

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 26th April, 2005

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

ORDER OF BUSINESS

Mr. Speaker: Hon. Members, as I had intimated last Thursday, we will begin with Questions by Private Notice.

QUESTIONS BY PRIVATE NOTICE

BANDIT RAID IN ORWA SUB-LOCATION

Mr. Rotino: Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) Is the Minister aware that on 15th April, 2005, bandits from a neighbouring district raided Orwa Sub-location killing a herdsboy and got away with 50 head of cattle?

(b) What steps has the Government instituted in arresting the culprits given that this is not the only incident in the area?

(c) How many animals have been recovered so far?

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

(a) Yes, I am aware that on 15th April, 2005, about 70 cattle rustlers believed to be Turkanas raided Orwa Sub-location and stole 500 head of cattle and not 50 head of cattle. They also shot dead a herdsboy by the name Kangoror Muket Kimeringole aged 16 years.

(b) Security has been intensified in the affected areas. A joint security meeting between the two districts was convened immediately after the incident and both sides agreed to trace and arrest the culprits so that they can be arraigned before court. The area chiefs and assistant chiefs have been involved in the meeting since they know their people better.

(c) Security officers have so far recovered 450 head of cattle and handed them over to their owners and efforts are being made to recover the remaining 50 head of cattle.

Mr. Rotino: Mr. Speaker, Sir, I want to thank the Assistant Minister for, at least, attempting to answer the Question correctly. However, the truth of the matter is that when the incident happened on 15th at 3.00 p.m., the security officers never went to the area. I do not know where they got the figures since they never even visited the scene. Even the body of the boy who was killed was never collected. It was left to rot there. I went there on Sunday and up until now, tension is still very high in the area. When will the Government say the truth? Secondly, when will the 50 animals be recovered?

If we do not recover those animals, tension between the two districts will escalate.

Mr. M. Kariuki: Mr. Speaker, Sir, we are telling the truth and we shall continue to do so. Regarding the 50 animals which have not been recovered, we are seeking the support and co-operation of the local community. We have mobilised chiefs and sub-chief to assist us in arresting the culprits.

Capt. Nakitare: Mr. Speaker, Sir, the escalation of cattle rustling in Trans Nzoia and West Pokot is an issue of a great concern. As I speak now, several people in Kesogon have fled their homes to seek refuge in Trans Nzoia District. In my constituency, women have been raped and livestock has been stolen. What steps is the Government taking to disarm people in Trans Nzoia?

Mr. M. Kariuki: Mr. Speaker, Sir, last week, the Minister issued a Ministerial Statement regarding the operation that is going to be carried out regarding disarmament in Trans Nzoia, West Pokot, Turkana and Samburu districts. We are on course.

Mr. Rotino: Mr. Speaker, Sir, the person who shot the herdsboy is a homeguard from Kainuk area. The name has been given to the security forces because the gun that was used was one of those issued to homeguards in Kainuk.

Could the Assistant Minister ensure that the homeguards in Kainuk are disarmed? This is because they are the ones causing the problem in West Pokot. Could he also ensure that the culprit is arrested since his name has been given to the police?

Mr. M. Kariuki: Mr. Speaker, Sir, I will get the full details from Mr. Rotino. We are not aware who the killer is. Now that we have useful information, we are going to act on it and we shall endeavour to arrest the culprit.

Mr. Speaker: Next Question, Mr. Munya!

MISMANAGEMENT OF MIKINDURI GIRLS SCHOOL

(Mr. Munya) to ask the Minister for Education, Science and Technology:

- (a) Is the Minister aware that Mikinduri Girls Secondary School is facing a major crisis due to mismanagement?
- (b) Is he further aware that the crisis has been created by the Teachers Service Commission's (TSC) failure to act on an inspection report of the Ministry on mismanagement at the school?
- (c) What immediate measures will the Minister take to address the crisis facing the school?

Mr. Speaker: Is Mr. Munya not here? Well, if he is not here, the Question is dropped!

(Question dropped)

DEMOLITION OF HOUSES IN BALOZI ESTATE

Mr. Ndolo: Mr. Speaker, Sir, I beg to ask the Minister for Labour and Human Resource Development, the following Question by Private Notice.

- (a) Could the Minister inform the House the criteria of evicting and demolishing houses in Balози Estate, South B, Nairobi, on 1st March, 2005?
- (b) Is the Minister aware that the affected households were not given notice to vacate the area?
- (c) Who owns the disputed 52 acre piece of land?

(d) Could the Minister consider compensating the people whose houses were demolished?

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

(a) The eviction and demolition of houses in Balozi Estate were effected on 1st April, 2005, and not on 1st March, 2005, through a court order. The ruling by the High Court of Kenya came under Civil Suit No.899 of 2003. The National Social Security Fund (NSSF) had sought the court to declare:-

(i) that the occupation of the land was an act of trespass and the NSSF had the right to repossess it; and,

(ii) that the encroachers be directed to immediately vacate the land, failure to which the NSSF would be at liberty to evict them using lawful means.

On 16th March, 2004, the High Court of Kenya declared the occupation an act of trespass and gave the NSSF the right to repossess its land.

(b) I am not aware. On the contrary, I am aware that the squatters had enough and ample time from the day the decree was issued on 16th March, 2004, to 1st April, 2005, to voluntarily vacate and remove their belongings to avoid unnecessary loss or damage to property.

(c) The NSSF is the owner of the 52 acres of land and has the title deeds for the three parcels of land.

(d) The NSSF cannot consider compensating them because they deliberately broke the law by encroaching private property and disrespecting a court ruling that they leave the land or be evicted.

Mr. Speaker: Mr. Ndolo, were you aware of all those facts? Were you aware that this matter went to the High Court of Kenya which adjudicated on the dispute?

Mr. Ndolo: Thank you, Mr. Speaker, Sir. I was not aware that the High Court of Kenya had given a ruling in favour of the NSSF.

Mr. Speaker: Mr. Ndolo, taking into account the decision of the court as read out by the Assistant Minister, do you really have anything further to add?

Mr. Ndolo: Yes, Mr. Speaker, Sir. I have documents here which show that the residents who were occupying that land---

Mr. Speaker: I am afraid, you cannot produce those documents here! If, indeed, you had those documents and the matter was in court, the correct place you should have taken them was the court.

This House will not sit on appeal on matters decided upon by the courts.

Next Question by Mr. Choge!

CAUSE OF STRIKE BY MAGISTRATES

Mr. Choge: Mr. Speaker, Sir, I beg to ask the Minister for Justice and Constitutional Affairs the following Question by Private Notice.

(a) What was the cause of the recent strike by magistrates?

(b) How many magistrates were suspended/interdicted or sacked?

(c) What measures have been taken to remedy the situation which is adversely affecting the administration of justice in the country?

Mr. Speaker: Anyone here from the Ministry of Justice and Constitutional Affairs? Where is the Minister?

(Mr. Githae entered the Chamber)

Hon. Members: *Ndiyo huyo!*

Mr. Speaker: Order, hon. Members! What is happening to this side of the House? You must understand that this is a respected House.

If you want to heckle, you should get out of the House! We must respect this House.

Mr. Muite: On a point of order, Mr. Speaker, Sir. It is not fair for the Chair to ask for two or three times where the Minister is when the Leader of Government Business is here. He should rise up and respond to the Chair. You have asked many times where the Minister is!

Mr. Speaker: Mr. Muite, you are absolutely right! Next time, I expect to get a response immediately.

Your Excellency the Vice-President and Minister for Home Affairs, would you like to say something?

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, the Assistant Minister walked into the Chamber just as I rose to respond to your question.

(Laughter)

Mr. Speaker: Very well! The Assistant Minister for Justice and Constitutional Affairs, where have you been?

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Mr. Speaker, Sir, first of all, I would like to apologise. I have just been told that we are now starting with Questions by Private Notice.

Mr. Speaker: Where were you on Thursday last week? You are supposed to be in this House to hear my communication!

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Mr. Speaker, Sir, I was here ready with the answer.

Mr. Speaker: Then why did you not listen to what I said on Thursday last week?

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): I apologise, Mr. Speaker, Sir, and I beg to reply.

(a) The genesis of the magistrates' strike were several messages sent through Short Message Service (SMS) from unknown sources asking magistrates to go on strike unless their salaries were increased by 1000 per cent with immediate effect.

(b) Sixteen magistrates were served with letters of interdiction for engaging in the strike.

(c) Three magistrates have now been posted to Machakos and five additional ones to Mombasa. The Judicial Service Commission (JSC) will also conduct interviews at the end of this month to recruit more magistrates.

Mr. Choge: Thank you very much, Mr. Speaker, Sir. The answer the Assistant Minister has given is very contemptuous and does not befit that Ministry. As I speak now, the magistrates in the country are still on a go-slow strike. They do little work for the little pay they get. I asked him to tell this House what led to the magistrates' strike. I did not ask him to tell me the genesis. Genesis and causes are two different words. Could the Assistant Minister tell the House what causes and not the genesis, led to the strike by the magistrates?

Mr. Githae: Mr. Speaker, Sir, the cause of the magistrates' strike were several messages through SMS received from unknown sources asking them to go on strike unless their salaries were increased by 1000 per cent with immediate effect.

Mr. Kagwe: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to impute such stupidity on the part of magistrates, whom we know very well cannot go on strike because of a message sent through SMS?

Mr. Speaker: Mr. Githae, I suppose that the SMS was a mode of communication and not the cause of the magistrates' strike! What was the cause of their strike?

Mr. Githae: Mr. Speaker, Sir, I am surprised that the hon. Member has not listened to the last sentence which says: "unless their salaries were increased by 1000 per cent with immediate effect." That is what the magistrates fought for, and I presume that, that was the cause of the strike.

Mr. Muturi: Thank you, Mr. Speaker, Sir. It is well known that since the purported radical surgery of the Judiciary in 2003, the morale in the Judiciary has been declining. Could the Assistant Minister confirm or deny that the recent appointment of yet another purported committee to investigate allegations of corruption in the Judiciary is the cause of the waning morale in the Judiciary and actually the cause of the go-slow strike by magistrates?

Mr. Githae: Mr. Speaker, Sir, first of all, the magistrates are not on a go-slow strike. If the hon. Member is aware of any magistrate who is on a go-slow strike, he should tell me now and the magistrate will be interdicted. Secondly, the morale of the magistrates is not low.

Mr. Mukiri: On a point of order, Mr. Speaker, Sir. Some of us are lawyers. We practise law in the courts and interact with lawyers and magistrates. It is a fact that the magistrates are on a go-slow strike. Is it in order for the Assistant Minister to say that he is not aware of that?

(Applause)

Mr. Githae: Mr. Speaker, Sir, I repeat, magistrates are not on a go-slow. This can be determined by the number of cases heard and the judgements passed. Just the fact that there was a purge on the Judiciary, it does not necessarily mean that there is low morale. That purge should have happened 40 years ago. In fact, this should be a continuous process. So, the fact that there is another committee which has been established to look into the integrity of officials in the Judiciary has nothing to do with the morale of the Judicial Service Commission (JSC) staff.

Mr. Muite: Mr. Speaker, Sir, the Departmental Committee on Administration of Justice and Legal Affairs recently visited Mombasa and Kwale where we received a lot of information with regard to this issue of magistrates. There is a serious crisis in the Judiciary because people being charged do not even have magistrates to take their pleas. They continue being locked up in police stations. The Minister for Finance said they had approved a 200 per cent increase in salaries. Through you, could the Assistant Minister assure this House that 200 per cent increment will be awarded immediately the striking magistrates are reinstated?

Mr. Githae: Mr. Speaker, Sir, even before the issue of salaries of magistrates was discussed, the Judiciary had prepared its recommendations. This had been approved by the Directorate of Personnel Management (DPM) in the Office of the President. In fact, they had been taken to Treasury for approval. Therefore, probably, the magistrates who may have been incited to go on strike, were not aware of this information. However, I have repeated several times here that we recognize and admit that the salaries being given to magistrates are low. No one is disputing that.

Therefore, everything possible is being done to see that their salaries are reviewed. People should not just go on strike because their salaries are low. Those are issues that are addressed in the normal course of events. So, the proposals have been taken to Treasury. Only Treasury approval is awaited before this information is communicated. I do not want to speculate as to when Treasury will do this, but we have employed---

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

Mr. Speaker: Mr. Sasura, what is it?

Mr. Sasura: Mr. Speaker, Sir, since the Assistant Minister says magistrates are not aware of the 200 per cent salary increment, would I be in order to ask him to send through Short Message Service (SMS) to all magistrates, so that they are aware of it?

(Laughter)

Mr. Githae: Mr. Speaker, Sir, we will be very glad to do so once Treasury has approved the proposal.

Mr. Speaker: Very well!

Hon. Members, let us now move to Ordinary Questions!

ORAL ANSWERS TO QUESTIONS

Question No.205

SUPPLY OF FUEL TO KITHIMANI AND MATUU POLICE STATIONS

Mr. C. Kilonzo asked the Minister of State, Office of the President:-

(a) how much fuel is allocated to Kithimani and Matuu Police Stations in Yatta Constituency;

(b) if he is aware that due to limited fuel supply, cases of thuggery are very high in Yatta; and,

(c) what action he is taking to ensure adequate supply of fuel to these stations.

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

(a) Both Kithimani and Matuu police stations were allocated a total of 12,000 litres of diesel fuel during the current Government Financial Year; 2004/2005.

(b) On the contrary, crime is on a downward trend in the constituency compared to the previous year, 2004. Recent recovery of assorted firearms in the constituency during which many notorious criminals were arrested is testimony to the level of security vigilance in the constituency.

(c) There is a Government wish to increase fuel allocation to each police station to 10,000 litres per year for effective policing, but this is not possible due to budgetary constraints.

However, the Government will continue to make prudent and effective use of the limited resources available to provide the necessary security services.

Mr. C. Kilonzo: Mr. Speaker, Sir, the two police stations cover three constituencies. The actual fuel received by the two stations is 200 litres per station. Sharing this among three constituencies amounts to about 70 litres per day, per police station per constituency. On the other hand, criminals are all over. They do not mind if police vehicles have fuel or not.

Mr. Speaker, Sir, could the Assistant Minister take the issue of supply of fuel to police stations, especially in Yatta Constituency and other police stations in the country more seriously and allocate more funds?

Mr. M. Kariuki: Mr. Speaker, Sir, it is this House that holds the strings to the purse. As soon as we approve our proposed budget for increase in fuel, we shall be home and dry.

Mr. Sambu: Mr. Speaker, Sir, is the Assistant Minister aware that in many police stations, including Kabiyet Police Post in my constituency, when a crime is reported, the inspector in charge will ask the complainant for money contribution before he releases the vehicle to go and pick a suspect? When the suspect also arrives, if he or she wants to be set free, he or she repays back the money that was used to buy fuel.

What action is the Assistant Minister taking on police officers who commit such crimes?

Mr. M. Kariuki: Mr. Speaker, Sir, members of the public are not supposed to be running police stations by providing finances. There is a budget for the police force. Any police officer who

solicits money from a member of the public, that information should be forwarded to us, so that we take appropriate action. In this particular case, the hon. Member is aware of the officer who solicited for money to fuel the vehicle. Mr. Sambu, please, forward the name.

Mr. Gitau: Mr. Speaker, Sir, the issue of insecurity is serious in this country. The Assistant Minister says we have the key to giving them a budget to finance fuel. These Ministers are driving four-litre engine vehicles, heads of Government parastatals are also driving four-wheel vehicles which are petrol guzzlers. Yet, we cannot provide security to our people because of petrol. Could they consider surrendering their vehicles, so that we buy fuel for police vehicles?

Mr. M. Kariuki: Mr. Speaker, Sir, last year, when we were discussing the Finance Bill, an amendment was brought here during the Third Reading. This House prescribed the capacity of vehicles for Ministers, Assistant Ministers and Permanent Secretaries. If there is any evidence that anybody is driving a vehicle above the prescribed capacity, let us have the information. The law is in place.

Mr. Speaker: Very well, Next Question!

Question No.245

VEHICLE ALLOCATION TO
POLICE STATIONS

Mr. Gachagua asked the Minister of State, Office of the President:-

- (a) how many police stations there are in the country and how many vehicles are attached to each of these stations;
- (b) if he is aware that vehicle allocation has been inadequate for patrol and has made maintenance of security virtually non-existent; and,
- (c) what steps he is taking to rectify the problem.

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

(a) There are 341 police stations in the country. The total number of motor vehicles attached to these police stations are 491, while 15 police stations have no motor vehicles. There is a total of 129 unserviceable motor vehicles.

(b) Yes, I am aware that the allocation is inadequate for sufficient and effective patrols within respective police stations. In certain instances, inadequate transport hinders efficient and effective security policing, but this does not mean security is non-existent.

(c) Efforts are being made to source for funds for the purchase of motor vehicles and for repair of the unserviceable ones.

Mr. Gachagua: Mr. Speaker, Sir, the answer by the Assistant Minister is clearly inadequate. On average, a police division with about 20 vehicles receives about Kshs500,000 for three months. A simple calculation will show that, that is merely Kshs30 per day per vehicle. What we are asking is: How can the Assistant Minister justify his claims that they are fighting insecurity with that kind of allocation?

(Applause)

Mr. M. Kariuki: Mr. Speaker, Sir, the average budget per vehicle is 16 litres of fuel per day. We are obviously constrained by the fact that, we want to purchase more motor vehicles for policing. However, that also has its own budgetary implications.

I can assure hon. Members that, as we come to the next Budget, we shall be asking for more

resources to enable us to do more effective policing.

Mr. Bifwoli: Mr. Speaker, Sir, you have heard the Assistant Minister say that there are 15 police stations without vehicles. Malakisi Police Station, which is on the border of Kenya and Uganda, is one of them. We are at a risk of being attacked. What plans is he making to give Malakisi Police Station vehicles, so that Kenyans could be safe from aggressors from Uganda?

Mr. M. Kariuki: Mr. Speaker, Sir, I do not have the figures for Malakisi Police Station. But I have figures for western Kenya. I am aware that we have about 23 police stations, ten police posts and 39 patrol bases. The serviceable number of vehicles in that province is 22.

Mr. Bifwoli: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Not during Question Time!

Mr. Bifwoli: I want to inform the Assistant Minister---

Mr. Speaker: Sorry! There is no such procedure in the House!

Mr. Bifwoli: Mr. Speaker, Sir, he does not know about Malakisi Police Station.

Mr. Speaker: Order, Mr. Bifwoli!

(Mr. Midiwo stood up in his place)

Mr. Midiwo, which is your constituency?

Mr. Midiwo: Gem Constituency, Mr. Speaker, Sir.

Mr. Speaker: The hon. Member for Gem Constituency! Proceed!

Mr. Midiwo: Mr. Speaker, Sir, I think this country has a lot of security problems. The least the Assistant Minister can do for this country is to give an assurance to Kenyans from the Floor of this House that the so-called police reforms will be implemented, and not just the casual approach as his attitude seems to depict?

Mr. Speaker, Sir, does the so-called reforms include simple solutions? If there are fuel problems, why can our police officers not patrol using mopeds and motorcycles? Are those part of your reforms, Mr. Assistant Minister?

Mr. M. Kariuki: Mr. Speaker, Sir, the reforms are on course. Two weeks ago, we launched a strategic plan for the Administration Police (AP). Tomorrow, we are rolling out our police reform programme. His Excellency the President is going to launch the first community policing project at Ruai. Hon. Members of this House are welcome.

Mr. Speaker: Last question! The hon. Member for Mathira!

Mr. Gachagua: Mr. Speaker, Sir, I think the Assistant Minister is taking this issue very lightly. Recently, we approved million of shillings for the purchase of police vehicles. The requisition from the Office of the President is inadequate, even when they bring it to this House. It is a matter of the Ministry not knowing what it is doing. I would like the Assistant Minister to assure this House that adequate provisions will be sought in the next Budget. The police are still soliciting money from members of public to fuel their vehicles. That is the truth. We know it because we are on the ground.

Mr. M. Kariuki: Mr. Speaker, Sir, in the current financial year, there was no allocation to purchase motor vehicles. I can assure this House that, in the coming financial year, we will make substantial requests to this House.

Mr. Speaker: Very well. Next Question! The hon. Member for Muhoroni Constituency!

Question No.012

IMPROVEMENT OF BUSIA AIRSTRIP

Prof. Olweny asked the Minister for Roads and Public Works what he has done to improve the condition of Busia Airstrip since the plane crash in January, 2003.

The Assistant Minister for Roads and Public Works (Eng. Toro): Mr. Speaker, Sir, I beg to reply.

Since the Busia Airstrip plane crash, the following works have been executed:-

The murrum runway has been graded, the shaping of the runway shoulders is complete to allow drainage of storm water, the aircraft parking area has been graded, the bushes and shrubs have been cleared and the construction of chain-link on the angle irons is complete.

Prof. Olweny: Mr. Speaker, Sir, could the Assistant Minister inform the House how much was spent in that work and who did it? Who was contracted?

Eng. Toro: Mr. Speaker, Sir, after the plane crash, the Ministry sent Kshs500,000 to start the work. That was in [Eng. Toro]

the year 2003. I would also like to bring to the attention of the House the fact that, the maintenance of the airstrip was under the Ministry of Transport. At one time, it was under the Office of the President. However, when the docket of maintenance of airstrips was given back to the Ministry of Roads and Public Works, it allocated Kshs3.5 million to that airstrip. The money was spent on the works that I have stated.

Mr. Speaker, Sir, I admit that there was a complaint as to the nature of the work that was carried out. The Minister has already sent a team to find out whether that money was spent properly or not.

Mr. Speaker: I think you are too tall! Can you come to this side? The hon. Member for---

(Loud consultations)

Order, Members! I want to address Prof. Mango but, what is her constituency? Is it Bumula?

An hon. Member: Butula Constituency!

Mr. Speaker: The hon. Member for Butula Constituency!

Prof. Mango: Mr. Speaker, Sir, much of the land around the airstrip has been grabbed. Could the Assistant Minister tell this House whether he will repossess the land?

Eng. Toro: Mr. Speaker, Sir, I did not answer one question. The works were carried out by our staff in the Ministry.

Mr. Speaker, Sir, on the issue of the grabbed land, the concern has already been raised. It is the duty of the Minister for Lands and Housing to repossess the grabbed land. My Ministry has no power to repossess land.

Dr. Godana: Mr. Speaker, Sir, may I ask the Assistant Minister to direct all District Works Officers (DWO) to put wind socks at all public airstrips in the country, even if it means using the Constituency Development Fund (CDF)? He should direct that, by a certain date, wind socks should be placed at each and every public airstrip in this country.

Eng. Toro: Mr. Speaker, Sir, we will do that in conjunction with the Kenya Airports Authority (KAA). They are the ones who do traffic control.

Mr. Speaker: Very well! I will now refer to the hon. Member for Muhoroni Constituency to ask a final question! Prof. Olweny, do you want to give the chance to any particular hon. Member?

Prof. Olweny: Mr. Speaker, Sir, could you allow me to donate the chance to the hon. Member for Amagoro Constituency?

Mr. Speaker: Very well. Order, hon. Members! Last time, I mentioned this and I think you are noticing what is going on. The Chair wants to discourage personalisation of debate.

I would like to begin, personally, by referring to hon. Members through their constituencies. I

encourage all other hon. Members to address one another in that way.

The hon. Member for Amagoro Constituency, please, proceed!

Mr. Ojaamong: Mr. Speaker, Sir, the airstrip is in my constituency, Amagoro, which is in Teso District. In all our meetings with the District Works Officer, I have never been informed if money has ever come to my constituency for this purpose. To confirm this, recently, I was with the hon. Minister at a rally there. We also assessed the work which has been done and found out that it is shoddy.

I want to ask the Minister to tell us which officer was given the work. Is it a District Works Officer (DWO) from Busia or Bungoma?

Eng. Toro: Mr. Speaker, Sir, as I said, the Minister has already sent a team of engineers to investigate why the work was done in a shoddy manner. The DWO Busia, is responsible for the airstrip maintenance.

Question No.023

IMPLEMENTATION OF ROADS
2000 PROGRAMME IN KARACHUONYO

Dr. Awiti asked the Minister for Roads and Public Works:-

- (a) when the implementation of Roads 2000 Network Improvement Programme in Rachuonyo District funded by SIDA will start;
- (b) what the level of investment is; and,
- (c) which particular roads will be covered under the programme.

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, I wish to reply.

(a) The implementation of the Roads 2000 Programme in Nyanza Province will commence in July 2005 and will run for four years. The programme will cover 11 districts including Rachuonyo District.

(b) The SIDA will commit Swedish Kronars 130 million, which is approximately Kshs1.3 billion, as donor contribution while the Kenyan Government will contribute Kshs500 million for the programme in Nyanza Province. The level of investment involved in Rachuonyo District will be to the tune of Kshs210 million in four years.

(c) The programme will cover all types of roads. Seventy five per cent of Rachuonyo Roads network of about 700 kilometres will be improved. I have a list of all those roads. They are 91 in total and I would like to lay it on the Table.

Dr. Awiti: Thank you, Mr. Speaker, Sir. I am happy to see the Minister going into details. But in my third question, I wanted the Minister to name the roads.

Mr. Speaker: Order, hon. Member for Karachunyo! The Minister has done more than that. He has already laid on the Table, a list which you can take and study. Do you have any other relevant question?

Dr. Awiti: Thank you, for that Mr. Speaker, Sir. I hope that this time round, the Treasury has also countersigned this loan, so that in July, we will not be told that the money is not available.

Mr. Speaker: There was no question; it is a hope.

(Laughter)

Mr. Arungah: Mr. Speaker, Sir, without begrudging the people of Nyanza District, I would like to know how the decision to spend Kshs1.8 billion in Nyanza was arrived at when where I come from, Khwisero Constituency, there is no inch of tarmac road.

(Applause)

Mr. Raila: Mr. Speaker, Sir, the Roads 2000 Programme is not for tarmacking roads. It is basically for ungravelled roads. It is a programme which is funded by a consortium of donors. Donors usually fund areas in terms of kilometres. We have the ADB in Central Province, DANIDA in Coast Province, EU in Eastern Province, World Bank and KWP in Rift Valley Province. We are inviting another donor to take up roads in Western Province.

For the hon. Member's information, we are including Ebiango - Ekero Road in his Khwisero Constituency in this financial year programme.

Dr. Godana: Mr. Speaker, Sir, if you look at the list of beneficiaries of this programme, with the exception of the road to Doldol, there is not one road out of the 91 in any of the ASAL districts. What was the criteria by which they decided to discriminate against such a large part of the country?

Mr. Raila: Mr. Speaker, Sir, the hon. Member from North Horr which borders Ethiopia would do us justice if he read the heading of this document. It reads: "Prioritisation of Roads in Rachuonyo District." Rachuonyo District included in the the Arid and Semi Arid Lands (ASAL).

Mr. Speaker: Where is the hon. Member for Rachuonyo? Ask the last question.

Dr. Awiti: Mr. Speaker, Sir, I would like to donate it to Mr. Omingo.

Mr. Omingo: Mr. Speaker, Sir, I commend the Minister's efforts in improving the road network in the country. The Roads 2000 Programme, which I believe Gucha District will benefit from, was supposed to take off last year in October. Could the Minister say if he is finding it difficult to implement the programme? We know very well that a shilling at hand today is not worth the same tomorrow.

Mr. Raila: Mr. Speaker, Sir, the implementation of this programme is completely out of the control of the Government. It is donor-funded. But for the hon. Member's information, we signed an agreement early February this year. We then moved very fast in carrying out survey including in Gucha District. The implementation will begin on the 1st of July, this year.

Prof. Oniang'o: Mr. Speaker, Sir, I would like to ask Question No.005 and inform you that I do not have a written response.

Question No.005

NATIONAL SCHOOLS INTAKE FOR 2005

Prof. Oniang'o asked the Minister for Education, Science and Technology:-

- (a) whether he could lay on the Table the list of all national secondary schools in Kenya;
- (b) what were the cut-off points of each national school in the country for the year 2005 selection; and,
- (c) if he could lay on the Table the national schools intake for 2005 to reflect district contribution.

The Assistant Minister for Education, Science and Technology (Mrs. Mugo): Mr. Speaker, Sir, I have a copy of the response for the hon. Member. I thought she had another one. I beg to reply.

(a) The following are the national secondary schools in Kenya:- Alliance High School, Lenana School, Mang'u High School--- Should I lay them on the Table?

Mr. Speaker: How many are they?

The Assistant Minister for Education, Science and Technology (Mrs. Mugo): Mr. Speaker, Sir, they are about 20.

Mr. Speaker: Lay them on the Table.

The Assistant Minister for Education, Science Technology (Mrs. Mugo): Mr. Speaker, Sir, I am waiting for your ruling. I was saying; we have Mang'u High School, Maseno School, Moi Forces Academy, Nairobi, Nairobi School, Starehe Boys' Centre and School, Nakuru High School, Utumishi Academy, Alliance Girls High School, Kenya High School, Limuru Girls High School, Loreto High School, Maryhill Girls High School, Moi Forces School, Lanet, Moi Girls School Eldoret and Starehe Girls High School. That is the list I have.

(b) The minimum marks for each school based on the district quota distribution was as follows. For Alliance High School the minimal joining marks are 346. Lenana School---

Mr. Speaker: How long will you take?

The Assistant Minister for Education, Science and Technology (Mrs. Mugo): I will lay the list on the Table.

Mr. Speaker: It may help the House if you told us the highest and the lowest mark.

The Assistant Minister for Education, Science and Technology (Mrs. Mugo): Mr. Speaker, Sir, this would come in the answer I am about to give. The minimum mark stated above varies depending on districts overall performance and quota allocations to each school. The minimum mark varies from year to year for each district still depending on the performance of the students in each district that year. The minimum mark is also referred to as the cut-off mark. As I said, it depends on the performance of the children in that particular year.

Prof. Oniang'o: Mr. Speaker, Sir, this is an issue of equity and being able to tap the top brains in this country since they exist everywhere. The population has increased. The number of national schools have remained the same and we have top performing students who are unable to gain admission into national schools. Could the Assistant Minister tell us what plans they have to increase the number of top national schools?

Mrs. Mugo: Mr. Speaker, Sir, as it was explained last week when the Sessional Paper on Education, Training and Research was being discussed, my colleague, hon. Dr. Mwiria, said that we have plans for building more schools. Indeed, we have funds from the African Development Bank (ADB) and Oil Producing and Exporting Countries (OPEC) who have supported that idea.

In each district, we will be able to construct one model high school and four model primary schools. That is only from the OPEC countries. Then on top of that, we intend to construct schools as well as improving the existing ones from the ADB grant.

Mr. Leshore: Mr. Speaker, Sir, from the Assistant Minister's reply, there is no single school from the pastoral areas. What happened to Garba Tula High School which used to be a national school? Secondly, when was it de-registered and why?

Mrs. Mugo: Mr. Speaker, Sir, I will check on that since I do not have the answer right now. If it used to be a national school, I will check on why it is no longer one. However, let me add that we have a very expanded programme of building schools in the North Eastern region. I know your region is very well covered under this programme. We have put a lot of resources in Arid and Semi-Arid Lands (ASAL).

Mr. Mwandawiro: Bw. Spika, kwanza, napongeza Wizara kwa kuwa wamepata fedha za kujenga na kukarabati shule mpya katika nchi hii. Je, huo mpango wa kujenga shule na kukarabati zingine utaanza lini haswa?

Mrs. Mugo: Mr. Speaker, Sir, we have already signed the agreement with OPEC and indeed even some money has gone to some schools. We have started construction and will intensify this programme after July in the new financial year. However, to a certain extent, it is still going on.

Prof. Oniang'o: Mr. Speaker, Sir, can I donate my last question to hon. Sambu?

Mr. Speaker: It is okay.

Mr. Sambu: Mr. Speaker, Sir, in fact, I am going to ask a question which will help ladies. There is a girl in my constituency who scored 357 marks in KCPE and was not admitted to any school and yet there are students with much lower marks from outside Nandi District who were admitted to Kapsabet Girls, Kapsabet Boys and Chepterit Girls. Why is there blatant discrimination against girls as exhibited in the case of this girl with 357 marks who was not admitted to a good school like Kapsabet Girls or Chepterit Girls?

Mrs. Mugo: Mr. Speaker, Sir, there is absolutely no discrimination against students when we admit them and certainly not the girls because I pay special attention to them. However, we admit students according to their preferences. That is one of the criteria. It depends on what school the girl had chosen to be admitted to.

If you give me her details, I will check on why she was not admitted to the school she had chosen.

Mr. Speaker: The next Question by Mr. Kombe is deferred. Next Question by Dr. Ali!

*(Mr. Kombe walked into
the Chamber)*

Order! I am amazed. There was an hon. Member who came to see me asking me to defer this Question on behalf of Mr. Kombe because he was unable to get a flight. How did you come?

(Laughter)

Who was that hon. Member who told me that hon. Kombe was going to be late?

Mr. Ngozi: Mr. Speaker, Sir, it was me, the hon. Member for Kinango.

Mr. Speaker: Very well. We can understand. Hon. Members, for better management of time for the sake of the House, the next time you send an hon. Member to ask me to defer a Question, you must speak with him or her so that I can arrange for management of time. I was under the impression that I was going to be left only with these two Questions. It is already 3.30 p.m. Anyhow, go ahead!

Mr. Kombe: Thank you, Mr. Speaker, Sir. I am sorry for that. I was worried I was not going to make it but thank God, I have made it. However, I beg to ask Question No.217

Question No.217

EMPLOYEES OF KENYA PORTS AUTHORITY

Mr. Kombe asked the Minister for Transport:-

- (a) whether he could table a list of all permanent, contracted and temporary employees of the Kenya Ports Authority (KPA);
- (b) what criteria is used in employing workers at KPA; and,
- (c) what qualifications are required for one to be appointed Managing Director of KPA.

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

(a) I beg to table here a 162 page list of all the current permanent employees of the KPA which comprises of 5,377 staff members. At any one time, up to 1,500 casuals may be employed by the port.

(b) Whenever a vacancy in the established positions arise, internal and external advertisements are undertaken to fill the positions. This is done through various panels. Senior position vacancies are filled through professional contracted companies to undertake the selection process and recommend the best for the final interviews to the management, or the board goes through competitive tendering.

(c) All executives of parastatals including those of the KPA are currently employed under the current guidelines on terms and conditions of service for state corporations which indicate that the CEO should be recruited from competitive markets in a verifiable recruitment procedure to be approved by the board.

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

Mr. Kombe: Mr. Speaker, Sir, how long does it take for a temporary employee to be taken on permanent or contract basis? Some of them have worked for the Kenya Ports Authority (KPA) for over ten years.

Mr. Ligale: Mr. Speaker, Sir, it entirely depends on when vacancies do occur in the establishment.

Mr. Mwanzia: Mr. Speaker, Sir, I have heard the Assistant Minister say that the appointment of the Managing Director of KPA is supposed to be done through competitive tendering or advertisement. Has this actually ever been done? If not, why has this requirement never been followed?

Mr. Ligale: Mr. Speaker, Sir, I did refer to the current situation. We now have guidelines that specify how Chief Executives should be employed. In the past, some other methods may have been used. But we are lucky that we have somebody who is very well qualified and is performing well.

Mr. Speaker: Order, hon. Members! That is the end of Question Time. I am afraid, I have three Questions I must defer to Thursday. These are: Question by the Member of Parliament for Wajir North Constituency, Question by the Member of Parliament for Kuresoi Constituency and Question by the Member of Parliament for Subukia Constituency. These Questions will take priority on Thursday.

(Loud consultations)

Order! The Minister of State, Office of the President, in charge of National Security, has asked that the Questions for tomorrow morning be deferred to afternoon. I think there are two Questions slated for tomorrow morning. Could I see the list, please, so that we do not inconvenience the hon. Members?

*(Mr. Speaker consulted
with the Clerk)*

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

Mr. Speaker: Order! Will you sit down, please!

Question No.168 by the Member of Parliament for Kerugoya-Kutus Constituency and Question No.285 by the Member of Parliament for Ugenya Constituency are deferred to tomorrow afternoon.

Question No.077

LACK OF MEDICAL FACILITIES
IN WAJIR NORTH

(Question deferred)

Question No.051

SUPPLY OF ELECTRICITY TO
KURESOI CENTRE

(Question deferred)

Question No.029

DISMISSAL OF MR. GICHOBE WAGURA
BY TWAJENGA HOLDINGS

(Question deferred)

Mr. Speaker: I have two Assistant Ministers who are supposed to give Ministerial Statements; the Assistant Minister for Lands and Housing and the Assistant Minister, Office of the President, in charge of Special Programmes.

Proceed, Mr. Mungatana!

MINISTERIAL STATEMENTS

SUB-DIVISION OF AGRICULTURAL LAND

The Assistant Minister for Lands and Housing (Mr. Mungatana): Mr. Speaker, Sir, I have a brief Ministerial Statement on uneconomic division and sub-division of agricultural land in the country.

Agriculture is the backbone of the Kenyan economy, supporting over 99 per cent of the population in food and other economic activities. Over the years, the productivity of agricultural land has been [**The Assistant Minister for Lands and Housing**] compromised by wanton sub-divisions into small uneconomic sizes, thereby resulting into food deficits, environmental degradation and loss of such lands to other users. While this issue is being addressed through the National Land Policy Formulation Process, it has become imperative to have urgent intervention to arrest this alarming situation.

Under the circumstances, the Ministry shall no longer allow sub-division of the agricultural and ranch land into small uneconomical sizes. Noting the central role the agricultural production plays in the national development, the Government remains committed to reviving the agricultural sector. We must all understand and place a lot of emphasis on the agricultural productivity of the land, which is the ultimate way to alleviate poverty facing our people. I, therefore, earnestly appeal to hon. Members to support this Government policy which will ensure that sub-division of agricultural land does not result into uneconomic sizes.

Meanwhile, I shall be making regulations under the Land Control Act Cap.302 to limit the sub-division of agricultural land into minimum sizes of one hectare or 2.5 acres.

Thank you.

Mr. Speaker: Did you say you had three Ministerial Statements?

The Assistant Minister for Lands and Housing (Mr. Mungatana): No, Mr. Speaker, Sir. I had only one Ministerial Statement.

Mr. Speaker: Order, hon. Members! I will give time for very short clarifications to be sought by the Member of Parliament for Mosop Constituency and the Member of Parliament for Machakos Town Constituency.

Mr. Sambu: Mr. Speaker, Sir, I will be brief. Could the Assistant Minister clarify what happens in areas where land was trust land and it has been sub-divided into freehold land? Here is an old man with five acres, for example, and he wants to transfer to each of his sons an acre of land. Will this not inhibit the customary way of giving out land in the families and hence, cause conflicts? What will the Assistant Minister do about this?

Mr. Speaker: Member of Parliament for Machakos Town Constituency could you, please, seek your clarification, or is that what you wanted to ask?

Mr. Mwanzia: Mr. Speaker, Sir, that is what I wanted to ask.

Mr. Speaker: Very well. If you are happy, let me get the other by the Member of Parliament for Wundanyi Constituency.

Mr. Mwandawiro: Asante, Bw. Spika. Hii sera ambayo inalenga kuchunga mashamba yasisigawanywe katika vipande vidogo vidogo ni nzuri sana. Hata hivyo, Bw. Waziri Msaidizi anafikiria sera hii inaweza kutekelezwa bila utafiti kamili unaohusu sera ya umiliki wa mashamba? Kwa mfano, huko Wilaya ya Taita Taveta, pale Milimani, kuna watu wanomiliki shamba ekari mbili au tatu na wana watoto ambao wanarithi mashamba hayo. Je, watu kama hawa watasimamishwa namna gani kuyagawa mashamba yao?

The Assistant Minister for Lands and Housing (Mr. Mungatana): Mr. Speaker, Sir, I am aware that, in the past, there have been attempts to control the sub-division of land, especially in agricultural productive areas. That is the reason why our Ministry has come up with that policy to ensure food security.

Mr. Speaker, Sir, I would like to address the question of customary sub-division of land as suggested by the hon. Member for Mosop. We will not approve those sub-divisions. We want those lands to be managed as a unit. We do not want to go below 2.5 acres. In the event that such lands are brought to the land control boards, we have issued instructions that they should not be approved.

Secondly, on the other clarification that was sought, I would like to confirm [**The Assistant Minister for Lands and Housing**] that, in conjunction with the Ministry of Agriculture, we are in the process of identifying the potential for various areas. For areas with very high potential, we will only accept a minimum of 2.5 acres. But for range lands and other low productive areas, we shall be a lot more stricter. We shall take into account the ecological zones as stated by the hon. Member.

Mr. Speaker: Very well! Actually, there is nothing new with what the Assistant Minister for Lands and Housing is saying. It has always been the law since Independence that, land shall not be sub-divided into uneconomical units. There is nothing new really.

Let us proceed!

FAMINE RELIEF DISTRIBUTION AND STATUS IN TURKANA DISTRICT

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, I would like to issue a Ministerial Statement concerning famine relief distribution and status in Turkana District as requested by the hon. Member for Turkana Central.

Mr. Speaker, Sir, the drought scenario developed in Turkana District in March, 2004. That was about four months earlier than the declaration of drought as a national disaster and a state of emergency by His Excellency the President. Therefore, emergency response began in the district earlier than other affected districts in the country. During that time, the Government signed a memorandum of understanding with World Vision International to undertake food relief operation in ten central and southern divisions of the district, and Oxfam GB to do the same in the four northern divisions. That, effectively covered 14 out of 17 divisions in the entire district. A total of 130,000 beneficiaries were

covered.

The agreement required that the Government contributes all the food and the agencies pay for the associated logistics cost. In that regard, the Government made available food and finances totalling to Kshs171,056,125, the details of which are tabled with this document. After his Excellency the President declared famine a national disaster on 14th July, 2004, the district was put under a fully-fledged emergency operation in which the United Nations---

(Loud consultations)

Mr. Speaker: Order!

Mr. Rotino: On a point of order, Mr. Speaker, Sir. As much as we want to hear the Assistant Minister, there are loud consultations in the House!

Mr. Speaker: That is right! Order! That corner! The hon. Assistant Minister is informing the House and the country of the steps he is taking to avert a famine disaster in some parts of this country, particularly Turkana! Could we, please, give him the audience? There are many hon. Members who would like to hear what he is saying! That problem is real! It is not imaginary.

Proceed, Mr. Assistant Minister!

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Could I be in order to ask the Assistant Minister to issue the Statement when there is a Member of Parliament from Turkana here? From the look of things, there is none here!

Mr. Speaker: Order, Mr. Angwenyi! It is the business of every hon. Member, including those from Turkana, to be in the House. Their absence will not stop the House from transacting business.

Proceed!

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, after His Excellency the President declared famine a national disaster on 14th July, 2004, the district was put under a full-fledged emergency operation in which the United Nations World Food Programme, through the same lead agencies - that is World Vision and Oxfam GB - distributed food targeting 258,335 people, which is equivalent to about 51 per cent of the district population. An equivalent of Kshs2.3 billion has been given so far. That is up to March. We have also intervened to fill in the gaps with about Kshs119,443,010. The details of that will be tabled with this document.

Mr. Speaker, Sir, Turkana District has also been a beneficiary of direct Kenya donations through the Kenya Red Cross totalling to Kshs145,000. Again, the details of that will be tabled with these documents. Therefore, the total expenditure on famine intervention is a net amount of Kshs2,590,684,135.

After the short rains of 2004, an assessment of the drought status was done. The realisation is that Turkana District shall remain under emergency operation up to 30th August, 2005 and, therefore, will be one of the districts to benefit from the emergency operation programme. May I, therefore, take this opportunity to assure this House that the plight of Turkana District is very well known to this Ministry and that, all effort is being made to ensure that relief operations continue.

Mr. Speaker: I will give an opportunity to two Members to seek clarification. I will begin with the Member---

(Loud consultations)

Order! Order, Mr. Mutiso! I think we need to communicate. We really need to communicate! Can we keep our consultations low? I will begin with hon. Member for Kilome! Then, the hon. Member for Baringo East! I will finish with the hon. Member for Sigor.

Mr. J.M. Mutiso: Mr. Speaker, Sir, the famine intervention policy of the Government has

been lopsided. The problem of famine is not only confined to Turkana District. The Government has spent enormous amounts of money as the Assistant has alluded to. It has spent over Kshs2.5 billion on famine relief alone. Notwithstanding that, I would like to request the Ministry concerned to consider other interventionary measures such as provision of water and other utilities to those areas because it appears that famine is a perpetual problem in this country.

Mr. Kamama: Mr. Speaker, Sir, first of all, on this subject, I want to thank all hon. Members for donating over Kshs12 million to the national kitty on famine. That was done under your Chairmanship, Mr. Speaker, Sir. The people of North Rift have appreciated that. I would like to know whether the Assistant Minister is aware that the long rains have not started in the whole of North Rift. That means all citizens in that part of the country will remain on relief food permanently, until the situation returns to normal. Does he have plans to feed those people up to December?

Mr. Rotino: Mr. Speaker, Sir, I do not come from the southern part of Turkana, but I know that Turkanas have been fed all through, ever since I was a young boy. What policy does the Government have to help Turkana's stop relying on food relief all the time? We should not spend Kshs2.5 billion distributing food yet there are rivers in Turkana that are permanent. River Turkwel flows into Lake Turkana. Could we not use this water to irrigate the lower part of Turkwel which is in the southern part of Turkana, so that we get out of the perpetual drought?

Secondly, could we also consider feeding part of Sigor Constituency which borders Turkana? You cannot distribute relief food to Turkana and yet Pokots are also not getting food.

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, I appreciate the comments of the hon. Member. My Ministry is addressing the welfare of all districts equally. I do not think there is lopsidedness in supporting Turkana. Eastern Province has equally received a lot of money from my Ministry. I accept the suggestion that more efforts should be put on development of irrigation mechanisms and other manoeuvres to try and abort these kind of situations. There is an Inter-Ministerial--

The Minister for Trade and Industry (Dr. Kituyi): On a point of information, Mr. Speaker, Sir. I would like to inform the hon. Assistant Minister that one of the most successful small-scale irrigation programme in Kenya was in Katilu in southern Turkana. It was destroyed because of incessant livestock raids by their Pokot neighbours.

(Laughter)

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, I would like to thank the Minister who has given me a valid point on my third response.

Mr. Rotino: On a point of order, Mr. Speaker, Sir. Is the Minister in order to allege that the Pokots destroyed Katilu Irrigation Scheme, yet Turkanas also destroyed Amolem which is in West Pokot?

Mr. Speaker: Order! Order! Sometimes I get distressed. I hope the House shares my distress that there are inter-tribal plunders around this country which somehow we leaders seem to take some delight in. It is distressing! I hope some day it comes to an end. I do not think this is a game of poker. Playing around with human lives is not a game of poker. I hope the leaders of the affected areas will seek God's salvation to show them that it is evil to perpetuate murder of fellow citizens.

Proceed!

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, I could not have summarised it in a better way. It is even more difficult to supply donor food to these communities because of their continuous wrangling. Anyway, I am able, in my programme to continue giving food to these communities up to August this year. I cannot predict what will happen after that because the resources are limited. But I pray that they stop the rubbish.

Mr. Speaker: The what?

The Assistant Minister, Office of the President (Dr. Machage): I said that they should stop the wrangles.

Mr. Bahari: Mr. Speaker, Sir, famine is a very serious matter and in the past we have lost lives in Turkana. The Assistant Minister has been informed by hon. Members here that it is likely that there will be no rains until December. This means that even if it rains, the effect of drought will go beyond that to May next year.

Is the Assistant Minister in order to tell us that he has no plans whatsoever to provide food to Kenyans?

Mr. Speaker: Order, hon. Members! As early as February or January the Meteorological Department warned the country that there will be deficiency of rain across the land. So, it is not something totally unexpected. At least, most people like us have read it. Have you not read about it, Dr. Machage?

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, I am very much well informed about that. The programme was supposed to end in February this year, but I extended it to August this year. We are receiving information and statistics on the next programme. I have not said that we will not address the issue after the current programme of up to August is stopped. We will continuously serve Kenyans.

Mr. Speaker, Sir, however, my appeal to the communities is to truly stop unnecessary fighting and more so when we have drought at the corner. That is enhancing a problem that is already at an emergency level.

Mr. Speaker: Very well! That is the end of non-business. Now we come to business of the House.

As I said we want to finish with all the Ministerial Statements. We hope to finish by next week. We hope that by next week at 3.30 p.m., we will begin business of the House. We are actually behind schedule in transacting any useful business.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Last week I asked for a Ministerial Statement from the Ministry of Trade and Industry and they promised to give it here.

Could the Minister confirm whether he will give the Ministerial Statement today, tomorrow or the day after?

Mr. Speaker: Mr. Angwenyi, you are taking away time for the business of the House unnecessarily. You had already sought the indulgence of the Chair and the Chair agreed to have it done tomorrow morning. Why are you repeating?

Next Order!

BILLS

First Readings

THE WITNESS PROTECTION BILL

THE INTERNATIONAL CRIMES BILL

THE NATIONAL MUSEUMS AND
HERITAGE (AMENDMENT) BILL

*(Orders for First Readings read - Read the
First Time - Ordered to be referred to the*

*Relevant Departmental Committees)***MOTIONS**ADOPTION OF REPORT ON APPOINTMENT OF
DR. J.K. ROTICH AS KACC DEPUTY DIRECTOR

THAT, this House adopts the Report of the Departmental Committee on Administration of Justice and Legal Affairs on the appointment of Dr. J.K. Rotich as Deputy Director of Kenya Anti-Corruption Commission Authority laid on the Table of the House on 22nd March, 2005.

*(The Chairman of the Departmental Committee on Administration
of Justice and Legal Affairs
(Mr. Muite) on 20.4.2005)*

*(Resumption of Debate
interrupted on 21.4.2005)*

Mr. Speaker: Prof. Kibwana was on the Floor. Is he here?

An hon. Member: He finished!

Mr. Speaker: Well, if he finished, it is fine. Mr. M. Kariuki!

The Assistant Minister, Office of the President (Mr. M. Kariuki): Thank you, Mr. Speaker, Sir.

On 5th August, 2004, this House deliberated the recommendations of the Advisory Board. During that discussion, and after the House went into Division, you made a recommendation to the House, which was referred to the Committee on Administration of Justice and Legal Affairs. I recall you stated thus:-

"It (the Committee) should first of all find out what way the House will be satisfied that a person is fit for appointment to an office before we give a stamp of approval. If we make a mistake, as is likely to be made, either by the House or by any other person or authority, what is the avenue for redress and how will we go about it?"

Mr. Muite: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House that you referred this matter to the Committee on Administration of Justice and Legal Affairs after the Division, when, according to the record of this House, this matter was referred to the Committee following a Question by Mr. Bett as to why Dr. Rotich had not been gazetted; a Question which came long after the Division?

(Applause)

Mr. Speaker: Order! Order, all of you! I think the main issue is not how the matter went to the Departmental Committee. What is important is the terms of reference by the House, through the Speaker, to that Committee. Because the mandate of the Committee only relates to what was referred to it and it can only operate within that mandate, not more.

So, proceed, Mr. M. Kariuki!

The Assistant Minister, Office of the President (Mr. M. Kariuki): Thank you, Mr. Speaker, Sir. You have underscored the important point that I was making. I was going through the mandate. You said:-

"Secondly, if we make a mistake, as is likely to be made either by the House or by any other person or authority, what is the avenue for redress and how will we go about it? On the basis, I will ask the Committee to proceed. Let us have answers to the future avenues."

Mr. Speaker, Sir, at the end of the deliberations by this Committee, all they have come up with are recommendations, that this House does adopt the Report, where a vote was already cast as the first recommendation. The second recommendation is that His Excellency the President does appoint Dr. Rotich, a matter that is, in my view, *fantas officio*; this House had conducted and finished its business.

The third recommendation is about the Tribunal. Once the Report had been received from the Tribunal, this House should consider that particular Report.

Mr. Speaker, Sir, if you look at the recommendations *vis-a-vis* the terms of reference of the Committee, you will realise that the terms of reference have not been responded to. The terms of reference of the Committee were to ensure that in future instances, not necessarily about the Kenya Anti-Corruption Act, but in all other future instances where there will be vetting by this House, what avenues will be there to be followed by this particular House. That aspect has not been answered.

On the contrary, what we have before us here is a recommendation to re-visit what the House had already discussed, finished and gone to Division about. So, the Committee, in the preamble of its Report, refers to its general jurisdiction, under the Standing Orders, but the general terms of the Committee's jurisdiction under the Standing Orders of the House do not apply in this case. The terms of reference were very specific, coming from the Chair, directing: "Go and do A, B, C and advise this House on the way forward."

Mr. Speaker, Sir, what we have before us, by way of this Report, is actually a legal opinion, which tends to indict very seriously the Attorney-General and His Excellency the President. So, I will not hesitate on my part to say that the Report before the House has not answered to the request made by this House. What we have before us is outside the mandate that was donated by this particular House to the Committee. I would have expected on my part that this Committee was going to come up with some proposed legislation; that, this is the way the House will be dealing with vetting, and these are the rules that can ensure that we can conduct our business in a legal and formal manner, without having to experience hitches between His Excellency the President and the functions of this House. Mr. Speaker, Sir, I have looked at the Report, and I am really surprised. There is a lot of law in it, but the Committee proceeded on the basis that, where there is the word "shall" then it means "mandatory". Nothing can be far from the truth. There are documented legal authorities on interpretation of the word "shall". When it comes to interpretation of the Constitution, the rules that apply to the interpretation of the Constitution are distinctly different from the rules that apply in the interpretation of a statute. This Committee does not make a difference between the interpretation of the Constitution's provisions and the interpretation of the statutory provisions. When it comes to issues of interpreting the Constitution, we have to adopt a liberal and broader approach that addresses the burning issues of the day for the country. The Constitution is a dynamic document that is supposed to resolve crises in a country at any one time. There should not be a restrictive meaning assigned to the word "shall".

Mr. Speaker, Sir, a very interesting case came before the High Court in 1984. It related to the interpretation of the rules of this House. That is the case; "The Republic against the Commissioner of Prisons, *ex parte* Kamonje Wachira, George Anyona and Koigi wa Wamwere". That is a standard authority today on the word "shall". The word "shall" can have two meanings, depending on the context. The first meaning is that it can be mandatory. That is what most people know, but there is a second meaning to the word "shall" and that is, it can be directory.

When the meaning is directory, then the authority exercising the power has a discretion. When

the meaning is mandatory, that authority has no discretion. This Committee, with respect, never drew this important distinction.

Mr. Speaker, Sir, if you look at the Kenya Anti-Corruption Act, as drawn, one has to look at the context. We are trying to address the issue of outstanding honesty and integrity on the part of the appointee. Once the House has finished its business, it makes a recommendation to His Excellency the President for his approval. The words "shall approve" is what is in context in this particular case.

Mr. Speaker, Sir, it is not lost on us that we have a Presidential system in this country and that the President exercises Executive authority. That is an important consideration in the interpretation of those provisions.

The question is, why would the House call upon the President to approve when it can do all the business here and finish? Why pass over the recommendation of the House to the President? A person exercising executive authority as President cannot possibly be a rubberstamp; that all he has to do on behalf of this House is "shall approve" and, therefore, we demand nothing less. I think that defeats the entire concept of an Executive President in a presidential system.

Mr. Speaker, Sir, it is also important in construing the meaning of the word "shall" to bear one important and cardinal principle of interpretation. That is, we must avoid a situation where the interpretation leads to absurdity and offends common sense. If we were to say that the President's work is only to sign once this House has completed its task, then it does not make sense about what kind of a President we have. If we had a ceremonial President, I imagine that would be a different situation where he has nothing else but to sign.

Mr. Speaker, Sir, it is important to underscore that the important matter that we have to weigh in our minds as we discuss the appointment is honesty and integrity. We have been told before this House that the President had information, before he could sign, that Dr. Rotich was, in fact, involved in acts which bordered on impropriety. Therefore, he had to exercise caution. Without rejecting entirely the appointment of Dr. Rotich, he had to defer it. That is what he has done; he has not rejected it.

Mr. Speaker, Sir, I think the President has a duty to the country to ensure that the law is complied to the letter. If we are looking for people of integrity and outstanding honesty, I think the President cannot divest himself of that responsibility by turning out to be a rubberstamp for decisions of this particular House.

There is also the principle of checks and balances between the Executive and the Legislature. The two organs have to exercise checks and balances. While this House may make a decision, the President is not precluded from re-examining the decision of this House within certain parameters that are set out by the law. I think what the President did was, in fact, sound wisdom, in my view.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, the Committee has raised the question of a tribunal. Clearly, simple reading of the Act shows that the tribunal's jurisdiction will only be invoked for conduct of a member once that member has assumed office. The tribunal has no jurisdiction to move the clock backward on the conduct of a member before the appointment.

Mr. Deputy Speaker, Sir, so, I think it is misleading to say that Dr. Rotich's name should have been forwarded to a tribunal, because he is not yet appointed. Therefore, the tribunal would not have jurisdiction for conduct that precedes the date of appointment. So, the tribunal's function is to look at the conduct of a serving member; whether they conduct themselves in a manner that lives up to the expectation of their oath to be honest and be people of integrity. So, the tribunal issue does not arise.

Mr. Deputy Speaker, Sir, the President has a moral responsibility to the country, over and above the constitutional and other legal responsibilities. When it comes to the question of honesty and integrity, these are moral issues, over and above their legal elements. If there is a slight whiff before the President that so-and-so is suspected to be corrupt, he is supposed to exercise his discretion to ensure that he does not put the country into jeopardy. I think what he did in this particular case was to remove any cloud of suspicion that Dr. Rotich was a person who was wanting as far as honesty and integrity are concerned.

Mr. Deputy Speaker, Sir, I support the Attorney-General. I think he gave sound wisdom in this particular case. He has become the subject of indictment in this particular Report; that he failed in his duty to advise the President. Section 26 of the Constitution of Kenya clearly gives the Attorney-General some insulation from attack in as far as his exercise of advice to the Government and the President is concerned. No power or authority should interfere with the exercise of that discretion and advice that the Attorney-General is supposed to give to the President. The indictment that you find in this Report, calling into question the wisdom of the Attorney-General as to his ability to advise the President is clearly *ultra vires* Section 26 of the Constitution.

Mr. Deputy Speaker, Sir, if we were to look closely at this Report, I think this is the closest we have come to a vote of no confidence in the President. Clearly, the Report underscores that the President acted unconstitutionally and that he has no regard for important constitutional provisions. That is a serious indictment and must be treated with the seriousness it deserves. This House in its wisdom did, in fact, find that Dr. Rotich did not warrant to be appointed. Nobody can re-open the deliberations of this House on a matter that was exhaustively discussed and concluded. So, what the Report is purporting to tell us is to review our decision.

Mr. Kajwang: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead the House by saying that this House found, as a matter of fact, that Dr. Rotich was not suitable for appointment, when this House actually voted for all the directors?

(Applause)

The Assistant Minister, Office of the President (Mr. M. Kariuki): That is nothing new. When this House voted for all the directors, it means that all the directors were fit to hold office, except Dr. Rotich whose name had been left out. I think that was the conclusion of the Division that we went into.

Hon. Members: No! No!

Mr. Deputy Speaker: Order! I need some clarification. Mr. M. Kariuki says that the House voted that Dr. Rotich was not suitable. Mr. Kajwang is saying the House agreed on all the directors of the Commission. What is the position, Mr. M. Kariuki?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, I stand to be corrected. The events took place on the 5th of August, 2004 and my recollection is that this House exhaustively discussed the list. There were concerns expressed during the debate on the conduct of Dr. Rotich.

Mr. Deputy Speaker: Order! What was the decision?

The Assistant Minister, Office of the President (Mr. M. Kariuki): I stand to be guided by the Chair.

Mr. Deputy Speaker: Fine, continue. I will look at it.

Mr. Bifwoli: On a point of order, Mr. Deputy Speaker, Sir. Is the Member in order to claim that we never approved the five names, when, in fact, when we were debating the issue here, nobody touched on Dr. Rotich? In fact, we approved all the five directors! Is the hon. Member in order to mislead the House?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, I thought you had made your ruling to the effect that you would cross-check the record. Well, I am human and if my memory fails me, that is quite in order.

But the point is that the information we have is that when the matter went to the President for approval, there was evidence before him which could not permit him to approve the appointment of Dr. Rotich. I think that is why the matter was subsequently referred here for subsequent discussion. I am not sure about the chain of events.

Mr. Deputy Speaker: Let me just correct the position. The House approved all the names, including Dr. Rotich. What brought about this debate is the question that was asked about Dr. Rotich having not been confirmed. That is very clear.

Proceed on that understanding.

(Applause)

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, the important thing is that---

Mr. Kajwang: On a point of order, Mr. Deputy Speaker, Sir. The hon. Member who is on his feet has just said that when the names were forwarded to the President, there was some information before him that Dr. Rotich was not suitable for the post. Now that we do not have access to that information and it cannot be laid on the Table, how can we verify the veracity of that information?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, I believe the hon. Member has read this Report. It is very clear in this Report that the controversy was about whether what was before the President could be proved or not. However, the Committees's Report went into great lengths and even reported something to the effect that there is information to that regard. All the Committee is saying in this Report is that this is a process that the President could not have stopped. Appointment is a process and the issue of integrity is a different matter all together. I think that is what the Report is concerned about.

Mr. Deputy Speaker, Sir, the legal opinion that is raised by the Committee - basically this Report is about an opinion of law which is faulty - falls short of making recommendations to this House with regard to the way we shall proceed in the future when we enact another legislation which empowers Parliament to vet appointments. The question, then, is: How do we go about this to avoid a future crisis? That question has not been addressed and, therefore, in my view, the Report of the Committee collapses in its face simply because it does not live up to the mandate that was spelt out.

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

Mr. Deputy Speaker: Mr. Kariuki, do you want to be informed?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, there is information in this Report. Mr. Bifwoli was one of the Members of the Committee. This is the time for hon. Members in this House to raise their comments. Hon. Members of the Committee already put their opinion in the Report.

Mr. Deputy Speaker: Mr. M. Kariuki, the hon. Member wants to inform you; if you do not want to be informed, just say so.

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, I do not want his information.

Mr. Deputy Speaker: Mr. Bifwoli, Mr. Kariuki does not want your information. What is it Mr. Mukiri?

Mr. Mukiri: On a point of order, Mr. Deputy Speaker, Sir. If you read the Report that is being discussed now, you will find that it is submitted in two parts. The first part of the Report is about Dr. Rotich. The second part of the Report, which the Assistant Minister is talking about, will come

later on page 7 of the Report. Is he then in order to say that the Report is not exhaustive when the Report before the House has explained everything on page 7?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, I started by going through the terms of reference of the Committee. At no stage was the Committee asked by this House to reopen the issue of Dr. Rotich at all. The terms of reference were very clear. They were about the way forward, that is, the future. So, what we have before the House is a Report on Dr. Rotich which amounts to reopening of the discussion that previously was before this House. In fact, it amounts to asking this House to review the previous discussion on this matter. So, the reopening of the issue of Dr. Rotich was not in the terms of reference. If this Report is on Dr. Rotich, it is flawed because it does not address itself to the first or second terms of reference. In that regard--

Mr. Bifwoli: On a point of order, Mr. Deputy Speaker, Sir. The hon. Member is misleading the House. If you read the terms of reference as shown in the Report, they state that:

"On 7th October, 2004 hon. Franklin Bett brought a Question by Private Notice seeking an explanation from the Minister--"

So, the Speaker, referred this matter to the Committee. The hon. Member is, therefore, misleading the House by saying that we do not have the terms of reference. This matter arose from the Chair.

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, I do sympathise with the hon. Member. I read the terms of reference as they appear on page 4 of the Report. They read in part:

"To find out what ways a House will be satisfied that a person is fit for appointment to an office before the House gives approval."

The second term of reference says that if we make a mistake; this could be by the House or any other authority, what is the avenue for redress and how will we go about it? The second term of reference required the Committee to obtain answers about the future avenues. Future avenues are not about Dr. Rotich. Immediately this Report is about Dr. Rotich, then the Committee misses the point. We are looking for a Report that will be able to lead this House into the future. If the Committee faces a crisis like the one we appear to have, how do we proceed as a House? What avenues are there for us? That is exactly what I asked. I expected the Committee to come up with possible legislation to fortify the House against the reversal of a decision. That attempt has not been made and the entire Report before the House is about Dr. Rotich, how the President behaved and what he should do about Dr. Rotich. That is outside the terms of reference and I think to that extent, this Report should be rejected by this House. The Report has not addressed the request that this House made to it. On the contrary, they have gone on a roller coaster trying to do other things that they were not called upon to address.

Mr. Deputy Speaker, Sir, on that note, I urge this House to reject this Report. This Committee should be called upon to revisit the terms of reference and address itself to the issues posed by the Speaker of this House.

Mr. M. Kilonzo: Thank you, Mr. Deputy Speaker, Sir. It seems to me that this House is facing a seminal question that is hardly being addressed. The seminal question is: What is this House about? What role does this House have in legislation? What role does the President have after this House has played its role in enacting legislation? It seems to me that if the Government is operating on the basis of advice by contributions like that of the last speaker, then it is going to create a crisis of monumental proportions.

(Applause)

Mr. Deputy Speaker, Sir, you heard my learned friend, whom I hold in high regard, drag the House through the question of the interpretation of the word "shall" as though we can start a nursery school, secondary school or a university here to start analyzing the meaning of the word "shall". The

last time I checked; and I am very familiar with the case involving the Commissioner of Police and my good friend, hon. Wamwere, the issues that were before the court cannot possibly be the issues before us here. The question is: When a sovereign Parliament has passed and made a decision which is then referred to the President, in a structure such as ours, can, in fact, the President dismantle that decision in a manner that has been done with regard to Dr. Rotich? I dare say, "No." I say so with the conviction that the advice that has been given to the President that he should start analyzing whether the word "shall" has four or five letters or whether it is directory or mandatory, illustrates a Government that has no respect for democracy, the sovereignty of Parliament and the decisions of this honourable Chamber.

Mr. Deputy Speaker, Sir, Section 23 of the Constitution describes Executive authority. The Executive authority is again qualified by Section 23(1). Indeed, this Committee picked the point clearly. Now we are being told by the Assistant Minister, in broad daylight, that the Committee did not address its terms of reference and that what they should have done is to tell us and give us answers about the future avenues. I beg to say that, that question has been answered.

Mr. Deputy Speaker, Sir, the question is simple. Once this House passes a law, it is incumbent upon the President to utilise the machinery in the Constitution to differ with that law. Once Parliament has approved the appointment of somebody to a parastatal or the Civil Service, the President does not have a role to play. He must approve that appointment. If that person has violated any law known to the President, the avenue available to the President is to invoke that law and cause that person to be subjected to that law.

Mr. Deputy Speaker, Sir, we have been treated to information that there was evidence available to the President on the appointment of Dr. Rotich. A Minister has said that we have a Presidential system of Government, but the President of this Republic remains an hon. Member of Parliament by right and by the operation of the Constitution. That means that if the President chooses to ignore a decision of this House on the appointment of somebody under the Act that we are debating, then that President is attempting to have a second bite on the contribution of debates, legislations and formulation of methods of governing this country unconstitutionally.

Mr. Deputy Speaker, Sir, therefore, I beg to support the position taken by this Committee, that the President has violated the Constitution and the law, and the sooner he accepts this, the better.

Mr. Deputy Speaker, Sir, when we debated the issue of Dr. Rotich, there was an attempt to isolate the name of the Executive Director. That is what went to Division. In fact, I remember that no hon. Member referred to Dr. Rotich in the contributions towards the approval of his appointment. The Committee has told us that there are insurmountable flaws in the current Constitution arising from a misunderstanding of that Constitution by no-one else, than His Excellency the President himself. Therefore, the memorandum that he has sent back to this House and the fact that we are debating this Motion, confirm to me without a doubt, that the time for amending the current Constitution has come.

Once Kenyans elect hon. Members, their expectation is that those hon. Members have all the ability required, and they are entitled to make mistakes. I remember the Chair made an order and I will read it on page 4. It reads: "We should first of all find out ways the House will be satisfied that a person is fit for appointment to an office before we give our thump of approval". The current Constitution has answered that question emphatically. The Committee has also answered that question emphatically. It has said that it will satisfy itself after debating the issue, exhausting the machinery of debate and passing either a Motion or a law on the matter. Secondly, if we make a mistake, as it is likely to be made, either by the House or by any other person or authority, what is the avenue for redress and how will we go about it?

Mr. Deputy Speaker, Sir, again, the Committee has answered that question. It has said that it is not Parliament which has made a mistake, but the person who has made a mistake is His Excellency the President, a man I hold in high regard. The time for him to acknowledge that he has made a

mistake is now.

Mr. Deputy Speaker, Sir, if his Ministers are advising him as we have seen, there is enormous potential in this country for other people. The Chairman of this Committee is no less than---

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the nominated hon. Member to divert debate on the Report of the Departmental Committee on Administration of Justice and Legal Affairs? He is discussing the personal conduct of the President, which is against our Standing Order No.73. He has said that the President has made a mistake and that this is the time to correct that mistake. That amounts to discussing the personal conduct of the President.

Mr. M. Kilonzo: Mr. Deputy Speaker, Sir, I was reading the direction of the Chair. Since this intervention is intended to waste my time, I will not bother to respond to it because the Chair has already ruled on that. Secondly, if we make a mistake, this House includes the President. For the benefit of those who do not know, Kenya's National Assembly is defined as Parliament plus the President himself. Therefore, if this House makes a mistake, that includes the President. I am not discussing the conduct of the President when I say that he has made a mistake. I mean that very much, that he has made a mistake.

The claim that has been made that we have a Presidential system of Government cannot stand. For the benefit of those who do not know, in a Presidential system of Government, hon. Members of the Cabinet do not sit in the Legislature. They stay out. They stay with the President in the Executive. When we debated these issues giving rise to this Motion, Ministers were here. They contributed and we voted with them. We also voted with them on the divisions that we took. It is assumed that His Excellency the President, being the hon. Member for Othaya, was absent. He could have come and contributed to the debate. The issue before us is simple and as I said from the beginning, is seminal. For those who do not want to see the writing on the wall, it is about time for them to buy glasses or go and see an eye specialist. The issue here is not Dr. Rotich. I do not see it as Dr. Rotich. I see it as affecting the country as part of the proposals that have been given by everybody in this country in the new Constitution.

Mr. Deputy Speaker, Sir, if you look back at the Report of the Inter-Parties Parliamentary Group (IPPG) of 1997, you will see that the mood of this country has been that the authority that the President enjoys under Section 23 should be reduced. It is out of the IPPG that legislations like the one which gave rise to this Motion, have been created. The idea is that Parliament should be given an element of contribution to what the President does. For the very first time, we, as Parliament, debated the appointment of several people. We objected the appointment of some of them, but we did not object the appointment of Dr. Rotich. We passed the Motion and decided that these people should be appointed. The President, in his own wisdom, subject to the advice he had been given, decided not to swear in Dr. Rotich. What other recourse does this country has against a President who chooses to behave in such a manner? My argument is that we have to pass this Motion, even if the Government is going to put it on the shelves. We have to pass this Motion, so that we start communicating with those people who want to be Presidents of this country. They need to know that time has come for Presidents to respect not only this Chamber, but also the wishes of the people, because they are the ones who have elected us to be in this House - Of course, I am a nominated hon. Member.

Mr. Deputy Speaker, Sir, let me address the issue of new evidence. The Minister has said that there was information and evidence before the President. Hon. Kajwang' was very kind to ask: What opportunity did Parliament have to discuss and evaluate that evidence before the President? Is the evidence here before us today? Is the President being fair by telling the representatives of the people that he has evidence, which he will not give to them, but he will not respect their decision regarding Dr. Rotich? This illustrates the seminality; the very concrete nature of a national crisis that is going to be created by this attitude to legislations.

Allow me to say that the decision on Dr. Rotich is hypocritical. It is hypocritical because even before Dr. Rotich's issue came up, we have had instances whereby certain hon. Members of the Government have been mentioned, sometimes in scandalous events. The President himself has insisted that there ought to be evidence produced in proof of allegations against those people. I do not need to go into the details.

If the President himself can ask for evidence, why is it that his Ministers did not bring the evidence against Dr. Rotich before this House, so that we could have taken it into account in making the decision that we made? It must be understood very clearly that Mr. M. Kilonzo is not supporting the appointment of corrupt, inefficient or unqualified people to Government positions.

I am totally opposed to the the idea of hiring people who do not meet the minimum criteria that this country deserves at this time in its history. I will always oppose the idea of appointing people to satisfy either ethnic, religious or other short-term consideration.

Mr. Deputy Speaker, Sir, two wrongs do not make a right. When Parliament speaks, we want the country to say: "Yes, our Parliament has spoken". So, with the act of this Committee in making the recommendations that have already been referred and averred to, we are reasserting that authority that Parliament should have; that, the Committee recommends that the President appoints Dr. J. Rotich as required by the Kenya Anti-Corruption Commission Act.

Once the President appoints Dr. Rotich, we will not tie his hands as to what other evidence he may have, because we are satisfied.

As I speak to you, Mr. Deputy Speaker, Sir, I speak with confidence that, in front of this House, there is no material evidence against Dr. Rotich, unless you are discriminating him on question of tribe, religion, gender or on any other question. Where is the evidence? To make matters worse, when this Committee was sitting under the chair of my good friend, Senior Counsel hon. Muite, a man of distinguished ability in this country; a man who has distinguished himself as a lawyer and a person who, in fact, supports the Government; what evidence was tabled before that Committee suggesting that the President has any discretion other than to appoint Dr. Rotich after he was voted in by this House? That is a rhetorical question but, fortunately, hon. Muite is just staring at me, meaning that there was no evidence! Therefore, I dare say that--

Capt. Nakitare: On a point of order, Mr. Deputy Speaker, Sir. You have heard the hon. Member refer to hon. Muite as being in the Committee, yet I was on the Floor when hon. Muite categorically denied that he was in that Committee. Is he in order to mislead this House?

(Loud consultations)

Mr. Deputy Speaker: Order! It seems like Capt. Nakitare did not get what hon. M. Kilonzo was alluding to; he was alluding to the Committee that prepared the Report that is under discussion, and not the other committee.

Mr. M. Kilonzo: Thank you, Mr. Deputy Speaker, Sir. Let me repeat what I was saying. If there is any person who understands the evaluation of evidence in Kenya, one of them is hon. Muite. If there is anybody who understands the Evidence Act or if there is anybody in this country who would be able to stand up and say: "This is a bad law" or "This is a good law", I would recommend to His Excellency the President to listen to hon. Muite, because it is His Excellency the President who, in the first ever historical appointment of senior counsel for this country appointed hon. Muite as a senior counsel. Was that appointment in idleness? Was it not intended that, when hon. Muite speaks on law, his words should be taken seriously? In fact, with utmost respect to the Minister for Justice and Constitutional Affairs and my learned friend, the Assistant Minister, they are not senior counsel!

(Applause)

You do realize that it is His Excellency the President who appoints senior counsel and, therefore, it is not discrimination as the two are just not qualified compared to hon. Muite!

The time to give credit where credit is due has come. The third recommendation says, and I am saying this with utmost humility; "The Committee recommends that, once appointed, a tribunal be set up to investigate the allegations made against Dr. Rotich, subsequent to his recruitment by the Advisory Board and approval by Parliament". What reason on earth would a Cabinet that cares for the interests of this country have to advise the President to reject such a recommendation? As I have said earlier, if you look at this Report, it bears the signature of hon. Muite.

Mr. Wamwere: (Inaudible)

Mr. M. Kilonzo: In conclusion, I will try to answer my friend. This is the time to address the issues affecting our country soberly, and the National Rainbow Coalition, NARC, the party in power, is forfeiting an opportunity that they will never get again. That opportunity is to run the country in an orderly fashion so that, when we criticize, you must listen to what we are criticizing because we love this country and also, because of the experience that we have gathered and garnered at the expense of the public; and that experience is being used by people like hon. Muite in his recommendations, who as I have said earlier, supports the Government.

The fourth recommendation is: "The Committee further recommends that the report of the tribunal be implemented". Once again, who set up this tribunal? This tribunal was set up by an Act of Parliament that we, ourselves passed. So, as I speak to you, no evidence has been tendered to that tribunal to suggest that the tribunal has acted irregularly.

In fact, it embarrasses me to say this; the Departmental Committee on Administration of Justice and Legal Affairs summoned the Minister for Justice and Constitutional Affairs; they sought a meeting with him and what did he do? He refused to attend the meeting. Since this Departmental Committee on Administration of Justice and Legal Affairs is our committee, I urge this House to take this issue extremely seriously. What else did they do? They sought audience with the Attorney-General, the man who says, with utmost respect, that the President is not a rubber stamp. They sought audience with him, and I suspect that they wanted to find out where this stamp was made from, so that they could make recommendations to this House in an orderly fashion so that we can understand why the Cabinet advised the President to violate the law and the Constitution.

Once again, the Committee said that the Attorney-General was reportedly away and, once again, those very senior officers of the Government who would have participated in law formulation and would have helped this House to understand what made the President to do what he did refused as it were, and did not find it fit to meet the Committee.

It is very late in the day for the Government to send its Ministers here today to say: "We oppose this Motion" because the time to educate the minds of the Members of the Departmental Committee on Administration of Justice and Legal Affairs has come and gone, and they refused to take that opportunity. In law, we say that they are guilty of laches. They have waived their right to be heard; they have waived their right to come here and start passing derogatory remarks against the Departmental Committee on Administration of Justice and Legal Affairs that is looking for the way out, because the way out is this: We want to tell the current President, the one who will come after him and the one after that, that when Parliament passes a Motion or a law the way we did, he has an obligation and, indeed, a moral and constitutional obligation to follow that law, and if he knows something better, to bring it back for amendment. But not to slap Parliament on its face, which is what the President is doing.

Mr. Deputy Speaker, Sir, I again conclude by saying that, if there was ever a case for the desire for either an Act of Parliament on appointments--- But I know that some people like Mr. Raila will oppose me because they are opposed to the implementation of the Bomas Draft in piecemeal. If

there was ever a time when Parliament should understand how it would be vetting people seeking high office, because we want judges, permanent secretaries and all these people heading parastatals to be vetted, so that you can reduce the stress that Ministers are having when they are facing incompetent people who were appointed on nepotism and tribal grounds; we want to create a transparent and effective system which will offer political predictability in this country. Right now, we are suffering from the most political unpredictability in the Continent of Africa.

This will ensure that when we appoint these people, we know there is a structure to be followed. I dare say that a case has been made for the new Constitution; the Bomas proposals or even sooner, if my learned friend, the Minister for Justice and Constitutional Affairs deemed fit for a law to be made pending that so that we know how these appointments are made. However, we will never pass a law here which says that we can appoint Dr. Rotich in Parliament and then the President refuses to confirm his appointment. I do not think that there is anybody who wants to take a bet like that.

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

Mr. G.G. Kariuki: Mr. Deputy Speaker, Sir, we have a very serious issue in front of us and if we are not careful, we will be judged by this nation fairly or wrongly. This august House is supposed to be a house of elders where even the youngest are elders. We should, therefore, avoid political emotions or opportunities to make political speeches in a matter like this. We have various fora where we can do that. I know it is painful for the House to be told by the President that what we did was wrong. It could also be very painful for him to hear that Parliament has also rejected his wishes.

The most learned hon. Member, Mr. M. Kilonzo, should be in a position to advise this Parliament without being emotional about what has happened and let this House truly and correctly understand that there has been a problem. This mistake was done by the Government itself, especially the Minister for Justice and Constitutional Affairs and as such I would have expected that the Minister would have come here and apologised for having misadvised the President.

(Applause)

That way, we would have found a way forward but just to come and pretend that nothing has happened, - Ministers are behaving the same way - it is not fair. We need to be given our due respect by the Government in this House because we have the same capacity to deal with issues.

I want to touch on the terms of reference that were given to this Committee. The Committee went outside its terms of reference and dragged the name of Dr. Rotich into all this. We all remember that when we were arguing about the composition of the entire Commission from the Director downwards, we did so for a long time and we were forced to go into Division. At that time, the Government had all the machinery to know whether what we were doing was right or wrong. It should, therefore, have investigated these people before their names were presented to this House. However, there was a political urge of some kind because we were being told that we must pass that Motion. Now, it has become a quagmire. Where do we go from here? We have to understand that we are dealing with a very serious issue touching on the Executive and the Legislature. It is not a light matter. We know that quite a number of Bills have been returned to this House by the President. We should have the machinery to investigate every person who is recommended for appointment by this House. We are asking the Head of State to appoint Dr. Rotich but subject him to further investigation by some other agency. What does it mean in terms of logic and intelligence? What logic is there to appoint a person and then start investigating him? The fact remains that the gentleman we are talking about is due for investigations but this House does not want to see it that way. It is not an issue of municipal lawyers like Mr. M. Kilonzo or Mr. Muite. It is an issue of Parliament. There is no legal matter in this case because it is clear in the guidelines that were issued by the Speaker. However, we want to pretend that something new has happened. There is nothing that has transpired in terms of

clarity and the truth.

Mr. Deputy Speaker, Sir, we have to examine this matter with sober mind and ask ourselves: What did we do? Who made us commit that mistake? That is the point we should raise. After that, like the Speaker said, the matter should be sent back to the Departmental Committee on Administration of Justice and Legal Affairs, which is chaired by Mr. Muite. It was expected that Mr. Muite and his Committee would not reduce themselves to discussing personality. They were requested to provide suggestions in case similar mistakes are committed in future. However, they just narrowed their minds into the appointment of Dr. Rotich. Is that what a Committee is expected to do? This House is fully represented by that Committee. It is important for it to be criticised and be reminded that they overstepped their mandate. This matter needs to be looked at with totally sober minds.

Mr. Deputy Speaker, Sir, the law is faulty and that is what Messrs. Muite and M. Kilonzo should be saying. It is not clear and we passed it here. This House should blame itself for having passed a faulty law. The Advisory Board is appointed by law just to receive applications, interview personalities and forward their names to this House. The interviewing body can also be competent in terms of investigations. Where Parliament is required to pass a law, recommend or vet someone, it is the most serious matter and we always should be guided by law. We should, first of all, look at the origin of the problem. It is from our own laws that we recommend names of individuals to Parliament, and then there is an appointing body. The procedure should have been the other way round. The Board should interview the individuals they want and forward the names to the President. The President will then refer the matter to Parliament for vetting. That is how it should have been. However, all the lawyers we have here are engaged in politics and that is why they do not guide the House. The two lawyers, called Chief Counsel--

(Laughter)

They could be senior or chief - because they are head of other counsel. This should have been the position. That is why they were given that mandate by the President to think as elderly men and women and not to be involved in cheap politics. You cannot have your cake and eat it! If you were given that position, you have to behave honourably because you are above other lawyers in terms of recognition. Is that what we are experiencing now? I like the proposals made by Mr. M. Kilonzo and his tone. However, the most unfortunate thing this afternoon is that he has talked like a politician from Machakos District. We should be extremely careful when we deal with matters of this nation. Parliament should not usurp the power of the Executive because this is very clear in the Constitution.

Mr. Deputy Speaker, Sir, if Mr. M. Kilonzo was the President of this country and this House asked him to appoint a known thief or criminal, and I am not saying that Dr. Rotich is a thief or a criminal, will he appoint him just because of the fear of Parliament or his tribe? Our Government and especially, the Ministers should not be politicised in future instead of advising the President.

I would like to propose that when the Government Responder stands to reply, he should, first of all, apologise to the House for forwarding the name of Dr. Rotich when they had information about his past conduct. These are our concern.

The Anti-Corruption and the Economic Crimes Act which will be brought to the House for debate faces the same problem. It is as if the Ministers knew what they were doing when they asked us to support the Anti-Corruption and Economic Crimes Bill. This is because they published a Bill which was passed and yet they knew that it was a toothless law. They also knew that the law would not affect those who were accused of stealing from the Government.

I think we are in a big problem. Therefore, I appeal to hon. Members in this House to think about this matter soberly and understand that this problem emanates from us because we passed this law.

Mr. Deputy Speaker, Sir, I beg to oppose this Motion.

Mr. Kajwang: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to add my voice to the sentiments made by many of my colleagues who have contributed to this Motion.

When the President gave his acceptance Speech, he said one thing which was music to my ears at that time. He said that: "This country will be ruled by the rule of law; and that there will be no roadside declarations." Everybody feels nice when the President says that the country will be ruled by the rule of law because people know where to seek redress if he does not follow it.

At that time the President was talking about the Constitution, and I am sure he was saying that he will obey it. The President also talked about other Acts of Parliament which we sometimes call the statutes. I think he also talked about certain binding judgements of courts of competent jurisdictions. So, everybody was cheerful and happy when the President said that this country will be governed by the rule of law. This is because we were coming from a regime, which according to us, was ruling by the thumb.

Mr. Deputy Speaker, Sir, with the wisdom of the hindsight, I remember when the former President wanted to break the law, he would first amend it and then apply it. If the former President wanted to declare this country a one party state, he asked Mr. Njonjo to bring a Motion before this House and Mr. Kibaki would second it.

(Applause)

The former President ruled the country by the rule of law. That was harsh and bad for the country, but it was lawful. The terms of reference in this Motion are very simple; it is one sentence. The question which has brought us here is that the President has disregarded the law which is clear. It says:-

"An Advisory Board will nominate, bring to Parliament to approve and take to the President to appoint---"

This is not something which is complicated. The President was not given any discretion. If Mr. Murungi thinks that there was any discretion there, there was none. In fact, the word "shall" there meant "mandatory". The President had no discretion. The question which is bothering us is: "What do we do when the President disregards the law?" I think that is what Mr. Muite is asking. What should Parliament and the country do when the President disregards the law? We have elected him with a massive majority vote and danced when he was crowned the President. We have given him the good faith that this country can give anybody.

Mr. Deputy Speaker, Sir, lwhat do we do when the same person, we have given such faith, breaks the law? Do we scream or riot? What does the Cabinet want us to do when the President disregards the law?

(Applause)

This is a unique law because it was made to check the President and the Executive. This is because corruption is the use of public office for private gain. The people who hold public office are the President, his Cabinet and officers who are appointed to the Civil Service. So, this law is unique. That is why it was not brought to this House by the Government.

Mr. Deputy Speaker, Sir, in fact, it was Mr. Kombo together with Mr. Murungi who moved a Motion in this House. The two hon. Members were Members of the Anti-Corruption Committee which went to Korea, South Africa and Colombia to seek views and wasted our money. When the law was made, we made it deliberate that the President will not have a hand in determining who will be appointed the Chief Executive of the Kenya Anti-Corruption Commission (KACC). This is because if he had a hand in that appointment, he would appoint his friend, who will not check him. That is the

origin and the basis of this law. If you give the President the power and discretion to say that although you have taken these names to him, he does not like so-and-so, then he will appoint whoever he wants. So, you will not check him. When did some of these young Ministers, who are very enthusiastic, start advising the President upside down?

(Laughter)

What has the President done now? The President is in contempt of Parliament. This is a serious charge.

The Minister for Education, Science and Technology (Prof. Saitoti): On a point of order, Mr. Deputy Speaker, Sir. The hon. Member is clearly out of order. He is talking about the conduct of the President which cannot be done without bringing a substantive Motion before this House.

Mr. Kajwang: Mr. Deputy Speaker, Sir, there is already a Motion in this House.

Mr. Deputy Speaker: I think that matter was raised the other day. So, all I am advising hon. Members to do is to confine themselves to the Motion before the House.

Proceed, Mr. Kajwang!

Mr. Kajwang: Mr. Deputy Speaker, Sir, I am really trying to be within the four corners of this Motion. The four corners of this Motion are that this House recommended five names to be appointed to the Kenya Anti-Corruption Commission Authority (KACCA). But we were very unhappy with one of the names.

Mr. Deputy Speaker, Sir, however, this is what Mr. Murungi then speaking to this House said about Dr. Rotich. It is contained in the HANSARD of 22nd July, 2004. It says:

"Mr. Speaker, Sir, I was saying that Dr. Rotich is very qualified for this position because he has worked previously as the Assistant Director of KACCA. At one time, he acted as the Director of KACCA. So, his qualifications are not in doubt."

These were the words that came from Mr. Murungi; "the Minister for Injustice" on the Floor of the House when we opposed the appointment of the Director of KACCA. After supporting a Motion here, it is not just for him to tell the President that---

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to use insulting language in this House which is against our Standing Orders by referring to Mr. Murungi as "the Minister for Injustice"? The correct title is Minister for Justice and Constitutional Affairs.

Mr. Deputy Speaker: Mr. Kajwang, you are completely out of order! Will you withdraw and apologise?

Mr. Kajwang: Mr. Deputy Speaker, Sir, I apologise very profusely, but the Minister is sometimes very unjust!

(Laughter)

Why do I say he is sometimes unjust? He says, although we did what we did lawfully and took the names to the President, which he had to appoint--- In his contribution the other day, he said that the President was acting in public good when he refused to appoint Dr. Rotich. Now, what is this so-called, "public good" and "public interest"? When I was at the School of Law, they taught us that public policy, like public interest, is an unruly horse. This is because you do not know where that horse can take you. When you say things which are so compact; those which have no meaning, then they can take you anywhere. Now, when you talk of public good, who is the custodian of it in this country other than the Parliament of the Republic of Kenya of which the President is an hon. Member? As some hon. Members said, Parliament is the National Assembly plus the President. So, who is the

custodian of public good? Who knows what is in public interest? Is it this House or is it the President excluding, the House?

Mr. Deputy Speaker, Sir, it is sad that the Minister for Justice and Constitutional Affairs can justify his argument on something very spurious. He says that in Germany during the Nazi Rule there was law, but that law did not serve them well. The Apartheid Government in South Africa was also lawful and that all the atrocities were committed lawfully. According to him, therefore, a law can be bad. He says the KACCA Act is a bad law. It is bad because it tells the President directly that: "You shall appoint." Who will know what is good for this country? Of course, the President has his mandate, but he is also an hon. Member of this House. Is this a sovereign Parliament, or are we under the thumb of the President? We want to know who is in charge of this country's public good? We are being told that Germany and South Africa could as well be good because they followed the law and that Kenya must not follow the law blindly because it can go a wrong way. If we do not follow the law today on this small matter, are we so sure that tomorrow we might not deviate again? Are we not so sure that tomorrow we might even deviate further? Where will we stop? When will we say that this was a small problem, but it is now a very serious problem?

Mr. Deputy Speaker, Sir, now let me tell this House something about Executive authority. I have heard hon. Members say that the President is the Executive and he is not ceremonial. First of all, I would like to assure them that this Parliament is not ceremonial. We are very Executive. If we pass Bills here and the President does not assent them, he brings them back here with a memorandum and we can refuse to pass them. However, in this particular case, he was not given that leeway because the KACCA was supposed to check the President. That is the only underlying philosophy behind him. Now, what about this Executive authority of the President? Do you know that the President has no Executive authority other than that which is given to him by the law? He does not have any authority which has come from heaven. The President has authority as the Constitution and this Parliament gives him. He does not have any other authority anywhere.

So, when you come here and say the Executive has been given mandate by the people; so as he can be a dictator, or create law to detain Mr. Wamwere again, *Hakuna kitu kama hicho!*

(Applause)

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, when I was in school, I read one book called *Darkness at Noon*.

Mr. Muchiri: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is Mr. Kajwang in order to use two languages while making his contribution? He is using both English and Kiswahili languages.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, that is what is called the colour of speech!

(Laughter)

When I was in school, there was a book called *Darkness at Noon*---

The Temporary Deputy Speaker (Mr. Poghiso): Mr. Kajwang, I must remind you that you cannot use two languages.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, I said, "*Hakuna kitu kama hicho*". That is the colour of speech. In that book, which is a contradiction because it is not very likely that there is likely to be darkness at noon; it was a satire about the Communist Party. It says: "My brother and I can be wrong, but the Party can never go wrong." If you remember the dictatorship of KANU, you had to walk the party. Prof. Saitoti knows about this!

(Laughter)

Today I would like to use that allegory. Somebody has said Parliament made a mistake, how do we correct it? Parliament does not make mistakes. In fact, Parliament will never make a mistake. Parliament, in its wisdom, never makes mistakes. When we pass a law, it stays as law until it is amended. If the President is uncomfortable with the KACCA Act because he wants power to appoint the Director, let us bring the law here for amendment. The Government already has sufficient majority in this House to pass anything. Of course, with Mr. Biwott in, you can pass anything and you can later amend it!

(Laughter)

The President can then appoint KACCA officials. However, once the law is still alive, it cannot be a mistake. Anybody else can make a mistake, not this House.

Mr. Murungi, in some leaflets which are circulating around here, says:-

"The Advisory Board was in breach of its statutory duties to recommend persons of outstanding integrity."

What he is trying to say is that the Advisory Board recommended a person without integrity. Who is it that was supposed to check the integrity of Dr. Rotich? Is it not that Advisory Board? Is it not after the Advisory Board that this House was supposed to check that integrity? Was it Mr. Kimunya and Mr. Murungi who, somehow, knew his integrity? Let us even assume that there was evidence of corruption against Dr. Rotich, in which court was that evidence heard? Does the President turn himself into a tribunal and listen to evidence? Did he give Dr. Rotich a chance to defend himself? Which *kangaroo* court was in the Office of the President or State House?

(Laughter)

Mr. Temporary Deputy Speaker, Sir, I am saying this: We have had the accusations against Dr. Rotich by some people here. But the best we can say about it is: They are merely speculative, spurious and unfounded! If the President was serious that there was something against Dr. Rotich, he should have appointed him first. Then, the next day, appoint a tribunal to investigate him! He would have said: "I have appointed him according to the law and, I am using the same law to prove to the country that he is unsuitable for that office." He has done that with the judges of the High Court and Court of Appeal. We also did that once with one Director of Kenya Anti-Corruption Authority (KACA). So, it can be done. What is that court? Was it in State House or the Office of the President? Where was the *kangaroo* court that decided Dr. Rotich was corrupt, unfit and cannot serve in that Commission? Where did it come from?

We are embarrassed because we love this Government! Let me tell you, when you see me talking like this, it is because I voted and campaigned for this Government. I love this Government because I put my trust in it. My people will pin me down on it. They will tell me: "You told us to vote for this Government!" That is because I also love the rule of law! I do not like arbitrary rule. I told them: "My people, for the first time in this country, vote for the President! This man loves the rule of

law".

Hon. Members: Yeah! Ah! Ah!

Mr. Kajwang: Yes! He loves the rule of law. That is what I told them! When he came to Uhuru Park, I almost predicted him right. He said: "The rule of law!" I said: "Hallelujah!"

(Applause)

An hon. Member: And now?

Mr. Kajwang: Now, what is this? A *kangaroo* court in State House? Thank you, Mr. Temporary Deputy Speaker, Sir.

(Laughter)

Mr. Sambu: On a point of order, Mr. Temporary Deputy Speaker, Sir. We are now going over and over the same points! Would I be in order to ask that the Mover be now called upon to reply?

(Applause)

The Temporary Deputy Speaker (Mr. Poghiso): Order, hon. Members! I have heard the request and I have declined for now because there are some people who have been mentioned and would like to be given a chance to speak!

But let us have Mr. Wamwere for now. Please, proceed!

Mr. Wamwere: Bw. Naibu Spika wa Muda, nakushukuru kwa kunipa nafasi hii ili nichangie Hoja iliyo mbele yetu. Jambo ambalo liko mbele yetu linalenga kuonyesha ikiwa kuna demokrasia katika nchi hii au la. Tunaongea juu ya Kenya Anti-Corruption Commission na Dr. Rotich. Lakini, swali lililo mbele yetu ni ikiwa Rais wa sasa au wale watakuja baadaye wako juu au chini ya sheria.

[**Mr. Wamwere**]

Wengi wetu wameumia sana kutokana na utawala unaowapatia Marais uwezo wa kutotii sheria. Hakuna jambo linalobabaisha zaidi kuliko kujua kwamba Rais ako juu ya sheria. Anaweza kutii au kutotii sheria. Rais ambaye hatii sheria, anaitwa dikteta.

(Applause)

Bw. Naibu Spika wa Muda, tunaongea kuhusu uteuzi wa makamishina katika Kenya Anti-Corruption Commission Authority (KACCA). Ukiangalia falsafa ya sheria hiyo, mwelekeo wake ni kwamba wanachama wa KACCA watachaguliwa na Advisory Board na majina yao yeletwe katika Bunge hili. Bunge hili likipitisha majina yao, yatapelekewa Rais. Sheria hiyo inasema kwamba lazima Rais atue wale ambao wametajwa.

Bw. Naibu Spika wa Muda, sheria hiyo haisemi kwamba Rais atateua akipenda au atateua kulingana na vile ameamka siku hiyo.

(Laughter)

Sheria inasema lazima atue majina hayo. Hana suluhisho lingine! Ni lazima atii sheria. Sheria imeundiwa watu wote. Haikuundiwa wadogo au wakubwa. Wengine wetu ambao siyo wanasheria--- Tumeona taswira ya sheria katika picha. Taswira hiyo ni ya mwanamke kipofu. Huyu mwanamke kipofu, kama ndiye sheria, hawezi kuona Rais. Haoni mtu mdogo kama mkulima au Mbunge. Wote ni sawa kwa huyo mwanamke!

(Applause)

The Minister for Water and Irrigation (Ms. Karua): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to make a sexist remark? Why is it "*mwanamke kipofu*" na sio "*mwanamme kipofu*?"

Mr. Wamwere: Bw. Naibu Spika wa Muda, mimi nimeongea juu ya picha ambayo---

The Temporary Deputy Speaker (Mr. Poghiso): Mr. Wamwere, I did not get what you were saying?

Mr. Wamwere: Bw. Naibu Spika wa Muda, nilisema kwamba taswira tunayochorewa ya sheria ni picha ya mwanamke kipofu. Mimi sioni ikiwa picha hiyo inamdhalalisha mwanamke. Inatukuza mwanamke!

(Applause)

Sheria inapewa sura ya mwanamke kwa sababu dunia inaamini kwamba mwanamke atajua haki kuliko mwanamme. Kwa hivyo, sioni cha kulalamikia.

Bw. Naibu Spika wa Muda, hakuna hatari kubwa inayoweza kutokea katika nchi ikiwa tuna Rais ambae atapewa uwezo wa kutazama sheria na aseme: "Hili nitatimiza na hili sitatimiza!"

Bw. Naibu Spika wa Muda, sheria zilizokuwa zikitumika kutuweka kizuizini zilikuwa zikisema wazi ya kwamba, kila---

Nasikia vitisho kutoka kwa Wabunge wakisema kwamba mhe Biwott atakapopata mamlaka tena nitarudishwa kizuizini.

(Laughter)

Bw. Naibu Spika wa Muda, nilikuwa nikisema kwamba, wakati tulipokuwa tukiwekwa kizuizini, kulikuwa na sheria zilizosema kwamba, kila baada ya miezi sita, Rais alitakiwa kuja Bungeni na kuomba ruhusa ya kuendelea kutuzuilia ndani. Sheria hiyo ilipuuzwa na Rais Hayati Mzee Jomo Kenyatta, Rais Mstaafu Daniel Moi na sasa, kuna hatari kwamba hata Rais Kibaki ataipuuzwa. Rais haruhusiwi kuipinga au kuhepa sheria. Lazima aitimize vile ilivyo, hata kama kuitekeleza kutampatia shetani uhuru. Sijui kama Bw. Naibu Spika wa Muda utaniruhusu---. Ningetaka kumnukuu mwanasheria wa zamani ambaye nilikuwa nikimheshimu sana. Alikuwa akiitwa Sir. Thomas Moore. Alikandika kitabu kiitwacho, "Man For All Seasons." Katika kitabu hicho, Moore asema kuna watu ambao walikuwa wakimtaka amfunge mtu bila kufuata sheria. Yeye aliuliza angefunga mtu huyo kwa sheria gani na akaambiwa aipinge sheria. Alisema kwamba ni lazima angeishikilia sheria ilivyo, hata kama ingemruhusu shetani kuwa huru.

Bw. Naibu Spika wa Muda, ningetaka, kama unaweza, uniruhusu ninukuu kwa kiingereza matamshi ya Moore. Jamaa mmoja aliuliza; "So now, you would give the devil the benefit of the law?" Mwana sheria huyo akajibu: "What would you do? Cut a great road through the law to get after the devil?" Huyo mtu alijibu: "I would cut down every law in England to do that." Thomas Moore alimuambia, na haya ndio maneno muhimu: "Oh! When the last law was down and the devil turned down round on you, where would you hide loffer? The laws, all being flat, this country is planted thick with laws from coast to coast. Man's laws, not God's. If you cut them down and you are the man to be, do you really think you could stand upright in the wind that would blow then? Yes, I would give the devil the benefit of law for my own safety's sake."

(Applause)

Bw. Naibu Spika wa Muda, wale wanaotaka usalama kama Sir. Thomas Moore, tunajua kwamba msitu wa kujificha ni ule wa sheria. Ukipatia Rais upanga wa kutengeneza barabara na aikate kupita huo msitu, ujue kwamba wakati utakapofukuzwa na shetani, hutakuwa na mahali pa kujificha. Nilisema kwamba Rais asipotii sheria, matokeo yake ni wazi. Ni udikteta. Hakuna lingine. Udikteta ukiingia katika nchi hii, hakuna hata mtu mmoja ambaye atakuwa salama. Bunge hili ni lazima lisiwe na uoga wa kusema la kwa Rais anapokosea. Ningetaka kusema kwamba wakati tuliipitisha sheria ya kuifanya nchi hii iwe ya chama kimoja, ninakumbuka tulikaa hapa tukiwa na uoga ambao sijaona. Hata mimi siku hiyo nilikuwa nikiogopa. Wabunge walikuwa wakitetemeka. Tulielewa ya kwamba tulikuwa tukiipitisha sheria mbovu. Tulijua ya kwamba tulikuwa tukizika demokrasia na kuuita udikteta katika nchi hii. Lakini kwa sababu ya uoga, sote akiwemo Rais Kibaki, tuliunga mkono sheria hiyo.

An hon. Member: Hata wewe?

Mr. Wamwere: Hata mimi. Funzo nililotoka nalo--- Tulipitisha sheria hiyo kwa kuogopa kuzuliwa. Maajabu ni kwamba wiki mbili baadaye, mimi nilikuwa nimekamatwa na kuwekwa ndani.

Bunge lazima lijifunze kutokuwa na uoga. Tukiwa na uoga, ni lazima udikteta utarudi katika nchi hii, tupende tusipende. Ukitaka kuulinda demokrasia, kitu cha kwanza kukiondoa rohoni mwako ni uoga. Tukumbuke kwamba waoga hata wakati tutakapotoka duniani, wao ndio watakaokuwa wa kwanza kuwekwa jehanamu.

Mimi sijui kama Bw. Rotich anafaa kufanya kazi na KACCA ama hafai. Kama mhe Kajwang na wengine walivyosema, hatuna ushahidi wa ubaya wake. Lakini ninakumbuka kitu kimoja. Wakati tulikuwa tunajadiliana kuhusu majina hayo matano, Waziri Kiraitu, sikumbuki kama Bw. Wako alikuwa hapa, alitambia kwamba Rotich alikuwa na sifa za kufanya kazi. Ninakumbuka ubishi ambao uliokuwa katika Bunge hili. Tulikuwa tukiitana kupiga kura. Wakati huo niliamini Wabunge waliokuwa wakisema Rotich alikuwa na sifa.

Wabunge si vinyago. Ni watu walio na akili zao. Huwezi wakati mmoja kuja hapa na kuwaambia wabunge: "Huyu ni mtu mzuri sana", na baada ya miezi kadhaa, ukaja kumlaani mtu huyo. Huko ni kuchezea Wabunge. Ni kuwafanya wajinga na baradhuli na kutaka kuwatumia. Ningetaka kusema hakuna kosa kwa maoni yangu, ambalo limefanyika. Waziri anatakiwa kuishauri Bunge na si kupaia ushauri ambao haufai. Ninasema hivyo kwa sababu wale ambao waliokosa kuishauri Bunge kama inavyostahili ni wale ambao walikosea katika kumshauri Rais. Walimshauri kimakosa. Vita na ubishi tulionao haungekuwa kama watu hao wangenfanya kazi yao namna walivyopaswa kuifanya.

Bw. Naibu Spika wa Muda, tunatakiwa kuleta Hoja na Sheria katika Bunge hili ambayo itapatia Bunge uwezo wa kuchukulia Waziri hatua anapokosa kufanya kazi yake. Mawaziri hawawezi kupewa ruhusa hiyo. Leo wanampatia Rais ushauri mbaya, kesho wanampatia Rais ushauri mbaya.

Mr. Rotino: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think hon. Wamwere is repeating himself in his contribution. I call upon the Mover to reply.

The Temporary Deputy Speaker (Mr. Poghisi): Order, hon. Members! I appeal for a little patience. I think I had committed myself in the ruling before that there are some hon. Members who should really be allowed to speak. I think it is only fair that we do that. So, just be a little patient.

Proceed, hon. Wamwere!

Mr. Wamwere: Bw. Naibu Spika wa Muda, mambo ambayo tunaongea juu yake ni muhimu sana. Wacheni mpaka tuingie katika hiyo barabara ya udikteta ndio mutanza kulia.

Bw. Naibu Spika wa Muda, ningetaka kumaliza kwa kusema hivi: Naunga mkono ya kwamba Rais atii sheria kama ilivyo halafu aunde hiyo tume kama ana kesi ya kufanya dhidi ya Dkt. Rotich. Kama anataka uwezo zaidi, alete sheria iliyoko hapa tuifanyie mabadiliko. Kabla ya hiyo, Rais kutotii sheria ni udikteta, uhalifu na ufisadi.

(Applause)

Mwishowe, wacha niseme ya kwamba sio Rais peke yake ambaye anakataa kutii sheria. Anafunza Mawaziri wake kutofanya hivyo. Wiki mbili zilizopita tulipitisha Hoja hapa inayohusu mashamba halafu Mhe. Kimunya akiwa ofisini mwake alisema hatatekeleza Hoja hiyo. Hakuna Waziri ambaye anaweza kuwa na mamlaka juu ya Bunge.

(Applause)

Bw. Naibu Spika wa Muda, tunaunga mkono taarifa hii kwa sababu lengo lake kubwa ni kuweka Rais chini ya sheria pamoja na Mawaziri wake.
Naunga mkono.

(Applause)

The Minister for Lands and Housing (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir. I stand here to oppose this Motion. My opposition to the Motion is derived from a couple of things that I want to share with this House. This Motion is not about whether Dr. Rotich was fit for the job or not.

In fact, I doubt if we can discuss him here when he has no chance of defending himself in this House. We are doing him a great disservice by discussing him here under the guise of discussing this Motion.

Mr. Bifwoli: On a point of order, Mr. Temporary Deputy Speaker, Sir. If you looked at the Report of this Committee, the Minister who is now on the Floor was summoned to appear before it and he refused to do so.

Is it in order for him to contribute on an issue he already rejected?

(Applause)

The Minister for Lands and Housing (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I was going to explain exactly the wrong impression created in the Report, that I refused to appear before the Committee.

Hon. Members: You refused!

The Minister for Lands and Housing (Mr. Kimunya): If you give me time, I will explain to the House what exactly happened.

Mr. Sambu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Committees appointed by the House should be respected. That is why they are given time and resources by the House. If they summon an hon. Member--

In fact, going by the Powers and Privileges Act, if Kenyans are summoned and they disobey, they are in contempt of the Act. I know this law and I have been in this House longer than you. He is not right to come and defend himself when he refused to appear before the Committee.

(Applause)

The Temporary Deputy Speaker (Mr. Poghiso): I really think this is a different context and this hon. Member is making a contribution to the debate. He is entitled to do so just like any other hon. Member.

Proceed!

The Minister for Lands and Housing (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Cheboi: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister is my friend but we cannot allow him to come and defend himself here. I am a member of the Committee and he acted in utter contempt of the Committee. We cannot allow him to come here---

The Temporary Deputy Speaker (Mr. Poghisio): Order! Let us differentiate between that Committee and this House. He has not come to defend himself here. He is contributing to the debate.

Proceed, Mr. Kimunya!

Mr. Kajwang: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am really seeking your ruling and this is a very serious issue for this House. If it is true that an hon. Member of this House was in contempt either of this House or a Committee of the House, make a ruling. Is it in order that such an hon. Member should be allowed even to speak before he is disciplined by this House?

(Applause)

The Temporary Deputy Speaker (Mr. Poghisio): Order! Let me say that even if there were to be a Motion raised here discussing the hon. Member, would he be heard? Let him get a chance to talk. I rest my case there.

Proceed, Minister!

(Loud consultations)

Order, hon. Members! It looks like it is becoming difficult for the hon. Member to be heard and yet you do not have that right to deny your colleagues a chance to be heard. I think we will be sending the wrong signals if we continue to do that.

Proceed, Mr. Kimunya!

*(Loud foot thumping from
the Opposition side)*

By the way, it would be my pleasure if I send the whole lot of you out of the Chamber. I do not like to see us trying to send the wrong message that an hon. Member of this House is denied a chance to contribute to debate. That is not what we are here for. So, Mr. Kimunya you can proceed.

The Minister for Lands and Housing (Mr. Kimunya): Thank you very much, Mr. Temporary Deputy Speaker, Sir. Like I said, the Motion before this House is not about Dr. Rotich. The Motion is not whether the President broke the law. The Motion was defined by the terms of reference that were given by the Speaker.

*(Loud foot thumping
from the Opposition)*

The Temporary Deputy Speaker (Mr. Poghisio): Order! Hon. Members, I think if you were trying to prove a point, you have done so. I also think you will need your votes at the end of this. I find that your behaviour is becoming unruly. The Chair can make it easy for you to applaud, but you cannot do so forever.

Dr. Khalwale, proceed with your point of order!

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, we have to transact business. You can see the mood of the House. The hon. Member who is on the Floor is in a privileged position; he is a

Minister and, therefore, he advises the President. So, the mood in the House is such that, probably, he is one of the people who misled the President.

Mr. Temporary Deputy Speaker, Sir, could he, therefore, kindly admit that he misadvised the President and give those of us who have never taken a position on this particular matter an opportunity to contribute?

(Applause)

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! I think we are beginning to disregard the dignity of this House. However bad you think of an hon. Member, or what he or she will say, at least, accord him or her a chance to speak and be heard. We do not even know what he will say. He has not even said anything!

Hon. Members, especially on the Opposition side, I would like to give this as a warning. I have done my duty and the Minister has a chance to speak. So, let him speak!

The Minister for Lands and Housing (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir, for restoring the dignity of this House.

(Loud continuous foot thumping)

The dignity and integrity of this House is what is being questioned by this Motion. If this is the way we will continue doing business, the world will never stop doubting the dignity of this House. The Speaker was very clear in his terms of reference for the Committee when he basically put it---

The Minister for Education, Science and Technology (Prof. Saitoti): On a point of order, Mr. Temporary Deputy Speaker, Sir. In accordance with the dignity of this House, an hon. Member, irrespective of how anybody else disagrees with his or her views, is normally allowed to make a contribution. But as the hon. Minister is making his contribution, there is deliberate noise so that the other hon. Members cannot hear what he is saying. This is deliberate disorder!

I believe that the Chair can urge hon. Members here, to ensure there is order. Otherwise, the House is being conducted in a disorderly way!

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I stand on a point of order to seek guidance from the Chair. The Committee in question, of course, is a Committee of this House. You have seen the mood in this House. Of course, hon. Members feel that, in refusing to come and appear before the Committee, the Minister was not just in contempt of the Committee, but also the House.

I appreciate the right of an hon. Member to be heard. But even in court, if you are in contempt of court, you must apologise first. Could he, therefore, apologise to the House first before we hear him?

(Applause)

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

The Minister for Lands and Housing (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I believe I am still on the Floor!

(Loud consultations)

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

[Mr. Deputy Speaker resumed the Chair]

Mr. Deputy Speaker: Who is on a point of order? Mr. Mwenje!

Mr. Mwenje: Mr. Deputy Speaker, Sir, we are members of many Committees in Parliament. Committees are, indeed, part of this Parliament. It is very clear in the Powers and Privileges Act and Standing Orders that, if an hon. Member is summoned by any Committee and declines, he or she can be punished by that Committee and, by extension, the House. I do not know the truth of the matter. But if the truth is that the Minister was summoned by the Committee and declined, this House should not have the liberty to listen to him.

(Applause)

It would not be right, even for the Chair. Not only can we refuse to listen to anybody, but we can even go ahead and deduct part of his salary for refusing to appear before a Committee. That is provided for in the Standing Orders. If it is proved that the Minister was summoned before a Committee and declined, then he should not be heard. If he was not, then he can be heard. I think the Chair can do that.

(Applause)

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

Mr. Deputy Speaker: Order! There is already a point of order. Could you, please, be patient? Hon. Members, first of all, we are not dealing with a matter or a Motion to discuss the Minister because he did not honour the summons. Let us be very clear on that. If what Mr. Mwenje has said was the case, there would be a Motion to deal with the hon. Member who did not appear before the Committee. In this case, we are certainly not dealing with that matter. If you wish, the House can still revisit the matter by way of a substantive Motion and discuss it under the Powers and Privileges Act. I presume that is what Mr. Sambu wants to show me. But that is not what we are dealing with. That does not preclude the fact that, the hon. Member can still be dealt with at a later stage.

Having said that, every hon. Member knows that we are not discussing hon. Members who attended or did not attend the meeting. If the House wishes to deal with them later, the matter is still open. But now, we are only dealing with the Motion as submitted by a House Committee. Therefore, let us have no doubts about it. The hon. Member is entitled to address this House, unless there is another Motion which is not before the House! That is the position.

Mr. Sambu: On a point of order, Mr. Deputy Speaker, Sir. I respect you quite exceedingly, Sir! But we have to follow the law. The fact that we are lawmakers, although we are not lawyers, makes us read the Powers and Privileges Act. It is very clear from Sections 14 to 20. A Committee of the House may summon an hon. Member. We are now discussing the Report of that Committee. We cannot discuss Dr. Rotich without discussing the Report of the Committee. My contention is: Is he in order to address us, after acting contrary to the Powers and Privileges Act?

Mr. Deputy Speaker: Order, Mr. Sambu! I think I have given you enough time. I have heard you. All I am saying is that what you are reading is correct, but you have not read anything there that says that an hon. Member who refuses to attend a Committee after summons shall not be allowed to address the Committee. I have said that we are not dealing with the Motion. The Report does not say that Mr. Murungi addressed the Committee, but he addressed the House. So, I do not think that there is any reason that bars Mr. Kimunya from contributing to the Motion. If you wish, the Floor is still open to prefer charges against the Minister or any hon. Member in accordance with the Act. Let us not waste more time on that.

Proceed, Mr. Kimunya!

The Minister for Lands and Housing (Mr. Kimunya): Mr. Deputy Speaker, Sir, one of the errors contained in this Report and which I would like to correct is that I refused to appear before the Committee. A letter was sent to my Permanent Secretary asking him to bring me to the Committee. The Permanent Secretary wrote to the Committee and asked to see the relevance of the Ministry of Lands and Housing on the issues they wanted to discuss in the Committee, so that he could prepare his Minister accordingly to appear before the Committee.

That letter was signed by my Permanent Secretary and it is on record. I was not summoned as Amos Kimunya, MP for Kipipiri. A letter was sent to my Permanent Secretary asking me to appear before the Committee. I have appeared before so many other Committees and in all those Committees, especially the Departmental Committee on Agriculture, Lands and Natural Resources, I have always taken a team from the Ministry, so that we discuss the issues complete with a technical back-up. That letter from the Permanent Secretary was asking exactly what the Committee wanted the Minister and the Ministry of Lands and Housing to come and contribute to the Committee. I did not receive any other invitation to appear before the Committee.

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

Mr. Deputy Speaker: Order! Mr. Samoei, let us give Mr. Kimunya a chance. He has been interrupted enough times.

The Minister for Lands and Housing (Mr. Kimunya): Mr. Deputy Speaker, Sir, that is one of the errors contained in this Report. I wanted to correct that so that for the record you know why I am opposing the Report. Had I been asked to appear as Amos Kimunya, I would have gone to the Committee and answered whatever issues the Committee wanted. But in my capacity as the Minister for Lands and Housing, I do not even know what the link between the Committee and the issues to do with my Ministry was.

Mr. Samoei: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to continue to be in contempt of this House by pretending that he did not know the issues being discussed in this Committee, when he was party to the formation of that Committee? He made extensive statements on the issues that the Committee was dealing with. Is it in order for him to continue pretending that he did not know?

Mr. Deputy Speaker: Mr. Kimunya, you are not on trial here. Proceed and debate the Motion at hand.

The Minister for Lands and Housing (Mr. Kimunya): Mr. Deputy Speaker, Sir, the Committee was given specific terms of reference. The Speaker of this House made it very clear on the two issues that the Committee needed to look into. First, he said that the Committee should look into ways of satisfying the House that a person was fit for appointment to office before we gave our stamp of approval. Secondly, he directed the Committee to find an avenue for redress were we to make a mistake, as was likely to be made either by the House or by any other body.

From the word "go", the Committee went off tangent. In the paragraph that follows, in its own Report, the Committee dwelt on the powers of Parliament to appoint. It misinterpreted the Speaker's terms of reference and said that the Speaker is concerned about the enforcement and redress when another arm of the Government disregards its authority--

Mr. Sirma: On a point of order, Mr. Deputy Speaker, Sir. Given that we have continuously repeated ourselves on this Motion, I beg to move that the Mover be now called upon to reply.

Mr. Deputy Speaker: Hon. Members, the Chair did promise to consider that request. So, I will put the Question.

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

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): On point of order, Mr. Deputy Speaker, Sir. The Official Government Responder has not yet spoken.

An hon. Member: He has spoken!

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): No, it is not Mr. Kimunya! It is me, and I am ready to give the official Government response.

Mr. Deputy Speaker: Order, Mr. Githae! The procedure is that the Mover be called upon to reply.

Proceed, Mr. Muite!

Mr. Muite: Mr. Deputy Speaker, Sir, I would like to thank all the hon. Members who have contributed to this Motion. May I clarify one thing? Mr. Kimunya referred to a letter that I had written to him in his capacity as the Minister. He is mixing up two matters. The letter he has talked about is a second letter, where the Committee asked him to appear before it on a different issue. Under the Architects and Quantity Surveyors Act, the professional body is the one that is supposed to nominate four people to the Examination Board. In utter disregard of that law, he appointed his own friends and gazetted their nomination.

Hon. Members: Shame! Shame!

Mr. Speaker: Order! Order! Hon. Members, we have to be orderly in this House.

The Minister for Lands and Housing (Mr. Kimunya): On a point of order, Mr. Deputy Speaker, Sir. I have just talked about the letter that was sent to my Permanent Secretary, asking him to inform me to appear before the Committee. The hon. Member wants to confuse this House by raising extraneous issues, because I have proved that the Committee never summoned me to appear before it to discuss the issue at hand. Is the hon. Member in order to mislead the House that I was summoned to appear before his Committee and the other Committee deliberating the matter of the appointment of the members of the Physical Planners Board, when I did not receive any letter to that effect? In any case, the issue was raised here, and we responded in this very House, about the appointment of members to the Physical Planners Board. That information is in the record of the proceedings of this House.

Mr. Muite: Mr. Deputy Speaker, Sir, my friends, Messrs. Murungi and Kembi-Gitura, said that the Committee acted outside its mandate. It did not. The matter that was referred to the Committee was the issue of Dr. Rotich, arising from a Question by Mr. Bett, as to why Dr. Rotich had not been gazetted. That is the specific issue that was referred to us.

So, we divided our mandate into two; the issue of Dr. Rotich and a comprehensive road-map, which is now ready and which will be coming to this House for debate, seeking to guide the House on how to go about approvals.

Mr. Deputy Speaker, Sir, Standing Order No.151 gives mandates to various Departmental Committees to investigate issues even on their own volition. No Committee needs to wait for a matter to be referred to it. A Committee can take cognisance of a matter in as long as it is within its mandate.

Mr. Deputy Speaker, Sir, therefore, we could have investigated this issue, even without being referred to this Committee by this House. A matter to do with the administration of justice is very fundamental.

(Applause)

Mr. Deputy Speaker, Sir, during the Inter-Parties Parliamentary Group (IPPG) reforms, when we amended the law to allow Opposition parties to recommend people to the Electoral Commission, hon. Murungi is on record in the HANSARD as saying that the role of the then President would be purely ceremonial. And it is a credit to the former President because he respected that.

Mr. Deputy Speaker, Sir, all the names that were suggested by the then Opposition parties were approved by the former President ceremoniously. This includes the Commissioners of the

Constitution of Kenya Review Commission (CKRC).

(Applause)

Mr. Deputy Speaker, Sir, I am not saying that the Presidency is ceremonial. I am saying that his Executive authority is derived from Section 23(1) of the Constitution. But Section 23(2) of the same Constitution confers power on this Parliament to confer Executive authority on any other person or institution. That is what we did when we enacted the Kenya Anti-Corruption Commission (KACC) Act. We took away those powers in order to ensure that the President had nothing to do with the appointment of the Advisory Board and the Director and Deputy Director. Why? For the very good reason that it is the Executive which has the capacity for corruption. So, we wanted the Advisory Board and a Commission with sufficient autonomy to independently investigate even the President, his Ministers and the entire Government.

Mr. Deputy Speaker, Sir, I appeal to this House, just like hon. Wamwere did, that we must exert our authority. For what reason should we be discussing the new Constitution when the draft subjects all the important public appointments to Parliamentary approval? Is the Government suggesting that even when we enact the new Constitution, this House will ratify and then be overruled by the President? Is that what we are being told?

(Applause)

Where a law gives Parliament the power to ratify, then the role of the President is formal and ceremonial, just like if the Member for Imenti South is elected by the people, and some people start making allegations that he murdered or raped somebody, can the Speaker refuse to swear him in? He must be sworn in. The role of the Speaker is ceremonial. Those other allegations are proved in a court of law.

(Applause)

Mr. Deputy Speaker, Sir, I repeat that Dr. Rotich was ordered in writing by the then Secretary to the Cabinet, Dr. Kosgey, to sell the strategic stocks of maize. Nobody has suggested that he benefitted anyway from that sale of maize. He wrote back to say the Board would incur losses, but he was told that the Board would be compensated from the Treasury. So, there is no substance in that allegation. The Advisory Board looked into it and found that there was no substance.

Mr. Deputy Speaker, Sir, if you support a President or Government, it is part of your responsibility to tell that President or Government that they are wrong when they are wrong.

(Applause)

Mr. Deputy Speaker, Sir, to fail to do so, means that support ceases to be support and it becomes sycophancy. With those few remarks, I beg to move.

(Question put and agreed to)

Hon. Members: Division! Division!

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

Mr. Deputy Speaker: Order, hon. Members! I am sorry you have not met the required numbers.

ADOPTION OF SESSIONAL PAPER
NO.2 ON DEVELOPMENT OF MICRO
AND SMALL ENTERPRISES

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts Sessional Paper No.2 of 2005 outlining Development of Micro and Small Enterprises for wealth and employment creation for poverty reduction laid on the Table of the House on Tuesday, 5th April, 2005.

Mr. Deputy Speaker, Sir, the Micro and Small Enterprises are businesses in both the formal and informal sector classified into firms and non-firms categories and employing 1 to 50 workers. This enterprises cut across all sectors of the Kenyan economy and provide one of the most prolific sources of employment creation, income generation and poverty reduction.

According to the 2003 Economic Survey, employment within the Micro and Small Enterprises increased from 4.2 million persons in the year 2000 to 5.6 million persons in 2004 accounting to 74.2 per cent of the total persons engaged in employment. The sector continues to contribute up to 18.4 per cent of the country's Gross Domestic Product (GDP) and the sector is, therefore, not only a provide of goods and services, but also a drive in promoting competition and innovation and also enhancing the enterprise culture which is necessary for private sector development and industrialization. The Micro and Small Enterprises (MSE) performance and competitiveness must, therefore, be increased if it is to effectively respond to the challenges of creating productive and sustainable employment opportunities, promoting economic growth and poverty reduction in the country.

Mr. Deputy Speaker, Sir, despite the significant role played by the sector, it has continued to experience many constraints that have inhibited the realisation of its full potential. These constraints include poor access to markets and financial services and unfavourable policy, legal and regulatory environments among others. In the past, the Government has put in place measures geared towards the promotion and the development of the MSE sector. One of the notable interventions is the publication of the Sessional Paper No.12 of 1992 on Small Enterprises and *Jua Kali* Development in Kenya. The Sessional Paper emphasises the need to create an enabling environment to run appropriate legal and regulatory framework and put in place support and facilitative measures to promote the growth of the sector. However, these measures have not yielded the expected impact, largely due to the inappropriate designs and weak implementation.

Mr. Deputy Speaker, Sir, in 1997, the current MSE policy and strategy framework which was formulated in 1992 was reviewed and a number of constraints were identified. These included weak co-ordination and implementation mechanism in lost efforts and minimal impact and inadequate participation of the private sector. These three major problems were areas of concern in all the thematic areas of the MSE sector, namely, technology, marketing, business development services, information dissemination and access to financial services among others. As a result, the sector has exhibited weak linkages with the rest of the economy, resulting in poor vertical growth. The Sessional Paper, therefore, attempts to fill the identified gaps, building on the previous MSE policy in very specific ways and laying emphasis on the following identified thematic areas:-

The first one is the role of markets. The Sessional Paper intends to make markets work. The Government's objective here for the sector is to promote the number and the competitiveness of the MSEs by reducing the cost of doing business and generally creating a more favourable environment for businesses to thrive, while improving the quality of employment in the sector. Secondly, the

Sessional Paper intends to integrate the MSE sector into the national economic grid. To achieve this integration, the new policy will promote MSEs in the formal and the informal sectors, including commercial small-scale agriculture in a policy framework that will encourage all forms of linkages.

Mr. Deputy Speaker, Sir, the definition of the MSE sector is, therefore, expanded in the Sessional Paper to include all enterprises, both firm and non-firm, employing less than 50 persons. Thirdly, the Sessional Paper intends to improve the effectiveness of the existing institutions. This will be done by establishing a national council of small enterprises and legislating a Micro and Small Enterprises Act. These institutions and legal framework will strengthen policy co-ordination and implementation and also help in monitoring and evaluation, which have been largely lacking in previous attempts by the Government to promote the MSE Sector.

Mr. Deputy Speaker, Sir, the fourth one, Mr. Deputy Speaker, Sir, is by promoting partnerships between key stakeholders including the citizenry, the MSE entrepreneurs, community, private sector, civil society, Non-Governmental Organizations (NGOs) and development partners. These will be promoted through appropriate policy dialogue to harness the synergy for effective resource mobilization, utilization and overall development of the sector.

Lastly, Mr. Deputy Speaker, Sir, is the plan of action. This Policy Paper incorporates a plan of action for policy implementation and a mechanism for monitoring and evaluation of the policies to assess the impact. Currently, among Kenyans, the economically active group of people is estimated at 12.3 million, while unemployment rates stand at 14.6 per cent. This labour force is projected to increase to 16.8 million by 2010 and further, to 20.6 million by 2020.

The labour force is predominantly young, with the majority 57.9 per cent being in the age bracket of 20 to 39 years. A higher proportion of this, that is 77.9 per cent is found in the rural areas where employment opportunities are minimal, leading to the rural-urban migration and high poverty levels currently estimated at 56 per cent.

Further, Mr. Deputy Speaker, Sir, the proportion of the labour force in the age bracket of 15 to 24 is estimated at 31.4 per cent, hence the youth, who constitute the new labour force recruits bear the brunt of the current and emerging unemployment problem. The problem is further compounded by the fact that the formal sector has been shrinking fast and hence, paving way to the informal economy to face the challenges posed by the unemployment problem. Despite its large growth potential, the MSE sector experiences many constraints; factors which inhibit the realization of its full potential. These constraints include unstandardized by-laws, poor work sites, inadequate access to financial services, market and technology and poor co-ordination among others. This has not only led to its stagnation in terms of growth but also high mortality rates for MSEs.

In order to address these problems at source and in line with the Poverty Reduction Strategy Paper and Economic Recovery Strategy for Wealth and Employment Creation, the Ministry of Labour and Human Resource Development in collaboration with other stakeholders, through an all-inclusive process, has prepared this Sessional Paper with a focus on wealth and employment creation, thus the finalization of the Sessional Paper would facilitate the formalization of the sector.

Mr. Deputy Speaker: Order, Dr. Kulundu! You will continue Moving your Motion tomorrow.

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

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday 27th April, 2005 at 9.00 a.m.

The House rose at 6.30 p.m.