order, Mr. Oloo-Aringo! We have already gone to another Order!

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, I am not satisfied that I have been answered the question I raised. The Chair is there to assist all of us. I have raised the question: What is political and what is not? The Assistant Minister must say it! He should not take us for a ride! We are not children! Some of us are grandfathers!

(Applause)

Mr. Deputy Speaker: Order, Mr. Oloo-Aringo! I actually assisted the Assistant Minister whether, in fact, he said that political matters should not be brought here. Obviously, this is a political House. However, I then said let us wait until Tuesday and we can discuss that matter further. I think, hon. Members, these are serious national issues touching on the lives of Kenyans. We must not do anything by uttering words that may accelerate the problems we have. Please, let us wait until Tuesday. I hope the Assistant Minister will be able to bring a suitable statement to the Floor of the House.

The next Order has already been read!

*(Capt. Nakitare stood up
in his place)*

*(Ms. Karua moved to the
Dispatch Box)*

Order, hon. Members! Will you sit down, Madam Minister? We have already read the Next Order. We are on Order No.7.

Capt. Nakitare, unless you want to talk about a matter on Order No.7, you are certainly out of order! The person I have asked to talk on Order No.7 is the Minister for Justice and Constitutional Affairs!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, could you protect me from a choir on the other side?

Mr. Deputy Speaker: Madam Minister, go on, please!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I wish to indicate that the Government wishes to step down the debate on the Constitution of Kenya Review Bill until further notice.

(Applause)

Mr. Deputy Speaker: Very well! Hon. Members, Standing Order No.31(2) reads:-
"Business shall be disposed of in the sequence in which it stands upon the Order Paper or in such other sequence as Mr. Speaker may for the convenience of the House direct."

Hon. Members, I have consulted with the Leader of Government Business and the Minister for Labour and Human Resource Development. I now direct that we will move to Order No.10.

*(Debate on Constitution of
Kenya Review Bill deferred)*

Second Reading

THE LABOUR RELATIONS BILL

(Bill deferred)

THE FISCAL MANAGEMENT BILL

(Bill deferred)

Can you read the next Order now?

Second Reading

THE EMPLOYMENT BILL

The Minister for Labour and Human Resource Development (Dr. Kulundu): Thank you very much, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, I beg to move that The Employment Bill be now read a Second Time.

*(Mr. Oloo-Aringo stood up
in his place)*

Mr. Deputy Speaker: What is it, Mr. Oloo-Aringo?

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, you have not explained to this House why you have dropped Order No.9. As you know, this has been on the Order Paper for the last three weeks. Unless something is not quite right, you should explain to us why you consulted with the Leader of Government Business and instead of awarding the next one which is Order No.9, you proceed to Order No.10.

(Applause)

Mr. Deputy Speaker: I will explain, Mr. Oloo-Aringo. In consultation with the Leader of Government Business--- Mr. Oloo-Aringo knows very well, because he is a very experienced Member of this House, that the Government has an option to give priority of business that they have on the Order Paper; how they want it to be prioritised. In this case, there were consultations and the Minister preferred to start with the Employment Bill and then the others would follow later on.

*(Mr. Oloo-Aringo stood up
in his place)*

Mr. Oloo-Aringo, you are not going to engage me in any argument!

The Chair, under Standing Order No.31, decided to concede to the request of Government that we proceed to Order No.10, and that the Bill will stand on that sequence until, perhaps, this afternoon when the House Business Committee meets and decides on the order of business from

tomorrow onwards.

Mr. Oloo-Aringo: On a point of order, Mr. Deputy Speaker, Sir. The House Business Committee is a House Business Committee and not a Government Business Committee. We must be told whether the House Business Committee is a Cabinet Business Committee or not. We have business to bring before the House as hon. Members elected by the people of Kenya. We are entitled to bring the business of the people of Kenya to the Floor of this House. This is outright discrimination against hon. Members, who represent the majority of people in this country.

(Applause)

Mr. Deputy Speaker: Mr. Oloo-Aringo, which business on this Order Paper would you like to call "the people's business" so that it can be given priority?

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, with a lot of respect to you, and I am not doubting your judgement, if you were consistent, you would come from Order No.8 to Order No.9. That is the ordinary common sense approach to this problem.

(Applause)

Mr. Deputy Speaker: But, Mr. Oloo-Aringo, I invited you to Standing Order No.31(2) and I read it to you. The Chair has already stated the discretion, the manner and order in which business will be conducted. That is the end of the matter.

Proceed, Mr. Minister!

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, allow me to have my say!

Mr. Deputy Speaker: Order, Mr. Oloo-Aringo!

Mr. Oloo-Aringo: Do not oppress me, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker: Order, Mr. Oloo-Aringo! You will respect the Chair! I have already given a ruling. If you wish to discuss this issue further, you can raise it at another time. For now, I have ruled that it is the Minister for Labour and Human Resource Development who is going to move the Bill as set out in Order No.10.

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

Mr. Deputy Speaker: No point of order on that matter!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, I beg to move that the Employment Bill be now read a Second Time.

This is an important Bill whose tabling before this House has been awaited by workers, employers, investors, the public at large and the international community, especially the International Labour Organisation (ILO). Kenya is among the few member states of the ILO which have not reviewed the labour laws inherited from the colonial era in order to bring them into conformity with the current challenges and demands of national and international labour market.

Mr. Deputy Speaker, Sir, the review of our labour laws has been a major concern to the Government for many years. The existing pieces of legislation are outdated, archaic and have proved cumbersome to enforce. Piecemeal amendments to some of the principal statutes have not fully addressed the tremendous transformation arising from the socio-economic changes to which our labour market has had to respond. There is, therefore, increasing need for legislation to address issues of enterprise competitiveness, flexibility in employment, protection and promotion of freedom of association principles in work places, abolition of forced labour as well as measures to combat all forms of work place discrimination and child labour.

Mr. Deputy Speaker, Sir, it is against this background that the Government established a task force to review the core labour legislation and other related Acts on 18th May, 2001. The

review exercise was a collaborative effort of the threshold partners, namely; the Central Organisation of Trade Unions (COTU), the Federation of Kenya Employers (FKE) and the Government with technical advice from independent consultants and ILO. The task force had the following terms of reference:

One, the task force was required to examine and review the following six core labour laws, that is, The Employment Act, Cap.226; The Regulation of Wages and Conditions of Employment Act, Cap.229; The Trade Unions Act, Cap.233; The Trade Disputes Act, Cap.234; The Workmen's Compensation Act, Cap.236; and The Factory and Other Places of Work Act, Cap.514.

Secondly, the task force was mandated to make recommendations for appropriate legislation to reflect or amend any of the labour laws. Thirdly, it was also to make recommendations on proposals for reform or amendments of labour laws to ensure that they are consistent with the conventions and recommendations of the ILO to which Kenya is a party. Lastly, it was to make recommendations on such other matters related to the foregoing.

Mr. Deputy Speaker, Sir, the task force completed its work and handed over its Report and draft Bills to the Attorney-General on 28th April, 2004. The Memorandum of Objects and Reasons for the Employment Bill is as follows:

The principal object of the Bill is to repeal and replace the Employment Act and to establish minimum terms and conditions of employment. Part I of the Bill provides for the preliminary matters. Part II provides for the general principles in the absence of employment contract, against forced labour, discrimination in employment and sexual harassment. Part III deals with the general provision of contracts of service, records to be kept by an employer and disciplinary rules and procedures. Part IV deals with payment, disposal and recovery of wages, allowances and deductions from the employee. This part also deals with issues of debts of an employee, repayment of monies wrongfully deducted from an employee and related matters.

Mr. Deputy Speaker, Sir, Part V, provides for the basic conditions of employment in relation to working time and weekly rest, leave, water, housing, food and medical attention.

Part VI, addresses the responsibilities of an employer and employee in cases of termination or dismissal. Part VII, regulates the engagement of children in employment relationships. It prohibits the employment of children in any activity which constitute any of the worst forms of child labour. It also sets out the minimum age and conditions of employment of a child.

Mr. Deputy Speaker, Sir, Part VIII, deals with the protection of workers in the event of insolvency of an enterprise. The Minister for Labour and Human Resource Development is empowered, under this part, to require certain employers to ensure that their employees for purposes of paying them redundancy benefits.

Part IX, requires an employer to keep employment records of all employees and make available records for inspection. Part X, requires an employer to notify the Director of Employment of existing vacancies, termination of employment and abolition of posts. The information to be obtained under this part will be crucial for employment, planning and policy formulation.

Mr. Deputy Speaker, Sir, Part XI, outlines the conditions for a foreign contract of service by a labour officer. Part XII, sets out the complaint procedure and jurisdiction in cases of dispute between employee and employer. Lastly, Part XIII, contains miscellaneous provisions.

Mr. Deputy Speaker, Sir, the following are the benefits of the Employment Bill:

(i) The Employment Bill repeals and merges the Employment Act Cap.226 and the Regulations of Wages and Conditions of Employment Act, Cap.229, making the proposed statute user-friendly, while retaining the same subject to minimum terms and conditions of employment.

(ii) The Employment Bill establishes and strengthens the minimum terms and conditions of employment.

(iii) The new provision on forced labour embodies the principle that no one shall be forced

to perform work on an involuntary basis or under any threat of being penalised.

(iv) The Bill provides for an employment insurance scheme to benefit workers who lose their jobs due to redundancy. The Minister for Labour and Human Resource Development is empowered to require employers to ensure that their employees, for purposes of paying them redundancy, benefits.

(v) Existing legislation and practice of casual employment have both been a subject of concern to the Government, politicians, workers representatives and other stakeholders.

Section 2 of the current Act defines a casual employee as:-

"An individual, the terms of whose engagement provides for his payment at the end of each day and who is not engaged for a longer period than 24 hours at a time."

Mr. Deputy Speaker, Sir, based on this definition, an employer can engage an employee on a day to day basis for as long as the employer deems it necessary, provided the employee is paid for each day's work at the end of that day.

The resultant abuse from this practice is, an employer who continues to employ an employee on a daily basis, denies the employee benefits which accrue to monthly-paid employees such as rest days, leave and notice of termination or pay in lieu thereof, and other social security benefits.

*[Mr. Deputy Speaker
left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, the Employment Bill, therefore, makes provisions for conversion of casual employment to term contracts to protect workers from exploitation by unscrupulous employers. A casual employee engaged for one month performing work which ordinarily cannot be completed within three months, will become a monthly-paid employee and will enjoy all the terms and conditions of employment associated with monthly-paid employees.

Mr. Temporary Deputy Speaker, Sir, the new provisions include:

(i) Provision on discrimination, promoting quality of opportunity and treatment in all aspects of employment.

(ii) Provision on sexual harassment requires employer to provide policy guidelines against sexual harassment in an employment relationship.

(iii) The Bill defines a child as any human being under the age of 18, making it uniform with the Children's Act Cap.586.

(iv) Provision on prohibition of worst forms of child labour is intended to ensure the proper development of children into adulthood and concentrate childhood to education and training.

(v) A woman employee who proceeds on two months maternity leave, will not forfeit her annual leave as is the case in the current provisions of the law. She will not be victimised on account of maternity.

Under the new provision, workers benefits will be secured against loss in the event of insolvency. This provision arose due to the reasons: Over the last 15 years, the country has experienced serious economic recession leading to companies being either closed or restructured resulting into massive job losses. The new provision on sovereign State will ensure that workers whose employers do not contribute to any pension scheme, do not lose their pay for years worked. This would protect workers with service benefits. The new provision on migrant workers legally in Kenya, gives this category of workers the protection given to our indigenous workers.

With those few remarks, it is now my pleasure to move the "Motion" and ask the Minister for Justice and Constitutional Affairs, Ms. Karua, to second.

Mr. Oloo-Aringo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Perhaps to assist the Minister, he is not moving a Motion; he is moving a Bill. Could you ask him to move a Bill and not a Motion?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Thank you very much, Mr. Oloo-Aringo. I beg to move and ask the Minister for Justice and Constitutional Affairs to second this Bill.

Mr. Oloo-Aringo: Mr. Temporary Deputy Speaker, Sir, according to our Standing Orders, you do not just move a Bill. You move a Bill with a specific name!

The Temporary Deputy Speaker (Mr. Poghismo): Order, Mr. Oloo-Aringo! I do not know whether he moved it at the beginning. I do not know whether he moved or just mentioned the Bill by the number.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Yes, Mr. Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghismo): Then that is fine.

Proceed to second!

Mr. Oloo-Aringo: On a point of order, Mr. Temporary Deputy Speaker, Sir. The HANSARD will bear me out. I was listening very attentively and I know that he did not do so. What is so difficult in the Minister just saying: "I move the Employment Bill, Bill No.7", so that we are all focused on the same thing?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, let me repeat, for the comfort of my friend and experienced legislator.

I beg to move the Employment Bill, Bill No.7, 2007, and ask the Minister for Justice and Constitutional Affairs to second.

The Temporary Deputy Speaker (Poghismo): Actually, if you had said it at the beginning, it would have been okay. Even if you repeat it, it is still okay. That confirms that you have moved the Bill.

Proceed to second!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I beg to second this very important Bill. I must say that this Bill is long overdue. This Bill is as a result of intense consultations between the employment and labour movement and the Government. It will help Kenya fulfil not only our obligations to the workers of this country but also under the International Labour Organization Convention.

We have been utilizing archaic labour laws that needed amending or re-enacting to ensure that the dignity of labour is preserved and the right of workers and their human rights are protected. Going through the Bill, as the Minister has already done, a lot of important issues are captured. The Bill establishes the minimum terms and conditions of employment so that any employment contract that does not contain the minimum terms and conditions will be deemed to include the minimum terms and conditions that are given by this law. So, this will become a matter of law and it will protect workers who are even hired without proper terms and conditions.

Mr. Temporary Deputy Speaker, Sir, I am very gratified to note that the Bill covers such issues as forced labour and discrimination in employment. We know discrimination abounds, especially in these days of HIV/AIDS scourge. There are employers who, when they know that an employee is suffering from HIV/AIDS, will lay them off. We also know that women suffer discrimination when they go on maternity leave. They are sometimes even by-passed for promotions. So, all forms of discrimination will be outlawed once this Bill is enacted.

Mr. Temporary Deputy Speaker, Sir, another issue that needs to be covered and had not been covered before, is the issue of sexual harassment. It is often trivialised, and yet, it can contribute to the lack of productivity where an individual man or woman feels threatened by their superiors at work. So, that is an area that we have to deal with and this Bill comes with that package.

There are also new clauses on the issue of contracts of service and the obligation for the employer to keep employment record and disciplinary rules and procedures. The bulk of the labour cases in court affect either the wages or dismissal on the grounds of discipline. So, the spelling out of disciplinary rules and procedures will help alleviate that problem. It also deals with the issue of payment, disposal and recovery of wages, allowances and deductions. Also, issues of payments when employees have died or monies wrongfully deducted. Those are the areas which bring conflict between employers and employees. It is very gratifying to see that they are all captured in this Bill that intends to modernise the labour legal regime.

Mr. Temporary Deputy Speaker, Sir, many other issues as outlined in the Memorandum of Objects and Reasons are covered. I would want, without much ado, to urge that the House supports this Bill. By supporting it, we will have supported our workers and we will have recognised the added hand; the protection, not only of the dignity of labour but of human rights of our works. When the labour laws do not cater fully for the rights of workers, we end up in situations where our workers are exploited by the so-called investors. We are left with a trail of disease and environmental degradation and no real benefits. But where our workers are protected, it means that they earn wages that are able to take them through and that their issues are taken care of including medical issues. It means that it is a win-win situation; the investors get their benefits and the country gets its benefits. When I talk of investors, I mean both local and foreign. After all, it is the bulk of the local investors who employ our workers, whether in the agricultural sector or in the business sector.

With those few remarks, I beg to second.

(Question proposed)

Mr. Raila: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill.

Mr. Temporary Deputy Speaker, Sir, this Bill should have come when hon. Members had sufficient notice to debate it and do it justice. It is a very important Bill, dealing with conditions of employment of our workers. We need sufficient time to ventilate on it. As it were, the House has been ambushed with a very important Bill. The other day, we were celebrating Labour Day. On that day, the President took a long time talking about what the Government is trying to do for the workers of this country. I also had the opportunity, a day before, to meet with the Minister for Labour and Human Resource Development at a prayer meeting. I drew his attention to some of the problems that workers of this country face. So, this Bill is very timely. For once, it is providing for very critical issues that affect the working force in this country.

Mr. Temporary Deputy Speaker, Sir, its Part II is talking about discrimination in employment and sexual harassment. Here, we deal with gender and issues of ethnicity, religious discrimination and many other forms of discrimination. We know that this is happening all the time. Discrimination on the basis of sex, for example, is rampant. This Government must lead from the front. Yesterday, I was talking about the emancipation of our womenfolk. First of all, we must begin with promoting education and training. Secondly, we must ensure that we give women employment at par with their male counterparts. At the moment, there are preferences for giving employment to men rather than women. This goes right to the very top. You find a situation where

the President has so many able women in this Parliament, and when he is appointing his Cabinet, he leaves all these women out. In the NARC coalition, we had very qualified women. We had Prof. Julia Ojiambo, Prof. Christine Mango, Prof. Wangari Maathai and many others. The President had many and highly qualified women to choose from when he was forming his Cabinet. What did he do? He went and recruited another *Ngumbaru* from the Opposition side and made him a full Minister. He got a professor of law and made him a full Minister of Environment and Natural Resources, and made another professor, who is specialised in environmental matters, Prof. Maathai, his Assistant Minister. That kind of impunity will not help this country. We must recognise talent where it exists. Unless we begin dealing with this issue of discrimination at the very top when we are forming Government, we will not be able to transfer it down. We must begin utilising it from the very top.

We must also deal with the issue of ethnicity, where people are being appointed to positions merely because they come from Raila's tribe, or they are friends of Raila, or they play golf or drink beer with him, or because they are his relatives, or because somebody is a son of my aunt and so on. All this must end, and that is when we are going to deal with the issues contained in Part II of the Bill. On sexual harassment, for example, when a lady has come for employment, she must be told: Let us meet somewhere in the evening first. Unless she is willing to give that kind of appointment, she will be told that the job has already been taken.

Mr. Temporary Deputy Speaker, Sir, the issue of wages, under terms and conditions of employment, is very important. The other day, the Secretary-General of COTU stood up at Uhuru Park and said there were people who had worked for 17 years as casual workers, and that thereafter their services were terminated. He was blaming Members of Parliament for not passing the law. The trade union movement's responsibility is to protect and defend the rights of workers. That is not the responsibility of Members of Parliament. He was making that pronouncement in front of the Minister for Labour and Human Resource Development. Now, in which country are we living, if Kenyans can be subjected to this kind of treatment? They work as casuals for 17 years and thereafter they are sacked like dogs, sent home and there is no protection from the trade union? The trade union leader himself and the Minister are crying. Who is there to protect the workers of this country? It is a big shame! That is just the tip of the iceberg. This is happening all over the country.

In a number of factories in the Industrial Area, I know of people who are made to work as casuals for three to five months and then they are sacked. They go home for three to four weeks and they are engaged again. So, the employers are able to say that there has been no continuous employment. This is happening; the Minister knows it, the trade union movement knows it, but they are doing nothing about it. This is exploitation of an extreme nature that should not be tolerated in a civilised society. Outside there in the sisal, tea and coffee estates, the working and living conditions are horrible. Housing conditions are very poor and the wages themselves are very poor. Workers are completely unprotected. We want to see a situation where we have a Government that is caring, a Government that will come up and talk, and whose voice is not choked.

Mr. Temporary Deputy Speaker, Sir, the issue of child labour is of great concern to us. We have children who are exploited because there is nothing to protect them. Child labour is very widespread in this country. We talk about it but nothing is done. In the Export Processing Zones (EPZs), workers are extremely exploited, and the Government knows about it. What is the Government planning to do about it? It is not enough for us to pass this Bill here, unless there is a will. There are very many other areas where we have Acts of Parliament already in existence, and nothing is being done to protect our innocent workers. They continue to be exploited. In the past, the trade union movement used to speak for the oppressed. They used to stand up and defend workers. They were the voice of the helpless. I mentioned the other day that workers need to unite.

It was Karl Max who said: "Workers of the world unite; you have nothing to lose but your chains". On this day, the workers have united but their leaders have been completely compromised. The trade union movement here is a lion whose teeth have already been extracted. The claws have been removed. So, we are dealing with *simba kibogoyo*. It is completely helpless. When they go for negotiations with employers, they are called aside and told: "There is something for you here and we want industrial peace here. We do not want this "a,b,d" that, otherwise we will do "A,B,C,D".

The Minister for Labour and Human Resource Development (Dr. Kulundu): On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not want to interrupt my friend, hon. Raila. He has made very serious allegations against trade unionists, who he says have been compromised by employers. Could he be more specific than that, because we have the teeth to bite even the trade unionists who compromise workers' rights? Could he be more precise than that? Can we get examples of such leaders?

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, that is a point of argument.

The Temporary Deputy Speaker (Mr. Poghisio): There will be no such points of order for him to be specific. If [The Temporary Deputy Speaker] you want--- We can say that, that is a different thing! What are the specifics that you want him to give you? Do you want him to substantiate?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, I want him to substantiate that allegation.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, that is frivolous and fictitious!

(Laughter)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, that is far from being frivolous! It is something that affects workers of this country. If hon. Raila has any evidence at all, he should lay it on the Table of this House so that we can also deal with trade unionists. Do not just cover it under the term "frivolous". It is not frivolous, I repeat!

Hon. Members: Frivolous!

The Temporary Deputy Speaker (Mr. Poghisio): Order! Order, all of you! Order, Mr. Raila!

Mr. Minister, that is taking over my job! I am the one who knows what is frivolous and what is not frivolous. So, both of you have taken over the position which is not yours.

Proceed, Mr. Raila!

Mr. Raila: Thank you, Mr. Temporary Deputy Speaker, Sir.

An hon. Member: Waziri amesimama!

The Temporary Deputy Speaker (Mr. Poghisio): What is it, Mr. Dzero?

The Minister for Tourism and Wildlife (Mr. Dzero): Jambo la nidhamu, Bw. Naibu Spika wa Muda. Rafiki yangu ametumia neno "*simba kibogoyo*". Je, ni vizuri kutumia lugha hiyo?

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghisio): Order! Order! Order! I do not want you to repeat the word "frivolous" a second time.

The points of order are derived from our Standing Orders. So, if you want to raise any order that has been breached, it has to be in the Standing Orders. I do not understand your point of order at the moment, Mr. Dzero.

Proceed, Mr. Raila!

Mr. Raila: Thank you, Mr. Temporary Deputy Speaker, Sir, for protecting me. I should have used the words "toothless bulldog". It means the same thing!

Mr. Temporary Deputy Speaker, Sir, the point I am trying to make here is that those who are charged with the responsibility of protecting the interests of workers are not doing it.

I would, once again, start by dealing with the employers and how workers are not effectively represented in the negotiations with employers. I know that is happening day in, day out, and I am sure that if I went with my friend, Dr. Kulundu, down there to Industrial Area and I said what I am saying, and he said what he is saying, you would see the reaction!

I am saying that these negotiations are not effective because it is known all the time that after they have come from--- Because they are negotiating there without the representatives of the employees themselves.

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Raila! Why are you taking time to think deeply?

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I am just--- I am not speaking on this point. I am just saying that when they come out, they come and say: "*Msiharibu kazi. Mnatafikana muendeleo kufanya kazi vizuri---*"

The Minister for Labour and Human Resource Development (Dr. Kulundu): On a point of order, Mr. Temporary Deputy Speaker, Sir. You have heard hon. Raila speak in Kiswahili. He started off delivering his speech in English and now he is speaking in Kiswahili. Is that allowed under our Standing Orders?

Hon. Members: Aaaah!

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Mr. Poghisio): Order! Order! Order, everybody! When I hear him speaking two languages, I will tell him that he has spoken two languages. Why are you people taking over this thing? Now, you only begin contributing in one language and finish making your contribution in that language. You are not supposed to speak two languages.

Mr. Raila: Protect me, Mr. Temporary Deputy Speaker, Sir!

The Temporary Deputy Speaker (Mr. Poghisio): Order! If hon. Raila spoke two languages, I did not hear that! Keep your peace!

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I was actually quoting what these people say. I did not say it is the language I am using. I am using English; if I want to speak in Kiswahili, I will speak in Kiswahili!

Mr. Temporary Deputy Speaker, Sir, the other day at Uhuru Park, it was a big embarrassment. It was Labour Day and somebody spoke there and he did not even mention the living conditions of workers. This has worsened since last year's Labour Day. Those workers were waiting to hear whether something was going to be said there because the President himself came there. They did not go there to be told that the Government was going to subsidize secondary school education!

Mr. Ojode: Tuition!

Mr. Raila: Some of them have no children in secondary schools!

(Applause)

So, that was a very raw deal and that is why they did not cheer. They listened to His Excellency the President hoping that he was going to say something about that, because since last

year, the prices of very many things have gone up! So, it is not sufficient for the Government to keep on telling workers that the economy is now growing at six per cent. Six per cent does not put bread or *ugali* on the tables of those poor workers!

Mr. Temporary Deputy Speaker, Sir, four years ago, the worker was buying flour at Kshs35 per kilogramme. It is now more than Kshs55 and going to Kshs60 per kilogramme. They were buying a litre of paraffin or kerosene at Kshs38 per litre, but they are now paying Kshs82 per litre!

Mr. Sungu: Shame!

Mr. Raila: The cost of *matatu* fare has gone up more than three times and, therefore, they have to walk on foot from Kibera to Industrial Area even when it is raining.

An hon. Member: For three hours!

Mr. Sungu: Shame!

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, the cost of rent has gone up sometimes twice or even three times. This worker is paying much more per square foot than somebody who lives in Runda or Lavington!

An hon. Member: Yes!

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, this worker is paying much more per square foot, yet he has no possibility of ever owning the ramshackle he is living in! So, this worker is living in squalor and he is the one who has come to Uhuru Park, and not the other guy who is living in Runda or anywhere near there. You are coming there and telling him that the cost of living has gone up. If you went and made that statement in Kibera, you will be lucky if they cheer you. Most likely, they will stone you! Those people are now worse off---

The Minister for Labour and Human Resource Development (Dr. Kulundu): On a point of order, Mr. Temporary Deputy Speaker, Sir.

Mr. Odoyo: Mr. Raila is trying to debate this Bill!

The Minister for Labour and Human Resource Development (Dr. Kulundu): Relax! *Poa!* Mr. Raila is misleading this House. In this year's Labour Day celebrations, it was decided that salary increments for workers would be pegged on productivity.

You will realise that, after being with him in church the previous day, instead of just a blanket---

An hon. Member: On a point of order---

The Temporary Deputy Speaker (Mr. Poghisio): Order! He is on a point of order! You cannot be on another one! Dr. Kulundu, what is your point of order?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, productivity will be the criterion for increasing the salaries of workers.

The Temporary Deputy Speaker (Mr. Poghisio): Order, Dr. Kulundu! Hon. Members, you need to familiarise yourself with the provisions of our Standing Orders with regard to raising points of order. Basically, what standing order is Mr. Raila breaching? Dr. Kulundu, you started very well that Mr. Raila is misleading the House. But we need to know how he is misleading the House so that we can rule whether he is in order or not! Therefore, let us not spend time back and forth, raising points of order, unless they are really points of order! I will disallow several points of order if that is the way we are going.

Proceed, Mr. Raila!

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, in any case, the Minister will have an opportunity to respond because this is his Bill. So, when we finish making our contributions, he will get an opportunity to respond. He started arguing---

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Raila, you are right! I think the

Minister should listen to you.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I want him to take notes so that, when I am done, he can respond to the points that I am raising. I am telling the Minister the issues that he needs to address---

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Raila, I do not think you should address the Minister!

Mr. Raila: I am doing so through the Chair!

The Temporary Deputy Speaker (Mr. Poghisio): Please, address the Chair!

Mr. Raila: Actually, Mr. Temporary Deputy Speaker, Sir, I am doing a public relations exercise for the Government. I am highlighting where the problems are. After the Bill, I should just keep quiet and not tell them anything because those are the issues they will use in their election campaign!

Mr. Temporary Deputy Speaker, Sir, the talk of a 6 per cent growth in the economy does not help if it is concentrated in the hands of 1,000 people, out of 34 million Kenyans who are starving. That whole argument is very hollow. It should not be repeated all the time. Somebody should advise His Excellency the President that he is boring the workers and the people of this country!

The issue of productivity that the Minister is referring to does not depend on the worker. It depends on the entire enterprise and how it is being managed. Why should the worker be held ransom or hostage because of lack of productivity? The worker must earn a living wage. That should be the policy of this Government. We must make conditions of living in this country "livable". That is exactly what I intend to do when I become the President of this country.

(Applause)

The Temporary Deputy Speaker (Mr. Poghisio): What? Have you finished? What is your position on the Bill?

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I said I support the Bill, but it was drowned in the applause!

With those few remarks, I beg to support.

(Applause)

The Temporary Deputy Speaker (Mr. Poghisio): Let us hear from Mrs. Tett.

The Assistant Minister for Housing (Mrs. Tett): Mr. Temporary Deputy Speaker, Sir, first and foremost, I would like to congratulate the Minister for bringing this Bill to this House. It shows that the Government is keen on the issues affecting our workers. The Government is also interested in promoting the welfare of the workers of this country. Thank you, Mr. Minister!

This Bill has covered a lot of things. When I looked at it, I was very excited because there was nothing that the Minister has left out. As I said, this is a very old Bill. The Bill has covered fundamental issues that affect our workers.

Mr. Temporary Deputy Speaker, Sir, I will start with the issue of discrimination and sexual harassment as far as women workers are concerned. Sometimes, our women work under very difficult conditions because of their bosses. A widow or a single mother, for example, may have six children. There is nothing that she can do if she refuses advances from her boss. If the boss wants a date with her, she must oblige because, at the end of the day, if she does not go for that date, she will lose her job. What will happen to her children or even herself, if she has no children? Indeed, this Bill covers all those issues.

Mr. Temporary Deputy Speaker, Sir, when many workers die, their next of kin wait for

their benefits for many months. There is no policy to regulate that. They mark-time from one office to another and, at the end of the day, they just give up. Maybe, the widow or the single mother has got children and needs to pay school fees, *et cetera*. Such a widow knows that her husband worked for many years for a particular company and yet, his dues are not forthcoming.

Mr. Temporary Deputy Speaker, Sir, I see that this Bill has covered the issue of wrongful deductions of a worker's dues. Sometimes, we cannot recover that. Some firms dilly-dally with the worker's salaries for many months and, at the end of the day, those workers give up.

Mr. Temporary Deputy Speaker, Sir, sometimes, the basic working conditions of workers are very harsh. A good example is the working conditions of our watchmen. Watchmen work under very difficult conditions. They work for seven days a week without any rest. Nobody fights for their rights. If they are found sleeping while on duty, they are sacked without pay. At the end of the day, they are the losers. They are, sometimes, told to go to the labour offices. They mark-time in those labour offices for months on end. That is just because they are forced to work for seven days a week with no rest or housing facilities. The employers exploit them very much. They are paid very little salaries. They can hardly take a bus or a *matatu* to work. They walk for miles to get to their work places. Those are the issues that this Bill has covered. As I said, I salute it.

Mr. Temporary Deputy Speaker, Sir, still on the working conditions of our workers, our Ministry looked at all those issues. We are now upgrading the slums. Most workers live in the slum areas. In fact, in the urban areas, 60 per cent of the population live in the slum areas. If we do not look for ways and means of upgrading those slum areas, we will be doing nothing. We need to give workers proper shelter. In Kibera, for example, you still find the flying toilets and the raw sewage that passes through the doors. When it rains, it becomes terrible. You find lots of diseases. The same happens in Mukuru kwa Njenga, Kangemi and Githunguri. The situation is terrible in most of those places. It is for that reason that my Ministry is looking for the quickest way of upgrading those slum areas, so that the people in them can live in dignity and feel that they are also catered for.

Mr. Temporary Deputy Speaker, Sir, for nearly 40 years, nobody has cared about this issue. The previous Government did not care about this issue. It is, therefore, very important that we address this issue, so that the conditions of workers can be improved, and so that when they work, they can feel that they are also part of the society. You will also find mothers forcing their children to work, because of biting poverty in their homes. This is especially so with the girl child.

You will find that her mother looks for her a job as a house-help. Small kids of even five years take care of other children, and they hardly get paid. All that they get is, probably, the food they eat. How many times have we seen children who have been burnt or beaten up? This is a situation we should never have had in Kenya, because it is terrible for our children. Even in our homes, that little girl is the one who runs up and down, with a child on her back. She is forced to do all manner of chores. This must come to an end because, at the end of the day, these are human beings and have their rights.

Mr. Temporary Deputy Speaker, as we all know, where parents are unable to pay fees for all their children, the girl child is the one who drops out of school. The Free Primary Education Programme has eliminated a lot of those bad habits. We had three million children out of school before this Government took over the leadership of this country. That is ten per cent of this country's population. Out of the three million children who were not in school, girls formed the majority. They had never seen the inside of a classroom. So, free primary education has also helped to reduce child labour. Every child is now able to access primary education. I am happy that, shortly, there will be a law in place which will make it mandatory for each child to go to school. That way, we will completely eliminate child labour. If a mother wants to look for job, let her do so, but she should not subject a minor to harsh conditions.

Mr. Temporary Deputy Speaker, Sir, in the past, some employers never kept records. Even where records were kept, you could not inspect them. You would not even know what employers' records look like. Citing the example of watchmen, employers do not keep records. They just employ watchmen whenever they need some. One does not even know how many days he has worked and how much money he is entitled to. So, I am glad that this Bill covers the record-keeping and inspection aspects.

The issue of threats has also been covered in this Bill. Some companies, or employers, threaten their workers. Most of the time, some employers even abuse their workers, or call them names. I know that a lot of employers today abuse their workers; they call them all manner of names, and the poor woman or man cannot answer back because he, or she, knows that if he, or she, answers back, that will be the end of their employment, and there will be nothing he, or she, will do about it. Therefore, threats and intimidation of the highest or by employers to employees must stop. I am glad that there is a provision for employers and employees to engage in dialogue. In many companies, there is nothing like employers engaging in dialogue with their workers. The employer is supposed to be supreme, and no questions should be asked by the workers.

Also captured in this Bill is the issue of insurance. In most companies, when a worker is taken ill, or is involved in an accident, he struggles to get treatment, because he is not covered. Employers are not interested in buying medical insurance covers for their workers. I will go back to the example of companies which employ watchmen, because we have seen a lot of incidents relating to the point I want to make. When watchmen are shot or maimed whenever there is a break-in, they go home with their wounds. They cannot do anything because there is no insurance cover for them. They cannot even save anything from their salaries, because they earn so little. So, they suffer so much. Therefore, such suffering must come to an end. I am glad that the issue of insurance cover has been mentioned in this Bill.

I will also mention something about casual workers. A lot of bosses, especially those at construction sites, employ somebody for three months. When the time comes for such a worker to be employed on permanent terms, he is sacked for some time and taken on again later. This is a way of evading the law. Since this loophole is addressed by this Bill, once it becomes law, employers will not have this leeway. At the end of the day, such an employee will have to be paid as a full-time worker.

Mr. Temporary Deputy Speaker, Sir, I am also glad that the issue of maternity leave has been covered. Previously, once a woman went on maternity leave, she lost her annual leave. With the passage of this Bill, women workers who will proceed on leave will no longer lose their annual leave. This is a terrible thing. Women must bear children. Otherwise, with time, mankind will become extinct. So, why subject them to such harsh conditions? We have to look at all these aspects.

The issue of discrimination has also been covered in this Bill. For instance, somebody can be working very hard in his department but, because his employer does not like him, his junior is promoted, and he is left to stagnate in the same position. There is a lot of discrimination at the workplace. I personally did see such a case happen.

Mr. Temporary Deputy Speaker, Sir, the pension scheme is also very important. As we all know, in the Ministry of Housing we are trying to introduce this pension scheme, so that if one wants to take a mortgage, instead of paying the 10 per cent deposit, he or she will get it from the pension scheme. If you do not have a pension scheme, at the end of the day, what are you going to do?

Mr. Temporary Deputy Speaker, Sir, as I said, this is a wonderful Bill, but the only problem, at the end of it, is on the implementation. We might have a beautiful document, but at the end of the day, it will end up collecting dust on the shelves. So many good laws have been passed,

but they have not been implemented.

With those few remarks, I beg to support and congratulate the Minister and all the teams that helped him to bring this Bill.

Prof. Oniang'o: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to support this Bill. I would like to congratulate the Minister and his team for bringing us a very comprehensive document which is well thought-out.

But we need to realise that unemployment is a major issue in this country. I believe that, that is why the majority of Kenyans get abused. They get abused because if they lose their jobs because of complaining about low pay or poor working conditions, they have nowhere else to go. We heard an announcement that poverty levels had gone down in this country, which might have meant that either salaries went up or that there were more jobs. I have not heard the Minister mention to what extent employment creation has been achieved. Of course, I do not agree with those figures. This is because for those of us who deal with people from different parts of this country, we are aware of the conditions under which Kenyans live. The very lowly-paid workers live in very indecent conditions. As a nation, we should consider that scandalous. It is not right that we should have very many Kenyans living in slums and many young people in the rural areas who are unemployed.

Mr. Temporary Deputy Speaker, Sir, let me compliment the Minister and his team for actually making sure that maternity - and we hope soon it will also be paternity - leave is actually paid for. Having congratulated him, I would like to say that if we have to borrow from elsewhere--- We should not just talk about two months. We need to understand what a young baby needs when it is born. It needs to be bonded with the parents for more than two months. We are talking of not employing young girls. Therefore, household labour is now going to be unavailable. It, therefore, requires that parents or one of them, at least, stays at home with the baby. So, I hope that the Minister, considerate as he has shown us here, will soon make sure that, at least, six months of maternity or paternity leave is actually paid for, either to the mother or father, or both. We know that in Scandinavian countries the maternity leave is nine months.

Why am I saying this? Actually the moulding of a human being starts at infancy; in fact, in the womb. So, if the idea is to really make sure that a Kenyan baby is well-bonded and well-connected to be able to develop into a well-fledged adult, we then must make sure that those very primary years and days are actually well taken care of. So, I compliment the Minister because he has taken a step which we have not seen in the past.

Mr. Temporary Deputy Speaker, Sir, the other issue is about unemployment compensation. We are all aware that where people are in employment and then they go out of it, there is actually a social protection, where they actually receive some basic income to take care of their basic needs as they move on to the next job, especially if they are professionals. Our economy might not be able to afford this, but it will be good if the Minister actually begun to express this in this Bill, because there is no reason why Kenya cannot be like other countries in the world.

Mr. Temporary Deputy Speaker, Sir, I would also like to address the issue of Kenyans who go out of the country to work. The Bill has a provision relating to Kenyans who go to work in foreign countries. As I travel out of the country, especially to Dubai, I see Kenyans who work for foreign airlines. We also have Kenyans who work at the Dubai International Airport. I was told that there are more than 600 Kenyans who work in the United Arab Emirates. But I was shocked to learn from one of those Kenyans that, in fact, Kenyans are not paid as much as other nationals with the same qualifications, say, from Britain, even for doing the same job. Why is this happening? I think they believe that our working conditions here are poor and that maybe, we do not have jobs for our people and, therefore, they will take jobs at any salary. So, these are issues that our country needs to address.

We need to address issues of abuse of Kenyans when they are working outside the country. There should be a centre in every Kenyan embassy, where Kenyans can be taken care of, or go to report cases of abuse, because we consider them as part of our labour force.

Mr. Temporary Deputy Speaker, Sir, we suffer so much from unemployment. As I have mentioned before, we need a clearing centre to be able to register all the job seekers, so that we prepare them for employment in foreign countries. This is because Kenya produces many well-qualified people who cannot all access jobs in the country. So, we should be able to prepare Kenyans for the export labour market. I believe that as we do so, we are going to benefit, as a country, because we are aware of the remittances that Kenyans bring back to the country, that actually help to develop this country.

Mr. Temporary Deputy Speaker, Sir, the other issue that I would like to mention relates to strikes. Kenyans often go on strike because of lack of dialogue with the employer. So many times, I see the Minister talking to the Press and saying that strikes are illegal and that those participating in the strikes are doing so at their own cost. When they go ahead and strike, the ring-leaders, in fact, go ahead and lose their jobs. For example, I am aware that some of the University of Nairobi staff who actually led the lecturers' strike have not been reinstated. I would like the Minister to look into this issue, because I believe, he has brought in the issue of dialogue. We are aware that there will always be ring-leaders. They risk their lives and, therefore, they should not be made to lose their jobs, just because they have the courage to go ahead and raise issues on behalf of their colleagues.

So, I would like the Minister to address this particular issue and make sure that those particular lecturers who were sacked--- We are aware that we require as many lecturers as possible--

QUORUM

Mr. Omondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. This Bill is very important because it concerns the majority of Kenyans. However, their representatives are merely drinking tea outside there. Could you, please, call for a quorum?

The Temporary Deputy Speaker (Mr. Poghisio): What are you asking for?

Mr. Omondi: We do not have a quorum, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghisio): That is all I need to hear from you! You do not have to tell me what to do!

It is true, we do not have a quorum. Ring the Division Bell.

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Poghisio): We have a quorum now. You may proceed, Prof. Oniang'o!

Prof. Oniang'o: Mr. Temporary Deputy Speaker, Sir, I was talking about strikes. When workers resort to strikes, it is because there has been no dialogue. I was complimenting the Minister for noting this and saying that normally, those who spearhead strikes, the ring leaders, end up losing their jobs. I was appealing to the Minister today whether he could address the issue of the lecturers who led the strike. Some of them are still at home, at a time when we are short of teaching staff at the institutions of higher learning. So, he could look into it and take advantage of that.

We are also aware that sometimes when workers go on strike and a company folds up, it is because they have no dialogue. We are aware of the Kenya Bus Services (KBS) where that issue was raised and the Minister did not do anything. Instead, he ended up taking the case to the Industrial Court.

So, we want to appeal to the Minister that the Industrial Court should always be a form of the last resort. In fact, he should try his best to make sure that many of those workers who have nowhere else to turn to and have nobody to really spearhead issues for them, the Ministry takes it up very seriously and ensures that there is fair play and the workers feel they are well represented.

Mr. Temporary Deputy Speaker, Sir, I also wanted to talk about workers who live on huge farms; tea and coffee farms and plantations. Some of us have had a chance in our other professions to visit these areas. We find a lot of malnutrition, poverty and poor housing. There are one-roomed houses. We are talking right now of a situation of HIV/AIDS and you have a worker who has a family and who cannot even bring his family to live with him. So, they remain separated for ever. Those are the conditions of the colonial days. We also find that many of those workers do not even have education for their children.

I am aware of a farm in Nyeri where, in fact, the children end up succeeding the parents on that farm, yet they do not go to school. At a time when we have free primary education, it is supposed to be compulsory, although I am not sure about the legal aspect. However, it is compulsory but many of those workers cannot even send their children to a free education system.

Mr. Temporary Deputy Speaker, Sir, we would, therefore, like this Act to be very comprehensive. It should most importantly address the plight of the workers at the very basic level. If you leave your house very early in the morning, at 5.00 a.m., you will see workers walking from far off; Kangemi, Kawangware and other places going to Industrial Area on foot because they cannot afford transport. This is because they are on casual labour for years. We want to implore - I am happy to see that in the Bill--- However, we need to see it in a more extensive manner. That, employers make sure that even if they are paying more salary, they actually take care of the basic needs of the workers. Housing, transport and food should be taken care of. When you are feeding masses, you can do this affordably.

Also, we are talking of abolishing child labour. I want to come back to this. If we are going to abolish child labour, many of the women who work, even on middle income, cannot afford household help in a manner that is appropriate. Therefore, so long as maternity leave remains two months, we would like to encourage employers to have creches in their points of employment. Creches are areas where young breast-feeding babies can be put with people taking care of them while their mothers work. If we are going to encourage women to be in employment, I want to assure you that a breast-feeding mother who knows that her baby is nearby, she can breast-feed, you can extract more from her than you can extract from any man. This is because she cannot work when she is so far away from her baby. We want to be able to maintain that responsibility for the family; to make sure that their families are taken care of even as the women go to employment.

Mr. Temporary Deputy Speaker, Sir, the other area of discrimination is against the people with disabilities. You can imagine those on crutches, yet we do not even have proper stairs for them. An employer will just look at that and would rather have somebody who does not have a disability.

Mr. Temporary Deputy Speaker, Sir, I thought we passed a Bill here that addressed issues to do with people with disabilities. However, like many other Bills we pass here, they are neither enforced nor implemented. I am aware that in other countries there is always one quarter affirmative action for people with disabilities. We are aware that there are disabled people who are not mentally affected and they can work very well just like any one of us. We need to make sure that work places have a provision for people with disabilities. They should show in their returns, every year, how many people with disabilities they have employed. We are aware that this country has about three million disabled people and we should not discriminate against them.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I would like to end there. I

hope that the Minister has listened to the many good points that have been pointed out in this House and that he shall include them in the Bill as amendments. I wish to support this Bill.

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to say a few things about this Bill which I believe is timely. I would like to join those who have congratulated the Minister for coming up with this Bill which is long overdue. As the country, time and the world changes, we also have to change our laws in order to move together with the changing issues that affect the citizens of this country.

Mr. Temporary Deputy Speaker, Sir, I would like to start by commenting on a few issues on which I disagree with the former speaker, who is also a Presidential aspirant in the forthcoming General Elections. Well, I wish that he becomes the Presidential candidate for the ODM(K). I hope that he will emerge the winner in their party nominations so that we can defeat him in the General Election.

Mr. Temporary Deputy Speaker, Sir, the President has promised to waive tuition fees amounting to Kshs3,600 for parents and guardians who have children in secondary schools. This, indeed, is going to affect so many people in this country. It will not only affect the parents, but also so many other sectors of our economy. When somebody says that this will affect only a few parents---When any amount of money is saved by parents, it ends up helping so many other members of the family. The money, for instance, is used to help neighbours and other persons who work for that family. When you have Kshs3,600 in your pocket, you will not just spend that money on yourself. You may decide to buy me lunch or increase the salary of your employee.

Let people not think that to waive Kshs3,600 tuition fee for parents is a joke or that it is of no significance. When I have Kshs3,600 in my pocket, I can use it, despite being a Member of Parliament, for a whole week. So, those who think that they have a lot of money and that Kshs3,600 is nothing in the economy of this country, are totally misled. They are not right in their thinking. We thank the President for promising to waive tuition fees for students in secondary schools with effect from January, 2008. Parents can now start planning.

Mr. Temporary Deputy Speaker, Sir, we have over 4,000 secondary schools in this country, and if we waive Kshs3,600 for every parent who has a child in secondary school, we can save Kshs4.3 billion for our parents. So, that is a lot of money that will help workers.

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Mwenje! How does that become an issue of this Bill?

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Mr. Temporary Deputy Speaker, Sir, of course, I am trying to correct what was said by an hon. Member who spoke before me. This has got a lot to do with this Bill.

The Temporary Deputy Speaker (Mr. Poghisio): What is that? Deal with issues concerning the Bill.

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): That is what I was coming to before you interrupted me. I have to go round so that you can see the point I want to make.

Mr. Odoyo: Sit down, Mr. Mwenje!

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): I know that Mr. Odoyo is one of those people who simply follow some of these people.

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

The Temporary Deputy Speaker (Mr. Poghisio): Order! Order, both of you! Everybody raises whatever they want to raise so that the Minister can then reply. Your business is to concentrate on the Bill. It is the official responder who will move the Bill. Let us continue discussing the Bill so that the Minister can get all the necessary information and then respond later

on. Please, let us not address other people in the House. Let us address the Chair.

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Mr. Temporary Deputy Speaker, Sir, this is a debate and there are pros and cons of the Bill. That is exactly what I was coming to. When some issues in this Bill are challenged, I have to put matters in order and properly.

Mr. Temporary Deputy Speaker, Sir, the other issue is to do with workers who live in slums. I am very glad that this matter has been addressed in this Bill. If you visit our main airport, you will be surprised to see that most people who work for flower farms here in Nairobi walk from the airport to their slum dwellings in Mukuru, Soweto or Ruai. I want to request the Minister to make sure that the management of these flower farms provide workers with transport. Some of these workers are women and they are forced to hike lifts from motorists. Because of this, they are always at the mercy of the motorists who give them lifts. It is important that the Minister compels the management of these flower farms to start providing their workers with transport. Some of them are already doing that, but others are not doing so. As you drive on our roads, you will see them standing by the roadside asking for lifts. When they are given those lifts, heaven knows where they end up. It is, therefore, important that the Minister makes it mandatory - I would have wished to see that word in this Bill - for such companies to provide transport for their workers.

Mr. Temporary Deputy Speaker, Sir, I would like to thank the Government because of late, I have witnessed electricity being supplied to the slums where these workers live. These people are only required to pay an instalment of Kshs1,000 and Kshs300 every month. That is a very big step forward towards benefiting the workers who live in the slums. I want to thank the President for coming up with this kind of proposal, which is being implemented now.

I would also like to urge the Ministry of Energy to move quickly to see that the Kenya Power Lighting and Company (KPLC) not only goes to particular slums in Nairobi, say, Mukuru Slums, but to go to other slum dwellings such as Gitari Marigu, Soweto and others where our people require electricity. These people live in Nairobi, but if you ask them which Nairobi they live in, they cannot say because they still use the funny lamps which do not help them much. So, I am very grateful that this exercise is going on and I hope that it will be extended to all the slums in this city.

Mr. Temporary Deputy Speaker, Sir, one of my major concerns, and I am glad that the Minister is here with his team, is about the employees who have been working in the construction industry. There is one notorious firm, which I would want to mention here, called Mugoya Construction Company. This company kicked out all its employees without paying them their terminal benefits. Those workers have been complaining a lot and have even been streaming within Parliament Buildings to see hon. Members, including me. They have tried to see the Commissioner of Labour, but they have not succeeded to see him. Today, some of them were in my office seeking assistance to see the Commissioner of Labour.

I want to urge the Ministry of Labour and Human Resource Development to tackle the issue of M/s Mugoya Construction Company immediately. We know the owners are very rich people. They can corrupt anybody in this country because of the kind of money they have amassed over the years. However, that should never scare us. We should not be scared because of whatever stealing they have done.

Mr. Temporary Deputy Speaker, Sir, we must assist all these people who are suffering. We have former employees who have not been paid their dues and benefits. There is another firm in Njiru Estate where employees are suffering. The Ministry is aware of it because we have already forwarded their cases. We also have Asian employers who claim that they have put the Government in their pockets. This is a serious matter. Let it be known. I wish the Minister was here to hear what I am saying.

*(Dr. Kulundu re-entered
the Chamber)*

The Temporary Deputy Speaker (Mr. Poghisio): He is here now!

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Mr. Temporary Deputy Speaker, Sir, I will repeat for him to hear. Many Asians who own construction companies do not pay their employees their dues and benefits. They claim to have put labour officers in their pockets. This is a serious allegation, but it is the truth. The whole truth. So help me God.

I want to appeal to the Minister to deal with such employers. M/s Mugoya Construction Company is one of them. I dare repeat so. It is one of the companies making our people suffer.

Mr. Temporary Deputy Speaker, Sir, our labour officers are not working properly. When we visit any labour office, be it in Nyayo House or Industrial Area, we find very long queues of employees who have gone to complain. It is a pity that they do not get any help from those offices. Some of these employees are unionisable, while others are not. I want to urge the Minister to visit those offices. I tend to believe that some of these officers are in employers' pockets.

Mr. Temporary Deputy Speaker, Sir, I would very strongly appeal to the Minister to tackle this issue immediately. I urge the labour officers not to stay in their offices and just write letters to employers. They should actually visit those firms and see how our employees are suffering. In the past, I used to hear many employers being taken to court. However, these days, there is hardly any employer being taken to court. I am sure because I have been counter-checking with my constituents. I receive a lot of complaints in my constituency office from employees. Labour officers are not working the way they are supposed to.

Mr. Temporary Deputy Speaker, Sir, there are many industries in my constituency. As we pass around them, we see employees eating food under trees. They only want a bite and go back to work. Is it not possible for us to ask the employers to provide an eating place near the industries. A place where employees can get good food. If you drive along Mombasa Road, you will see them eating under the acacia trees. As they eat, the leaves fall on their food. They have to eat the leaves too.

I want to appeal to the Minister and his office to provide a decent small place in or next to their industries. We want to see those employees eating their *githeri* or *ugali* in decent places. Us, we go to hotels to eat. There is no secret about it. We want to see those employees eating in a decent place. It must not necessarily be under a tree. The employers can put a shed for them. They should also be provided with water and sodas. Let us treat our employees with a lot of respect. Whenever I go abroad, I find such places. I do not see employees there, eating under trees. Kenya is the only place I see employees eating under trees.

Mr. Temporary Deputy Speaker, Sir, something has been mentioned about injury of workers at places of work. I have had to use my emergency funds from the CDF kitty to go to areas where employees have been hurt. What became of workmen's compensation? Who is in-charge of workmen's compensation in the Ministry? How many of them have been paid their rights through workmen's compensation? This is a very simple thing. It does not involve a lot of money. However, I have seen so many employees trying to follow workmen's compensation.

Mr. Temporary Deputy Speaker, Sir, I am told it is only about Kshs40,000, but they have never been paid. I appeal to the Minister to follow whoever is supposed to deal with the issue of workmen's compensation. At least, the National Social Security Fund (NSSF) and the National Hospital Insurance Fund (NHIF) have improved a little bit. Where is the workmen's compensation? When we pass a Bill such as this, we should also provide for workmen's compensation.

The Minister for Labour and Human Resource Development (Dr. Kulundu): On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Yes, I will accept the information.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, I am sorry to interrupt my friend, the Member of Parliament for Embakasi Constituency. However, I just want to inform him that workmen's compensation will be tackled effectively under a Bill. Very soon, I will be tabling that Bill before this House. There is a package of five such Bills on workmen's compensation. In the current Bill under discussion, we are also referring to some issues captured in that Bill which is yet to be laid on the Table of this House.

Mr. Mwandawiro: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister to hide behind Bills that are yet to come to the House when the reference is being made to the reality happening now?

The Temporary Deputy Speaker (Mr. Poghismo): Dr. Kulundu, I know you are volunteering information. However, I think the question Mr. Mwenje asked is what happened to the workmen's compensation. He is not asking whether there is a new Bill coming or not. How come workmen are not compensated now? I hope I am representing you well, Mr. Mwenje?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, in my opening remarks, I said that labour laws are archaic and not responsive to today's life. The Workmen's Compensation Act is one of those laws. It is just a question of time. Maybe, next week, we will be discussing workmen's compensation in another Bill.

The Temporary Deputy Speaker (Mr. Poghismo): So, what are you saying? What has happened to it?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, it has not been put on the Order Paper---

The Temporary Deputy Speaker (Mr. Poghismo): I am talking about what happened to the law as it exists now.

The Minister for Labour and Human Resource Development (Dr. Kulundu): The law, as it exists now, gives very minimum sums of money for various injuries. We have revised all that. At the end of next week, I am sure my friend will be happy with the sum---

The Temporary Deputy Speaker (Mr. Poghismo): You have taken more than enough of Mr. Mwenje's time!

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

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Mr. Temporary Deputy Speaker, Sir, I only hope my time is not being eaten by---

The Temporary Deputy Speaker (Mr. Poghismo): Mr. Mwenje, there is a point of order!

Mr. Muturi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to make reference to Bills that have not even been published and are not even the subject of debate? Is he not clearly out of order? Mr. Mwenje was talking about the existing Workmen's Compensation Act; what happened to its implementation and enforcement.

The Temporary Deputy Speaker (Mr. Poghismo): Mr. Minister, you are not actually the one on the Floor. I think the point of order is directed to a different person.

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Mr. Temporary Deputy Speaker, Sir, at least I have made a point. All I was saying is that, even in the existing law, it should be implemented, but the Minister wants to enforce it even more. Since we are not allowed to anticipate Bills, in the meantime, I would like to ask the Minister to let our people benefit from the little that has been authorised. Could whoever is in charge take up that

matter? There are so many in the queue who have made those claims but have not been paid.

Mr. Temporary Deputy Speaker, Sir, I am happy to see that the Minister is trying to improve by bringing laws that will conform with the International Labour Organization (ILO) Convention. Most important to me is that those laws will assist our people. They are not just there because an international organization is telling us to enact them, but because it is necessary for our people.

Mr. Temporary Deputy Speaker, Sir, during Labour Day's celebrations, I noticed that the workers were quite happy with the many things that are happening. They exhibited what they are doing. I am encouraged by the fact that we continue observing Labour Day. Our unions have now become a reality and effective tools to assist our workers. Once upon a time, I was a leader of a trade union in the banking industry and I know how important it is. I am also happy that the industrial court now is working perfectly in conjunction with the Government and the trade unions. I am happy that we now have an industrial court which is not just run by one judge as it has previously been. There are now about five judges of the Industrial Court and that is quite encouraging.

Mr. Temporary Deputy Speaker, Sir, I also want to advice workers, especially when it comes to strikes - I know them because I used to lead them at one time - that it is important to refer to arbitration. I also appeal to the Minister that when such things are happening, instead of waiting until people have gone to the streets, to encourage negotiations. Let us discuss with them and find out what the problem is. However, if they are unreasonable, then the Government must over-ride them.

Mr. Temporary Deputy Speaker, Sir, regarding the new districts which were created, I realise that we need to have labour offices in the district headquarters, including the Embakasi/Makadara District. I refer to that one because it affects me most. Labour officers should be posted to every new district that has been created. Some people still travel from very far to go and make their claims. All other departments have now been opened. Today, I had the opportunity to visit Maragua District and I asked to be shown the labour office, but nobody could show me. Then I remembered that even in Embakasi/Makadara we do not have one. I appeal to the Minister that he should now open labour offices in the new districts.

If we are saying that we are taking services nearer to the people, then let us also post labour officers there. After all, anywhere where there are people, like in Embakasi where the population is about one million, they will certainly require to have a labour office. Let the labour officers not be posted there just to show that there is a labour office. Let them be posted with information. They should not just deal with people who have been sacked. They should also start dealing with people who are looking for jobs. I have realised that labour officers sometimes deal with sacked employees, but there is one thing they are not doing; they do not bother to look for jobs for people. Even when a new industry is developed, you will not see a labour officer going to introduce himself to the management of that industry and ask for jobs.

Mr. Temporary Deputy Speaker, Sir, if you want graduates, Form Four leavers, tea-makers and so on, they are available. But the labour officers do not bother at all. Sometimes it becomes my job to go to the industry to look for jobs for my people and you will never see a labour officer joining me to go and do that job. Sometimes, it is even easier to find a District Officer (DO) joining me to go to the industry to look for jobs for our people. The management ends up employing even foreigners. This country is infested with many foreigners from the neighbouring East African countries who come to look for jobs here.

Mr. Temporary Deputy Speaker, Sir, our officers should realise that when the President said that this is a working nation, it is not just for those who are working in farms or in the industries alone. The Government officers should also start working and looking for jobs for our

people. The other day, I asked our labour officers in Nairobi how many people they have been able to give employment. The answer is most likely to be zero. It is important that they should now go to look for those jobs. If you go to the labour offices, you will find people sitting and doing nothing when Kenyans are bothering Members of Parliament and councillors in order to get reference. Why are they not giving those people references? Why are they no longer keeping records of those people who are looking for jobs? If you asked any labour officer today about the records, they will tell you that they do not have any record of people who are looking for jobs. What is their job and why are they being paid?

Mr. Temporary Deputy Speaker, Sir, I find that the objectives of this Bill are very good and important. We hope that things will change, particularly, with regard to the pension scheme. We hope that it will work well and that this law will be implemented. We are making a lot of laws but when it comes to implementation, it becomes a nightmare. If the laws cannot be implemented, let them not be brought to this House for debate. It becomes futile and useless when they are not implemented, and they do not help us in any way. The Memorandum of Objects and Reasons in this Bill is quite good. I am sure that the trade unions have gone through it and must agree with us that this is a good Bill. It should not just be a written Bill. These laws will only become useful to our people when they are actually implemented.

With those few remarks, I beg to support.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, for record purposes, I am giving the official response.

The Temporary Deputy Speaker (Poghisio): Hon. Members, Mr. Muturi is speaking for the Official Opposition on this subject matter.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I want to begin by looking at the Memorandum of Objects and Reasons. It clearly says that the principal object of the Bill is to repeal and replace the Employment Act, Cap.226 of the laws of Kenya and to establish minimum terms and conditions of employment. Those are the principal objects of the Bill.

Mr. Temporary Deputy Speaker, Sir, I have gone through this Bill, and I believe the framers had good intentions. But it requires very serious crafting. At a glance, the Bill attempts to make seven definitions. For instance at page 149, Clause 2, it purports to make the following definition. It says: "Authorised officer means a labour officer, employment officer or medical officer appointed under the Labour Institutions Act". I think we must be clear here. We do not, as yet, have any law in Kenya known as "Labour Institutions Act". Therefore, for the Minister to say in the Bill that an authorised officer is an officer, or another officer, appointed under such other non-existent Act--

Even if the Minister intends to bring a Bill for an Act of Parliament to establish such an Act, to make reference to it here now is to assume that this House merely rubber-stamps what comes from him. It is quite possible that the Minister could propose the Bill, and it does not see the light of the day.

Mr. Temporary Deputy Speaker, Sir, I do not want to borrow some of the populist phrases that have been used in this House sometimes, such as that people are in injury time or things like that. But it is important that the Minister should not make this kind of assumption.

The Minister for Labour and Human Resource Development (Dr. Kulundu): On a point of order, Mr. Temporary Deputy Speaker, Sir. I just want to say that the Labour Institutions Act--

The Temporary Deputy Speaker (Mr. Poghisio): Order! Do not go for an argument. You are taking his time. If you want to raise a point of order, do so.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, can I explain a little bit?

The Temporary Deputy Speaker (Mr. Poghisio): No; that will not be allowed.

The Minister for Labour and Human Resource Development (Dr. Kulundu): On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghisio): Well, if he wants to get the information.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, the Minister is the one who moved the Bill. I believe it is only fair that he should listen, and that whatever information he has, when giving his reply, he will then inform the House, so that when we go to the Committee Stage, we will be in tandem.

Mr. Temporary Deputy Speaker, Sir, for the time being, I think it is only fair that the Minister should keep that information; in fact, he should multiply it so that he will be able to inform the whole House well, and not just myself. So, for the time being, it is just a point of information, and I decline it, with respect.

The Temporary Deputy Speaker (Mr. Poghisio): You may very well do that. Dr. Kulundu, if it is not a point of order, it is better you listen and then you will respond to everybody. If he says something you do not like and you think he is breaching our Standing Orders, you may raise a point of order.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, I was rising on a point of information which has been declined. But I will inform him later.

Mr. Odoyo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Would I be in order to appeal to the Chair to protect us from the Minister, who is raising frequent interruptions when we are discussing his own Bill, which we want to pass on time?

The Temporary Deputy Speaker (Mr. Poghisio): Very well; you may proceed, Mr. Muturi.

The Minister for Labour and Human Resource Development (Dr. Kulundu): On a point of order, Mr. Temporary Deputy Speaker, Sir!

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! Hon. Members should not debate by points of order and counter-points of order. That gentleman was on a point of order. You were not on a point of order. We do not even know to whom you are directing your points of order. You cannot direct it to the other person! The person on the Floor is the one--

The Minister for Labour and Human Resource Development (Dr. Kulundu): I was directing it to---

The Temporary Deputy Speaker (Mr. Poghisio): Order! The person on the Floor is the one who--- If he has breached anything, it is the person on the Floor!

Mr. Muturi: Thank you, Mr. Temporary Deputy Speaker, Sir. Because I consider this Bill to be so important for this country, indeed, my desire would be that, when we finally pass it, we do so being very clear about the provisions that we are making in it so that its application is not, in any way, made impossible because of certain oversights. Therefore, it is for that reason that I began by looking at that. Indeed, if you look through the Bill, even immediately after that one, there is the Board.

"Board" means the National Labour Board established by Section 5 of the Labour Institutions Act".

Mr. Temporary Deputy Speaker, Sir, the point I would want to raise here is that, indeed, to define a Board is not rocket science. The Minister and his team are capable of defining for us in this Bill what the Board means. We do not have to import the meaning of the word "board" from

another law that is non-existent. I am sure that the Minister can clearly make this revision---

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Muturi! What are these points? I will actually ask the Minister. If Mr. Muturi is raising an issue of a non-existent law which you have not defined, what do you have to say at this point?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, I am sorry for the mix up. But we submitted five Bills to the Attorney-General and we did not know that he would bring them one by one. In fact, our preference was that they are brought simultaneously because they are interrelated. Some of those terms that are in there are contained in the Bills that are coming. I am sorry for---

You know, I think they will be coming next week. Actually, indeed, they will be coming next week and hon. Muturi will understand these Bills better when he looks at the other Bills.

The Temporary Deputy Speaker (Mr. Poghisio): All right.

Mr. Odoyo: Then wait for the other Bills!

The Minister for Labour and Human Resource Development (Dr. Kulundu): You were an Assistant Minister!

The Temporary Deputy Speaker (Mr. Poghisio): Order! Order, Mr. Minister! Order! I am just being magnanimous. I am just saying that I want us to bring things out on the Floor so that everybody is with us. The issues that Mr. Muturi is raising are very crucial. Therefore, you better keep the options open. You are dealing with matters which are not yet before the House.

Proceed, Mr. Muturi.

Mr. Muturi: Thank you, Mr. Temporary Deputy Speaker, Sir. Indeed, it is because some of the definitions--- The issues I am raising here, in my view, can actually be addressed quite adequately even within this Bill to the extent that we do not really need to borrow other definitions from what will be included in another Bill, unless the draftsman or the person that was responsible for this Bill was a little lazy or tired. Really, to say;

"authorised officer" means a labour officer, employment officer or medical officer appointed under the Labour Institutions Act"

We have seen the definition of a labour officer somewhere as we move on. The only thing that the Minister seems to want to import is a meaning for "medical officer".

Indeed, a medical officer is actually described and even defined in the Medical Practitioners--- and some other already existing Act of Parliament. So, really, if it is only those words we want to define by importing that other meaning in the Bill, we can replace this with what is in the existing law.

On the issue of the board, the Minister can create one. We fully support that. All we are saying is that we do not want to be caught up in situations which will make us breach our own rules. The Bill defines "Director" as a person appointed as the Director of Employment under the Labour Institutions Act.

The Minister can actually define the "Director" within this Bill and we will pass it.

Mr. Temporary Deputy Speaker, Sir, on page 151, I want the Minister to just take note of the following. This Bill is so poorly done! It has no sub-sections. It begins with paragraphs "a" and "b". Again, there is "a" and "b". This is poor workmanship! I am sure this is not the work of the Minister! It may very well be the work of the State Law Office! It is messing up the Minister. I am just trying to point out something. If you look at page 151, it reads:-

"industrial undertaking" includes-

(b) a factory within the meaning of Occupational Safety and Health Act---

Mr. Temporary Deputy Speaker, Sir, I believe the Minister intends to bring a Bill to create that. I am sure the Minister can define industrial undertaking within this Bill. What I am trying to avoid is a situation where by, when we get to Committee Stage, we will delete so many sections,

replace them and so on. I am sure that, if the relevant Departmental Committee was here, and it has looked at this Bill, it will agree with me that there are so many things that require to be amended. A proper Bill should really not attract many amendments. We believe the Minister means well by bringing this Bill.

Indeed, I, personally, feel it is high time that the Employment Act was repealed and updated.

Mr. Temporary Deputy Speaker, Sir, if you look at page 150 of this Bill, among other things, it defines disability as:-

"disability" means being HIV positive or any permanent-

(i) physical disability or impairment;

(ii) physical illness;

(iii) psychiatric illness;

(iv) any other loss or abnormality of physiological or anatomical structural function;

or

(v) reliance on a guide dog, wheelchair or any other remedial means."

Mr. Temporary Deputy Speaker, Sir, whereas I have no quarrel with physical illness and psychiatric illness, but I have a quarrel with disability being defined as being HIV positive. I doubt that, that can actually qualify as a physical disability. When you talk about psychiatric illness, as being a disability, one understands that.

Mr. Temporary Deputy Speaker, Sir, somewhere within this Bill, it is again provided that an employer cannot discriminate on the grounds that a person is HIV positive. That is something which already exists. You cannot discriminate on that basis.

So, being HIV positive, to the best of my understanding, is not a form of disability. This issue should be reconsidered by the Minister.

Mr. Temporary Deputy Speaker, Sir, on page 150 of this Bill, there is a definition of the employer. It reads:-

"employer means any person, including the Government, who employs or has employed an employee and, where appropriate, includes-

(a) an heir, successor, assignee or transferee of an employer; or"

This is something, again, which is not clear. It could be, perhaps, a transferee or a transferee. I think there is something which is not clear. It cannot be!

Mr. Temporary Deputy Speaker, Sir, let me move to page 152---

The Temporary Deputy Speaker (Mr. Poghio): Did you actually tell the Minister which page you are on?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I told him that I was on page 150, the third paragraph, where there is a definition of what an employer is. I was telling him that, perhaps, he needs to clarify whether after an "assignee", he means a "transferee" or "transferor", and it is understood.

Mr. Temporary Deputy Speaker, Sir, there is the definition of a labour officer. We have heard the previous speaker here talk about people he referred to as "district labour officers" or something like that. I wonder whether those are titles which could attract the definition within this Bill. I wonder how far down the ladder this definition of a labour officer goes, in terms of our administrative areas. I am asking for clarification. I believe that the Minister will clarify this when he replies to this debate. Clause 79, at page 218, provides as follows:-

"An employer shall keep a register in which the employer shall enter the full name, age, sex, occupation, date of employment, nationality and education level of each of his employees and a return of the employees for each calendar year ending on 31st December; such information shall be sent to the director not later than 31st January

of the following year."

The reason as to why I am raising how low down the ladder the labour officers are supposed to operate is because the employer is, first of all, going to be compelled by law to keep a register. Secondly, he is defined as any person, including the Government, who employs or has employed an employee and, where appropriate, it includes an heir, a successor, an assignee, an agent, a director or---

These people will be found all over the country, including in the villages. If we go by our current arrangement, labour officers cannot even be found in some districts. They are not there. Even labour relations officers are not there. Here, we are saying that every employer will keep a register. So, unless the Government engages in a massive recruitment of labour officers, we will end up creating a law which we may not be able to implement, or which we will end up implementing selectively, which is unconstitutional.

Mr. Temporary Deputy Speaker, Sir, that way, the Government will be able to inspect only those employers within areas which already have labour officers stationed - primarily, in major towns. That will not help to achieve the objective of this Bill in its entirety. I want to support the proposal that every employer keeps a register. Now that we are in the information technology age, we expect that such information will be made available in places where anybody will be able to access them at the touch of a button.

If we are going to offer reasonable arguments, as national leaders, that a particular employer is discriminating people on the basis of age, race, sex or ethnic origin, then we need to have that information. It cannot be that we leave it to be available only to labour officers.

What we know is that if we just leave this without providing that, we will have labour officers even at the locational or divisional levels---- Many a times people have come to complain to hon. Members of Parliament that they are not receiving fair treatment when they appear before labour officers. But if you visit those labour offices, you will sympathise with the conditions under which they work. Labour officers generally operate in very squalid conditions. I was lucky, in my past life, to have worked in some urban centres where I interacted regularly, in the course of duty, with labour officers. I know that they really have a lot of inadequacies.

Therefore, I hope that by the passage of this Bill, we will also be empowering the Minister or Ministry to go on a massive recruitment exercise, so as to be able to comply with this law. How do you expect, for example, people who own five or ten acres of land in the villages--- They could be small-scale sugar-cane farmers like the hon. Wetangula who has about ten employees. If there is nobody near Sirisia, there will be nobody to keep records of whom he is employing. Even if he is just an heir, as an employer, we need that record. We want to know how he practises and implements this law.

We have been talking about discrimination in all manner of places, including, in political parties and employment. We need records---

An hon. Member: In ODM!

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members!
Proceed!

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, Clause 80, on page 218, requires a bit of adjustment. It says:

" A Minister may exempt any category of employers, any sector of industry or any industry from this Part, or any section of this Part, or may vary the limit of its application provided under Section 68(1)."

So, it means that the Minister has got power to say that the hon. Katuku, for example, does not have to supply certain information, because it is within this Part of the Bill. It also means that the Minister can actually exempt very many employers. I think this needs to be re-thought of. I have

tremendous respect for the hon. Minister, Dr. Kulundu. I do not expect that he would be the kind of person that will be compromised to exempt particular employers from the provisions of this Part. Today, we have Dr. Kulundu, but tomorrow, we do not know who else will be there. Therefore, I think we need to put in some little bit of flexibility; that the Minister will do this in consultation with some body. He must do this in consultation with some identifiable body, like the Federation of Kenya Employers or even Central Organisation of Trade Unions (COTU) so that when the exemptions are made, even the representatives of workers are aware that, that class of employers or sector - because it says that even a sector of an industry can be exempted by the Minister from the provisions of this Act. It is important that when the Minister exercises that power, he does so after due consultation with some recognisable body. In my view, I would consider that COTU, perhaps the FKE and others in that category would be good organisations with whom the Minister should consult.

Mr. Temporary Deputy Speaker, Sir, I also take issue with the very minimal penalty. I do not mean to have people in jail but if you look at the penalty for failure to comply. Clause 81 says:-
"An employer who contravenes any of the provisions of this Part commits an offence and shall on conviction be liable to a fine not exceeding Kshs100,000 or to imprisonment for a fine not exceeding six months or both."

I can tell you from experience, and Mr. Wetangula also knows it, that this provision in "both" is rarely applied. Certain classes of employers can actually flout the provisions of this part deliberately because a fine of Kshs100,000 may be peanuts to some of them. I appreciate that, perhaps, the Minister and his team meant well. They may have had in mind the likes of Mr. Wetangula as an employer in Sirisia. If he does not comply and he is asked to pay Kshs100,000, that may be too punitive.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Speaker, Sir. I know the young man takes pride in having been my classmate and keeps on referring to me. However, is he in order to put me in the category of small employers when I am, in fact, a major employer in this country?

The Temporary Deputy Speaker (Mr. Poghisio): That is a point of information! You are providing information!

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I think Mr. Moses Masika Wetangula wanted me to know that he is a young man of considerable fortune. That is good information! I believe the taxman would also look at the HANSARD.

(Laughter)

The point I am making is that if you look at that penalty, perhaps, there may be need to moderate. We are talking of a maximum: A fine not exceeding Kshs100,000. Perhaps, because the courts will also look at certain classes of employers, not less than would be--- Not exceeding Kshs100,000.

Mr. Temporary Deputy Speaker, Sir, I am proposing that this limit should be upped so as to force compliance. This is so because in the majority of cases, it is those big time employers who are likely to---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! It is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 9th May, 2007, at 9.00 a.m.

The House rose at 6.30 p.m.