

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 19th July, 2007

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

PROPOSED AMENDMENT TO CLAUSE 28 OF
THE LABOUR INSTITUTIONS BILL BY
HON. MUIITE IS UNCONSTITUTIONAL

Mr. Speaker: Order! Hon. Members, as you will realise, immediately after Question Time, we will be in the Committee of the whole House to consider the Labour Institutions Bill. I have received a proposed amendment from Mr. Muite, the hon. Member for Kabete Constituency, to delete Clause 28 and in place thereof, substitute with the following provisions:-

"28(1) The award or decision of the National Labour Court shall be final;

(2) The award, decision or proceedings of the National Labour Court shall not be questioned or reviewed, and shall not be restrained or removed by prohibition, injunction, *certiorari* or otherwise, either at the insistence of the Government or otherwise."

I have looked at the content of that amendment. I am aware of a decision of the High Court on 15th February, 2006, which declared Section 17(2) of the Trade Disputes Act to be unconstitutional. That section is worded exactly the same way that the proposed amendment by Mr. Muite is worded. It cannot, therefore, be introduced in this House as it has been considered as unconstitutional. So, it will not be allowed.

PAPER LAID

The following Paper was laid on the Table:-

The Report of the Departmental Committee No.A on Agriculture, Lands and Natural Resources on the Squatters Settlement Bill, 2007.

(By Mr. Bett)

QUESTION BY PRIVATE NOTICE

DEMOLITION OF SMALL-SCALE
TRADERS' PREMISES IN NAKURU

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

(a) Is the Minister aware that structures belonging to small-scale traders located on Tom Mboya Street in Nakuru Town were demolished by Nakuru Municipal Council *askaris* on 6th July, 2007?

(b) What was the rationale for the demolition?

(c) Could the Minister stop further demolition of business premises and harassment of small-scale traders in the town?

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

(a) The Municipal Council of Nakuru carried out a clearing-up exercise along Tom Mboya Street after giving those concerned seven days notice to remove the illegal *kiosks*.

(b) The structures were in the central business district and they were interfering with storm water drainage along the said street.

(c) All councils are hereby directed to seek the Ministry's approval before major demolitions are carried out in their areas of jurisdiction, and should ensure the concurrence of the full council meeting in the first instance.

Mr. Mirugi: Mr. Speaker, Sir, I thank the Assistant Minister for that answer, although I am not very satisfied. One of the biggest challenges we have in this country is fighting poverty. There is no way we can fight poverty if our Government continues to impoverish the common man. Just because there is a meeting of the World Health Organisation (WHO) in a hotel nearby, our people are rendered poor. I want the Assistant Minister to clarify that in future, they will not conduct any demolitions before they have consulted the stakeholders and found alternative premises. Those people are not going anywhere!

Mr. Muchiri: Mr. Speaker, Sir, I concur with the hon. Member. However, he must also realise that councils may not condone illegal structures, but the Ministry's position is very clear. Action should be taken after due diligence has been carried out and a full council meeting of that particular authority has agreed that the structures are in the wrong place. We sympathise with the situation.

Mr. Sirma: Mr. Speaker, Sir, could the Assistant Minister confirm that the council issued licences to these small businessmen and its officers went back later to demolish their structures? These businesses were licensed. Why should the council demolish licensed businesses? If the council did not want to have business structures on that street, why did it issue licences?

Mr. Muchiri: Mr. Speaker, Sir, licences issued to kiosks are temporary. Therefore, temporary as they may be---

Mr. Sirma: On a point of order, Mr. Speaker, Sir. What is a temporary licence? It is an authority to trade!

Mr. Muchiri: Mr. Speaker, Sir, temporary licences are issued to kiosks which are constructed on road reserves. When we need the road reserves for the construction of roads, then the temporary licences expire. I should also add some licences are bare licences. They have even no notice.

Mr. J. Nyagah: Mr. Speaker, Sir, this Government is treating hawkers as if they are second class citizens. They treat them very badly. This is happening not only in Nakuru, but in every town in Kenya. When is this Government going to treat hawkers and *matatu* touts like other Kenyans?

Mr. Muchiri: Mr. Speaker, Sir, it is for that reason that we feel that there is a lot of politicking in some of these demolitions. That is why I have just said that no demolitions are going to take place unless there is approval from my Ministry.

Mr. Mirugi: Mr. Speaker, Sir, could the Assistant Minister take action against the council

officers who carried out these demolitions without seeking the approval of the Ministry, as he has stated?

Could he also assure this House that these traders will continue doing business without further harassment or demolitions by the council *askaris* from now onwards until a clear solution to this big problem is found?

Mr. Muchiri: Mr. Speaker, Sir, we shall investigate and if any officer exceeded his powers, action will be taken against him.

Mr. Mwandawiro: On a point of order, Mr. Speaker, Sir. Is it in order for successful Ministers of Local Government to continue pretending that they are bringing order in urban areas while they are allowing slums to mushroom everyday? What kind of order are they bringing?

Mr. Muchiri: Mr. Speaker, Sir, we are looking forward to having order in our towns. However, at the same time, we want that order to be exercised with a human face. That is the bottom line.

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

Mr. Speaker: Sorry, Mr. Mirugi! We have to make progress.

ORAL ANSWERS TO QUESTIONS

Question No.357

AMOUNT OF FUEL CONCESSION RECEIVED FROM NIGERIAN GOVERNMENT

Mr. Weya asked the Minister for Energy:-

(a) how much in fuel concession the Government of Kenya receives from the Nigerian Government; and,

(b) which companies have been awarded lifting contracts of fuel in the past three years and how much revenue has been received on behalf of the Kenya Government.

The Assistant Minister for Energy (Mr. Kiunjuri); Mr. Speaker, Sir, before I reply, I beg that I will give a lengthy answer.

(a) By an agreement signed in 1999, the two governments agreed that Kenya would be awarded a term contract to lift 30,000 barrels of Nigerian crude oil per day at an official selling price. You may wish to note that the official selling price fluctuates from time to time depending on the international crude oil market rates. These are the same terms offered to all countries with similar bilateral arrangements with Nigeria.

You may also wish to note that under OPEC regulations, member countries like Nigeria are not permitted to offer crude oil to any other country at concessionary terms.

The actual oil barrels received under this agreement is, however, dependent on availability and always subject to monthly nominations by the Nigerian National Petroleum Corporation. This agreement is also applicable to Kenya. The texture of the crude oil obtained from Nigeria known as bony light is not suitable for refining at the Kenya Petroleum Refineries Limited due to incompatible technical specifications. For this reason, Kenya is not in a position to refine this crude oil for home use.

Consequently, the Government decided that the said crude shall be traded in the international market and any commercial benefits used on petroleum related activities. Due to capacity limitations, the Kenya Government appoints through an open tender system, qualified international oil traders to lift and trade the crude oil on its behalf and, thereafter, receive

commission for every barrel lifted. The total revenue received is, therefore, dependent on the total number of barrels lifted as per the nomination by the Nigerian National Petroleum Corporation and the prevailing commercial rates per barrel as agreed in the tender.

Mr. Speaker, Sir, it is, therefore, incorrect to say that the crude is obtained for free from the Nigerian Government as suggested by some hon. Members. It is also incorrect to say that we lift the crude oil at a lower rate than the market rate. In the 2006/2007 Fiscal Year, we had five crude oil cargo liftings totalling to 4,717,517 barrels, representing a performance rate of 42 per cent. The commission during this year was US Cent 15.1 per barrel. This is a comparison to the five cargoes in the 2005/2006 Fiscal Year, totalling to 4,678,538 barrels, which was also a performance rate of 42 per cent. The commission per barrel was US Cents 15.1 per barrel.

In the 2004/2005 Fiscal Year, there were six cargoes lifted, totalling to 5,388,364 barrels, representing a performance rate of 50 per cent. The commission during this year was US Cents 7 per barrel for the first three cargoes and US Cents 13 for the next three cargoes. It is evident, therefore, that the commission per barrel has been increasing progressively since the 2004/2005 Fiscal Year to date. It is also evident that the barrels lifted in the 2006/2007 Fiscal Year were less because there were fewer liftings than the previous years. Secondly, you may also wish to note that the exchange rate against the Kenya Shilling was higher in the other two years than in the 2006/2007 Fiscal Year.

Finally, the bid documents for the Nigerian crude lifting had other considerations relating to technical capabilities and whoever was most responsive was asked to march the highest price offered in the tender. Kenya, therefore, earned the highest commission ever recorded to date, during this fiscal year. The tender documents concerned are available for scrutiny.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Can you give the opportunity to the Chair to listen to the intervention of the hon. Members and the opportunity to the other hon. Members to hear?

Mr. Weya: Mr. Speaker, Sir, I feel very disadvantaged because last week, you ruled that the Assistant Minister should table the tender documents and also tabulate the volumes and the proceeds that the Government is getting, which he has not done. So, until he does that, I do not think we can proceed with this Question. He was supposed to table the documents to the House, so that I can ask him questions.

Mr. Speaker: I think you are partly right and partly wrong. I do not recollect asking the Assistant Minister to bring tender documents. You may correct me if I am wrong, but I certainly remember clearly that he was supposed to bring to the House the tabulations of the volumes lifted and the prices gained. I think that is all he was supposed to do. I have heard him read the volumes lifted and the prices given, unless, of course, you want to see the document. Is that what you would like to see?

Mr. Weya: Mr. Speaker, Sir, the Assistant Minister has clarified the volumes that are lifted every month. He has not mentioned those volumes. He has stated according to the allocations they are given. He has just mentioned that they are allocated "X", but he did not give us what volumes they are allocated. From my understanding, the Government collects its commission upfront before it gives back to the---

Mr. Speaker: Maybe he will answer that bit. Maybe you have not heard, but I have heard the Assistant Minister say that in one financial year, over 4 million barrels were lifted and in the last financial year, 5 million barrels were lifted.

Mr. Kiunjuri, would you like to give a copy of that document to him? I do not want the hon. Member to be disadvantaged. I really would like him to have a look at the document. If you

want time, I will give it to you. I really want hon. Members to be in a position to ask questions from a position of knowledge. Would you like to give him a copy?

Mr. Kiunjuri: Mr. Speaker, Sir, I will do that. However, it is very clear. This can be repeated in a very short time. I have said clearly that in the 2006/2007 Fiscal Year, the lifting was totalling to 4,717,515 barrels. In the 2005/2006 Fiscal

Year, the total lifting was 4,678,538 and in the 2004/2005 Fiscal Year, the total lifting was 5,388,364 barrels.

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

Mr. Weya: Mr. Speaker, Sir, could you, please, give me some time to go through the document?

Mr. Kiunjuri: Mr. Speaker, Sir, if you look at the mood in the House, you will notice that all the hon. Members were very interested in this Question and they seem to be very satisfied with the answer that I have given. It is a very simple answer, unless there is another motive. We are also ready to tackle that if the hon. Member still wants us to push it further.

Mr. Speaker: Order! You are certainly wrong on that score, Mr. Kiunjuri. Very wrong! In fact, hon. Members may just be keeping quiet because they do not have the information. You know that if you do not have all the information, you cannot participate.

I think it is my duty here to ensure fair play. You have the information, he does not! You have now given him the information and I must give him the opportunity to look at it and interrogate you appropriately!

Mr. Kiunjuri: Mr. Speaker, Sir, I agree with you. I can see that the "general" is not in, therefore, it is okay with me.

(Laughter)

Mr. Mwanzia: On a point of order, Mr. Speaker, Sir. You have heard what hon. Kiunjuri has said. He has referred to a "general".

(Laughter)

Mr. Speaker: Order! Order, hon. Members! We are very fortunate in this House because we do, indeed, have a general! We do, indeed, have a Colonel, hon. Konchella, and several Majors, led by Maj. Madoka and Maj. Sugow. I think we also have a Captain!

Mr. Ojode: Mr. Speaker, Sir, we should not bring the name of anybody into this matter. I thought that the "general" within this House is the Speaker. Do we have another "general" other than the Speaker?

(Laughter)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, we have the "A-General"; that is the Attorney-General.

(Laughter)

Mr. M'Mukindia: Mr. Speaker, Sir, while I listened very carefully to what the Assistant Minister for Energy said, it looks like progressively from the year 2004/2005 to date, the volumes of crude oil lifted from Nigeria are decreasing for some reason. The level of lifting has averaged between 50 percent to 42 percent of what the Nigerian Government has given to this country. In a situation where crude oil prices are increasing, could the Assistant Minister tell this House and the country why the country is not lifting all the crude oil that it is supposed to lift so that we can mitigate the effects of price increases in petroleum prices?

Secondly, the Assistant Minister should also clarify to the House and the country, the Government's policy regarding oil concessions in the light of the fact that there is information that countries such as Angola, Libya and Iran have actually given Kenya oil concessions? Could he also tell us how much money this country has earned from those other oil concessions?

(Applause)

Mr. Kiunjuri: Mr. Speaker, Sir, there is nothing that the Government can do regarding the issue of oil concessions and lifting because the only way to lift oil is through open tender system. Immediately we place the tenders, whoever wins is supposed to lift. The Government cannot give him conditions because it will not be involved from that juncture. We have only two other concessions that are coming up; that is, from Libya and one that we are negotiating with Venezuela.

Mr. Speaker: Mr. Weya, are you comfortable with the answer given?

Mr. Weya: I am not comfortable. The Assistant Minister was supposed to clearly give tabulations. He has just given us a bold figure over the years, telling us how much fuel they have lifted this year and at so much commission. He was supposed to tabulate those monthly allocations which they have been given so that we know after the allocations, how much of that oil is being lifted.

Mr. Speaker: I think the annual lifting is the total of either daily, weekly or monthly lifting. If you have anything to interrogate, then interrogate on those totals.

Mr. Okemo: Mr. Speaker, Sir, I just wanted a clarification from the Assistant Minister. He is talking about the oil being lifted at the official price. I think he needs to clarify; what is the official price vis-a-viz the market price? The only reason I think the Government of Kenya will benefit from the Nigerian Government is if the official price will be lower than the market price so that that differential which he is calling a commission can actually be of benefit to this country. If that is the case, then I am very surprised that the Government will only be taking a half of the capacity that they are allowed to take, if there will always be a differential between the official price and the market price. Maybe, the Assistant Minister can make a clarification.

Mr. Kiunjuri: Mr. Speaker, Sir, I have indicated clearly that there are no special rates. The rates that are offered are the rates at the market price at that particular time.

Mr. Speaker: What is the concession?

Mr. Kiunjuri: Mr. Speaker, Sir, we are allowed to get into the market and any concession that is being given to other countries. It is not only Kenya that is benefiting. Other countries are also benefiting. That rate is given for all other countries benefiting.

Secondly, we asked people to float tenders. Before they do that they should go to Nigeria and find out about the prices there so that they will be able to give us their price. That is why I said that they are giving us 15 cents. Some of those who have tendered would give us 7 cents and others 10 cents and we go for the highest.

Mr. Speaker: For the benefit of the House, I understand that Kenya as a country, was

given oil on concessionary terms. In my understanding, the word "concessionary" - and I hope in plain ordinary English - means less than the ordinary. It therefore, means that the Government is being sold oil at a lower price than the prevailing market price. If that is the position, what is the difference between the market price and the concessionary price?

Mr. Kiunjuri: Mr. Speaker, Sir, you are right. We receive that special rate like any other country that has been given concession. Ours depends on how much at that particular time, the price will be because it fluctuates. I cannot say that at this particular time, it will be 20 cents. The special rate we are given---

Mr. Speaker: Just a moment. I am sure that when you are given a concessionary price, I believe it is given as a percentage of the market price because no price remains stagnant throughout. You are probably being told that you will pay 80 percent or 97 percent of the market price. If you are given at 97 percent, it means you are getting a concessionary price of 3 percent. The benefit is 3 percent. So, what is the percentage then or are we not saying everything?

Mr. Kiunjuri: Mr. Speaker, Sir, there is nothing to hide in this House because everything is there and it is Government to Government; you cannot hide this kind of information. I am ready to go once again and look at the actual price that is given. I can be able to answer that. I want to clarify this matter: Whether we are given US\$1 or US\$2, the issue is whether it is competitively done---

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

Mr. Kiunjuri: Let me finish, Mr. Speaker, Sir.

Mr. Speaker: Order! Fairness demands that the Assistant Minister is heard. Let us hear what he has to say because he will not run away from this House. You will still be able to interrogate him. If he tries to run away, I will stop him; you know that.

Mr. Kiunjuri: Mr. Speaker, Sir, it is true that I have answered the first part of the Question which I was supposed to come and clarify today. Another question which I have been asked, which is fundamental and Kenyans should know, regards how their money is being used and how these concessions are being handled. I beg the indulgence of the Chair that I answer it next Thursday.

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

Mr. Speaker: I will take your points of order but Mr. Assistant Minister, you will help us if in advance of Thursday, whatever answer you will give, let the hon. Member have a copy of it in advance so that he will not say again that he has not seen it.

(Question deferred)

Mr. M'Mukindia, what was your point of order?

Mr. M'Mukindia: Mr. Speaker, Sir, while I see what the Assistant Minister is trying to do; on one hand, the Government is unable to lift more than 50 percent of the crude oil available to us. It is also a contradiction that the Government is working with Venezuela and Libya to get more concessions when we cannot lift what Nigeria has given us. Could the Assistant Minister explain to the House how he intends to get that additional oil lifted?

Secondly, Is there not a penalty clause in the contract between the people who win the tenders and the Government? What kind of contracts does the Government sign?

Mr. Speaker: Mr. Assistant Minister, would you like to respond?

Mr. Kiunjuri: Mr. Speaker, Sir, I can answer that question. The issue is about the penalties. This concession was signed in 1999 by the then Minister for Energy Mr. Raila Odinga and the Government of Nigeria. It was between the Government of Kenya and the Government of Nigeria. The issue of lifting is about the capability of whoever wins the tender.

Mr. Speaker: Hon. Members, I think we are getting out of line. Once I have deferred the Question, it is deferred. You cannot speak on a deferred matter because you are speaking to a void. So, why do you not wait until Thursday?

Mr. Okemo: Mr. Speaker, Sir, the Assistant Minister should actually bring a copy of the concession; that is, the actual agreement that was signed between the Kenya Government and the Nigerian Government. I think that is important so that we see for ourselves the content.

Mr. Speaker: That is fair enough. I hope we have less Questions on oil because that one has taken all the time.

Next Question.

Question No.382

SHIPPING OF TEA TO OVERSEAS
BUYERS WITHOUT LCs/CASH

Mr. Bett asked the Minister for Agriculture:-

(a) whether he is aware that processed tea valued at over Kshs650 million was shipped in March, 2006 to an overseas buyer without opening letters of credit or receiving cash;

(b) whether he is further aware that the farmers are bound to suffer losses because one of the buyers, Lohit International Limited, has declined to remit Kshs271 million; and,

(c) what measures he is taking to protect the interests of the farmers.

The Assistant Minister for Agriculture (Mr. Muiruri) Mr. Speaker, Sir, I beg to reply.

(a) I am aware that processed tea valued at Kshs650 million was shipped in March, 2006 to an overseas buyer without opening letters of credit or receiving cash.

(b) I am aware that one of the ten buyers, Lohit International has refused to pay the KTDA Kshs244,974,346.84; hence, there is a risk that farmers will lose the same amount.

(c) In order to protect the farmers' interests, I have directed the KTDA to use every available channel, including legal action, against the buyers to recover the same amount.

[Mr. Speaker left the Chair]

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

Mr. Bett: Mr. Temporary Deputy Speaker, Sir, I want to thank the Assistant Minister for his sincerity. That tea belongs to more than 420,000 farmers for whom the Kenya Tea Development Agency (KTDA) acted as their agent. The KTDA released tea worth Kshs650 million without caring about its source and insurance to protect the poor farmers. Was that tea sold by the KTDA through direct sale or auction? Was it insured so that farmers would have security on their tea? As far as I am concerned, there was no guarantee of paying for that tea.

Mr. Muiruri: Mr. Temporary Deputy Speaker, Sir, the tea was let out to this international company without following procedures of payment. There were no letters of credit or anything to cover tea farmers. This is a terrible thing. I am not so sure about the insurance, but I believe when tea is in the possession of the KTDA, it must be insured. However, when it leaves the KTDA, it must be insured by the buyer himself. It was an error. That is the position.

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

[Mr. Speaker resumed the Chair]

Mr. Mwancha: Mr. Speaker, Sir, very clearly the agency gave away tea worth Kshs650 million without the necessary security such as letters of credit. Last week, we heard that farmers lost Kshs244 million. Within this month, we were informed by the same Assistant Minister that in the purchase of continuous fermentation machine, the agency, again, lost Kshs105 million. Last year, on a deal of imported fertilizer from Romania, farmers lost excess of Kshs500 million. What is he doing to stop these loses to poor Kenyan tea farmers, once and for all?

Mr. Muiruri: Mr. Speaker, Sir, what the hon. Member of Parliament is saying is very true. As I said, we, in the Ministry, will follow up this matter and many others, to ensure that farmers are at least paid this money.

This company is not based in Kenya. It is a Swiss-based tea-buying company. We will follow all the legal channels together with the KTDA, to ensure that at least farmers are paid the money.

Mr. Salat: Mr. Speaker, Sir, I must thank the Questioner for asking this Question because I am also affected. Kapkoros tea farmers stand to lose Kshs4 million in this shoddy arrangement. We have had cases where the Government comes in to aid farmers and institutions that have failed. I consider this as a failed institution. What is the Government doing to compensate the farmers? He said in part "c" of his reply that they are pursuing the culprits. What is the remedial measure the Government will undertake to save these farmers because this is a lot of money? Could the Government compensate as they continue to pursue these culprits?

Mr. Muiruri: Mr. Speaker, Sir, the Government will not compensate the farmers. But jointly with the KTDA, we will do what it takes to ensure that the tea farmers are paid. We have interest in this matter. I have two factories in my constituency and they have lost over Kshs2 million. Katunguru Tea Factory, which is in Mr. Kamotho's constituency, is the highest loser with Kshs12 million. So, this is a serious matter and we are taking it seriously.

Mr. Ligale: Mr. Speaker, Sir, this is a very serious matter. Beyond the Government pursuing KTDA, could the Assistant Minister tell us whether they have identified the particular officers in the KTDA who undertook this shoddy deal? How can this happen, that there is no security and tea is released without payment? They must have identified the particular officer who dealt with it. This is a very serious matter!

Mr. Muiruri: Mr. Speaker, Sir, it is a very serious matter. There is no doubt about that. We are told that some of the officers have been suspended and others dismissed. However, I do not know their names. The tea farmer is going to be saved by what will come out of the Tea Task Report.

Mr. Speaker, Sir, the Questioner; Mr. Bett, is also the chairman of the Committee of Agriculture, Lands and Natural Resources. It is, therefore, important that we work together to ensure that these farmers are paid. It is their tea. It is the fault of the KTDA because it gave out the tea without calling for balloting. This is not right. We will follow it up to ensure that farmers are paid this money.

Mr. Sambu: Mr. Speaker, Sir, the tea does not leave the auction in Mombasa without affirmed letters of credit and insurance from the buyer on the other side. Affirmed letters of credit must be guaranteed by a local bank. Anything short of that, is conspiring to steal from farmers. Could the Assistant Minister make sure that those officers who allowed the tea to leave Mombasa without affirmed letters of credit are arrested?

Mr. Muiruri: Mr. Speaker, Sir, this tea did not go to the auction. It was direct sales. It was sold between 22nd, March and April. We can follow up this matter. Where we think that an offence was committed, the law shall be followed. We may report the matter to the Kenya Anti-Corruption Commission (KACC). That is the much we can do.

Mr. Mwancha: On a point of Order, Mr, Speaker, Sir. Sometimes last week, *The Standard* Newspaper carried out an article saying that Members of Parliament who have been asking Questions about KTDA have been paid. The Assistant Minister has admitted impropriety in that deal of continuous fermentation machines. Could the newspaper name the people who were paid? When I went to the constituency, it was concluded that I am one of those people who were paid. I was not paid! Could now *The Standard* Newspapers carry an article to apologise to the House? Otherwise, it should name those who were bribed in that deal?

(Applause)

Mr. Speaker: Order, Members! You should have brought this matter to my attention much earlier, so that I can know what you are talking about. But I think I want to make it absolutely clear from the Chair here that, no person or organisation is entitled to stop Members of Parliament from asking legitimate Questions. But in the same breath also, if we as Members of this House have some taint, you do not hope that this House will polish you. Polish yourselves!

So, let us get everything right. We have a job to do and we must do it the best way we can. I hope that we are all acting in the national interest. I really do not know about that particular aspect.

Yes, Mr. Angwenyi!

Mr. Angwenyi: Mr. Speaker, Sir, that is a lot of money which is owed to farmers. Could the Assistant Minister direct KTDA to immediately pay out that money and then recover it through litigation or whatever means later, so that poor farmers can get their money? In the same breath, could the Assistant Minister repossess KTDA which was handed over to the private sector improperly, so that the he can inject some good management in it?

Mr. Muiruri: Mr. Speaker, Sir, KTDA is owned by farmers. But as I said earlier, we have directed KTDA to get money. Where they get it from, is their business. But they must pay the farmers.

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

Mr. Speaker: Order, Members! I must be forgiven for not being a tea grower! I do not know much about KTDA. But, apparently, it is making too many frequent visits to this Chamber. There must, therefore, be something basically wrong. What is it?

Mr. Muiruri, what is basically wrong with KTDA, because there must be something wrong!

Mr. Muiruri: Mr. Speaker, Sir, what happened to KTDA is a product of some of the Members of this House, including myself. KTDA was operating very well before the legal notice that was issued by the Minister in 1999. That legal notice left KTDA to operate the way it wants. There is no direct Government control. I must admit that many things are going wrong, this being one of them.

Mr. Sambu: On a point of order, Mr. Speaker, Sir. You did ask why many people are asking why KTDA keeps on coming here.

Mr. Speaker, Sir, tea is supposed to be sold at the tea auction. What the Assistant Minister did not say, and it has now come to light, is that, that tea was sold directly, as it was in the lorries going to Mombasa. They just transferred it to those people and transferred it to the ship. Even the

Government may not have known how many tonnes were there. It was theft. Tea should be sold through the auction in Mombasa.

Mr. Speaker: Order! Sometimes, I am afraid! Sometimes, you must suffer from the consequences of your own actions! I was sitting on the same Chair when this House, in its wisdom or lack of it, cannibalised, in my view, the KTDA Act. You removed any power from the Government. Now, if you remove power from the Government, and now things have gone wild and you want the Government to control it--- You had removed the power from the Government to do that. What do you want the Government to do? Restore the power yourselves!

Mr. Muiruri: Mr. Speaker, Sir, that has partly been done. This House has passed a Motion.

(Loud consultations)

Mr. Speaker: Order, Mr. Muiruri! Order, all of you! Mr. Muiruri, a Motion has no legal effect. It is a wish. You are expressing a wish that something happens. There is a difference between a wish and power.

The Minister for Energy (Mr. Murungi): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Yes! Minister for Energy.

The Minister for Energy (Mr. Murungi): Mr. Speaker, Sir, I rise on a point of order to seek clarification from my colleague, Mr. Muiruri, because all of us were members of the Coffee and Tea Parliamentary Association (COTEPA) when KTDA was transformed from a parastatal to a private company. Is the Assistant Minister saying that you can, by a Motion in this House, convert a private company into a public company? That really amounts to compulsory acquisition of a private company without compensation!

(Loud consultations)

Mr. Speaker: Order, Members! Can we have some order! What I observe is that there are actually some problems in KTDA. I think your problem now is how to address that. If you must address that question as you should, please go and think deep about it and make appropriate legislative intervention if you have an avenue to do so. That is because lamenting on a thing that you gave away cannot help us. Look at the time we have taken; one whole hour! So, please, can we now finish with this?

Mr. Bett, last question!

Mr. Bett: Mr. Speaker, Sir, the frustrations of these Members is the frustrations of 420,000 farmers in our countryside. KTDA is frustrating them. KTDA is not even paying them! The Minister for Agriculture recently set up a Task Force to look into the operations KTDA and the entire tea sector. That report has not been made public. When will that report be made public, so that hon. Members could know what that Task Force found out?

Mr. Muiruri: Mr. Speaker, Sir, let me first comment on what Mr. Murungi has said. The creation of KTDA was done in 1964 by a legal notice by the Minister for Agriculture. That was revised in 1967 by the Minister for Agriculture. In 1999, the creation of KTDA into a company was done by a legal notice by the Minister for Agriculture. So, all these matters are matters that are within the powers of the Minister for Agriculture, and not the House.

Now, in answering Mr. Bett's question, I must say that we are re-looking into the issue of the Gazette Notice of 1999 by the then Minister for Agriculture with a view to revoking it.

Mr. Speaker, Sir, with regard to the question by Mr. Bett, we received the report by the Task Force on Friday. We looked at it, but we were not satisfied. We will go through it again over

the weekend. Within a very short time, the Task Force Report will be available to this House.

**COMMUNICATION FROM
THE CHAIR**

DELETION OF CLAUSE 28 FROM
THE LABOUR INSTITUTIONS BILL

Mr. Speaker: Very well. Order, hon. Members! Hon. Members, I think I have two minutes or so, for a Ministerial Statement to be issued. Just before that, I have brought to the attention of the Attorney-General, and through him to the Minister, of Clause 28 as it now stands in the Labour Institutions Bill. That clause, from the way it is reading as of now, is unconstitutional. I am sorry; today I am expunging too many clauses on being unconstitutional. Unless I have a commitment either from the Attorney-General or the Minister that they will amend Clause 28 to conform with the Constitution, I will be forced to delete it on my own. I will order from the Chair that it be deleted. So, do I have that commitment?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Speaker, Sir, you have that commitment. In fact, I am just inserting the corrections in the main Bill.

Mr. Speaker: Mr. Minister, you know we have to do it in a legal way. You have to draft the amendment to satisfy me and I approve it. In fact, you have very little time. You have to do that just before we go to the Committee of the Whole House. Yes, Mr. Attorney-General.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, the amendment has already been drafted in good handwriting which is very readable. I am asking the Minister to now give it to the Clerk-at-the-Table, because he has just signed it. I hope you can approve it.

Mr. Speaker: Who was the Minister who wanted to make a Ministerial Statement? It was hon. Munya. All the other Questions are deferred since time is up. They will take priority in the usual way.

Question No.323

NUMBER OF COMPENSATION CASES FILED
BY FORMER MILITARY OFFICERS

(Question deferred)

Question No.111

COLLECTION/UTILISATION OF SUGAR
CESS BY MUHORONI TOWN COUNCIL

(Question deferred)

Question No.348

COMMENCEMENT OF WORKS
ON ROADS D204/D205

(Question deferred)

Question No.355

TITLE DEEDS FOR NYERI-MAJENGO
PLOT OWNERS

(Question deferred)

Question No.389

WHEREABOUTS OF FUNDS FOR
MAGARINI WATER PROJECT

(Question deferred)

Question No.398

NON-PAYMENT OF BENEFITS
TO MR. SANG'S DEPENDANTS

(Question deferred)

Question No.399

INADEQUATE PREVENTIVE/TREATMENT
MEASURES AGAINST MALARIA

(Question deferred)

Question No.406

CONSTRUCTION OF COLD STORAGE
FACILITIES AT NYANDIWA BEACH

(Question deferred)

MINISTERIAL STATEMENTS

INSECURITY IN KIBERA SLUMS

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, on 11th July, 2007, hon. Raila Odinga, the Member of Parliament for Langata rose on a point of order to seek a Ministerial Statement from the Minister of State for Administration and National Security on the issue of insecurity caused by criminal gangs in the sprawling Kibera slums.

Mr. Speaker, Sir, on 27th June, 2007, at about 8.30 p.m. at Kibera Laini Saba, four gangsters armed with AK-47 rifles and pistols stormed into the bar of one, Mr. Sammy Mutuku, and ransacked

customers at gun point. The gang robbed the customers of their valuables, including money. Mr. Eliud M. Okeyo, a male adult aged 54 years old defied the criminal's order to lie down prompting

them to shoot him. He died on the spot. Following this incident, an alarm was raised. Police officers on patrol responded and pursued the criminals who escaped while shooting indiscriminately. It is suspected that they did so, as a way of clearing their escape route. As a result the following were shot and died instantly: George Ouma Wamure aged 40 years; Paul Maunda aged 23 years and Moses Kamau aged 24 years.

Mr. Speaker, Sir, a murder case File No.141/413, 2007 has been opened and investigations are in progress. Investigations done so far, indicate that the people involved are members of an organised gang led by Mr. Odhiambo, a known criminal who is wanted by the police. He has evaded police dragnets for some time. This gang operates at Kibera, Ngando, Muthama, Kwa Ngongo, Uthiru and Kabiria areas within the jurisdiction of Kilimani, Langata and Gigiri police divisions. So far, no arrests have been made. However, police have intensified patrols in the affected areas in an effort to wipe out criminals. For instance, on 2nd July, 2007, police received information that gangsters were planning to commit a robbery within Kilimani area. They intercepted the gangsters who were in two motor vehicles at the junction of Kangara Road and Bahati Avenue and gunned down three of them. They recovered one AK-47 rifle with 14 rounds of ammunition, one pistol and one motor vehicle, Registration Number KAX 799K, a Toyota Corolla. Other criminals escaped in the other vehicle. It is truly suspected that the shot gangsters and those who escaped participated in the Kibera murders.

Mr. Speaker, Sir, similarly, on 4th July, 2007 at about 9.45 p.m. while on patrol along Ngong Road as part of the efforts to net the gangsters, the police spotted a suspicious motor vehicle at Three Wheels Hotel. They ordered the occupants to stop, but instead they came out of the vehicle and fired at the officers. Three of them were gunned down and one AK-47 rifle, one Browning pistol and 11 rounds of ammunition were recovered. The officers have been keeping vigil within the area, but unfortunately, Mr. Odhiambo has gone underground.

Mr. Speaker, Sir, finally, on 12th July, 2007 at about 9.45 p.m., the police managed to gun down one suspect at Annex Bar within Kibera/Kianda who is suspected to be a member of the gang that participated in the Kibera killings. The suspect, not only resisted arrest, but also snatched one of the police officers firearms and started running away. He was shot dead by the other police officers.

Mr. Speaker, Sir, while the police have not yet apprehended all the perpetrators of the heinous crime of 27th June, 2007, preemptive and other anticipatory measures have been put in place to prevent the occurrence of a similar crime in future. All the suspects who have been killed met their fate for engaging the police in an exchange of fire. I would like to urge the residents of Kibera, especially those who witnessed the crime, to volunteer information to the police. This will hasten the arrests of the remaining criminals.

Thank you, Mr. Speaker, Sir.

Mr. Raila: Mr. Speaker, Sir, I thank the Assistant Minister for the Ministerial Statement. However, I would like to plead with him to take his time, go back and get proper information from his officers.

Mr. Speaker, Sir, first, he says that these gangsters invaded a bar in Laini Saba Village. Thereafter, there were scuffles and Mr. Okeyo was shot dead. I want him to know that Mr. Okeyo was not shot dead in Laini Saba Village, but around Fort Jesus which is over two kilometres away from there. This is another village completely.

Secondly, he says that these people were running away and then the police were pursuing and they were clearing their escape route and that is when the other people were shot. Mr. Moses Kamau and Mr. George Odhiambo were shot in Soweto Village. These gangsters ordered them to lie down near the railway line and shot them in cold blood. Mr. Paul Maunda, basically, is a *samosa* vendor. Mr. Moses Kamau is a radio mechanic. Mr. George Ouma was shot 100 metres away from there. These people were not running but walking. Mr. Ouma was ordered to lie down

and as he attempted to run away, he was shot dead.

Mr. Speaker, Sir, the Assistant Minister says that this gang was led by a Mr. Odhiambo. So, they know Mr. Odhiambo. What is there to prevent them from apprehending Mr. Odhiambo?

Mr. Speaker, Sir, I want to say that the information the Assistant Minister has provided to this House is incorrect. First, there was no scuffle in any bar. Those people moved in and began to shoot at will. It is very important to know that this statement is covered with very unrelated incidents. We want the Assistant Minister to give this House proper information on what happened, exactly, on that particular day. We do not want to know what happened in Laini Saba, Soweto and Fort Jesus villages in Kibera Estate.

Mr. Speaker: Mr. Assistant Minister, would you like to respond to that?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, what hon. Raila is saying is that he is, basically, disputing the information I have given. There is a difference between what he has said and what I have said. I did not say that there was a scuffle in the bar. I said that the robbers entered the bar, ransacked the customers who were there and shot one of them dead. They then walked out of the bar. As they were leaving, police officers were pursuing. They kept on shooting indiscriminately as they were running away from the police officers. I rely on the police for information and I have no reason to doubt the information they have given. They have given specific details of what happened. The same individuals that Mr. Raila is talking about are the same ones who were killed. The police have information about the operations of this gang. I have already given one incident where one gang member was killed. The others have gone underground. Police officers are still pursuing them and looking for them. It is not easy, in Kenya, to find a criminal who has gone underground. It takes time, but we are sure that the police will catch up with them. They are known, and specifically, the gang leader is well known. Several of them have been cleared in the same region; so, the police are doing something.

The concern of the hon. Member is that the police have done nothing. What I have outlined here clearly shows that the police are doing everything in their power to ensure that the gang members are apprehended, and make sure that similar incidents do not take place again.

Mr. Speaker: Let us have one more question from Mr. Raila, then we move on to the next Order.

Mr. Raila: Mr. Speaker, Sir, I do not want to engage the Assistant Minister in an argument. However, it is very important that the House gets to know the truth. First, Mr. Okeyo was not shot in a bar. He was shot while he was walking along Karanja Road at Fort Jesus Estate. The other two people were ordered to lie down and they were actually shot while they lay down. Would I be in order to request that the House orders the Assistant Minister to come with me to the village of Kibera so that he can hear and get first-hand information from people and order the police to carry out proper investigations?

Mr. Speaker: Do you accept the invitation to go to Kibera?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, I have no problem with accompanying hon. Raila to Kibera. However, the most important thing is not for me to arrive in Kibera. Even if I went there, yet I am not trained to carry out investigations that would help get the gangsters, that would only be a public relations exercise. The concern of the police is to make sure that the gangsters are apprehended. What I would welcome is to sit down with hon. Raila and get the information that he has, which I will forward to the police so that they can get to the bottom of the matter. In any case, he can also accompany me to the police headquarters. Since he has some information that is useful to them, we can deliver it there. However, going to Kibera will not help us. But I would accompany him for a political meeting if that is necessary. For this particular issue, let us give it to the experts who are the police to deal with it.

Mr. Speaker: It seems as if you will be in each other's company for quite sometime now, which is not a bad thing. You may end up knowing each other well.

(Laughter)

Should I move to the next Order?

*(Prof. Anyang'-Nyong'o and Mr. Mwaboza
stood up in their places)*

What is it Prof. Anyang'-Nyong'o? I will come to you, Mr. Mwaboza.
Please, we have to leave this matter now.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I quite sympathise with the hon. Assistant Minister. Would I be in order to request him to inform the House what method the Ministry has to check on the authenticity and validity of police statements given to them so that the House can be secure that the report they have can help them solve the problem?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, we have very many ways of checking information to know if it is correct. We have the Intelligence, the Provincial Administration and individuals who can inform us about what is happening. If we find out that the information we have been given is not true or is misleading, we take action on the affected officers. We are not saying that we are angels and we cannot be misled. However, if we find out that we have been misled, we take action. That does not mean that individual hon. Members here cannot also mislead us.

DEPORTATION ORDER FOR
MR. MOHAMMED SHEIKH OSMAN EGAL

The Assistant Minister, Office of the President (Mr. Mwaboza): Mr. Speaker, Sir, pursuant to a Question by Private Notice dated 17th July, 2007 by hon. Member for Mandera Central, I do, hereby, wish to lay on the Table, a copy of the deportation order of one Mohammed Sheikh Osman Egal dated 22nd May, 2007, duly signed.

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

(Loud consultations)

Mr. Speaker: Order, order, hon. Members! Mr. Minister, are you ready with your Ministerial Statement? Can we not wait a little longer?

INSECURITY ALONG THE
KENYA-UGANDA BORDER

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Speaker, Sir, in response to the request for a Ministerial Statement by the hon. Member for Kacheliba, hon. Poghishio, we have considered the issues raised and the events going on along the border. I, therefore, have a brief statement to make.

One is that, since the incident was reported on 29th June, 2007, when the Uganda People's Forces crossed into Kenya, there have not been any other reported incidences in the area. Information available is that other incidences took place outside the Kenyan territory. Immediately after the reported incident, our security forces, which are the Kenya Police, jointly with our military

forces, intensified the patrols within the area. Arrangements have been made to hold security meetings between the Provincial Security and Intelligence Committee and their counterparts in Uganda in order to solve the problem. In that meeting, I expect the discussion will be on the recovery of livestock, compensation of livestock and how to ensure that there is permanent border security within that area.

Other issues that arise thereto, are that we have held consultations with the Ministry of Provincial Administration and National Security to ensure that they pursue this issue further.

Mr. Poghismo: Mr. Speaker, Sir, I want to thank the Assistant Minister for trying to respond. The people who wrote that statement were not sure about what to do about the issue. If this Ministry is not capable of handling this matter, I think it should hand it over to the Ministry of Foreign Affairs so that it can be dealt with comprehensively. To say that no other incidences have been reported is not correct. Yesterday, I spoke here and said that in Kacheliba, near the border, two people were shot dead and another one wounded. The one who was wounded is hospitalised. Therefore, it is not true to say that no other incidences have been reported.

The other matter is that our livestock is in Uganda. It is only a serious Kenyan security team that can help the Ugandans see that we need to co-exist, so that our livestock is returned to us. So, I am asking the Minister to reconsider his Statement, which is very weak, and really come up with a stronger commitment for helping the Pokots along the border. I just wanted a commitment from the Minister.

Mr. Speaker: Okay! Fine!

Proceed, Mr. Assistant Minister!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Mr. Moroto): On a point of order, Mr. Speaker, Sir. I do not want to look as if I---

Mr. Speaker: Is the mention of the word "Pokot" sufficient to make you stand on a point of order?

(Laughter)

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Mr. Moroto): It is not like that, Mr. Speaker, Sir. I happen to come from that area. I know what happened, just like the way hon. Poghismo has put it.

Mr. Speaker: What is your point of order?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Mr. Moroto): I just wanted to correct him! We should not mislead this House!

Mr. Speaker: Okay!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Mr. Moroto): Despite the fact that I am also in this Government, but what they are giving is out of order!

(Laughter)

Mr. Speaker: Proceed, Mr. Tarus!

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Speaker, Sir, may I take this opportunity to, without contradicting the spirit of collective responsibility, inform Mr. Moroto that he is an Assistant Minister in the Office of the Vice-President and Ministry of Home Affairs and, therefore, he should allow the Ministry to assist in ensuring that Pokots enjoy peace.

Mr. Speaker, Sir, I hope that nobody is overlooking the fact that, all of us are responsible in ensuring that our people are able to co-exist with other people. That aside, the sentiments expressed by the hon. Member are, indeed, valid. That is why we have held discussions with the Ministry of Provincial Administration and Internal Security to ensure that such incidents are addressed

promptly. We are concerned about the lives of our people. It is our responsibility to ensure that there is peace and co-existence. Therefore, we shall explore all avenues to ensure that peace is not breached in that particular aspect.

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

Mr. Speaker: Sorry, Mr. Poghio! We will not make it a debate now! What is it?

Mr. Poghio: Mr. Speaker, Sir, I do not see any seriousness in the Assistant Minister. Why is he having consultations with our own Ministry of Provincial Administration and Internal Security? The livestock is in Uganda. The people are being killed by Ugandans. We are not hearing any commitment to engage Ugandans! That is what I want to hear! Could the Assistant Minister, please, give me peace, just by being here?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Speaker, Sir, I am not sure whether the hon. Member was listening. I said that arrangements have been made to hold proper security meetings between our Ministry of Provincial Administration and Internal Security, the Intelligence Committee--- There have been meetings between Kenyan security officers and those from Uganda to solve that problem amicably.

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

COMMUNICATION FROM THE CHAIR

DEFERREMENT OF ORDER NO.8

Mr. Speaker: Order! Order, hon. Members! Order! Order! I would like to give some directions on the course of the Order Paper.

Hon. Members will recall that a few weeks ago, we still had, in the Committee of the Whole House, some Labour Bills; I think they are three.

An hon. Member: Five!

Mr. Speaker: Yes! Five of them. They are all interconnected and referring to one another as if they have already become law. Some of them are creating certain institutions within the other Bills. I think it is very, very difficult. I do not know how those things will be rationalized. I will give the Attorney-General the opportunity to consult with the Minister to see whether, indeed, it is possible to pass any one of those Bills, because they have interconnections within themselves. I really do not know how they will do it, but I am sure that the hon. Attorney-General has a lot of knowledge - and I respect that - and I am sure he will assist.

For that reason, and at the request of the Minister, I will defer Order No.8; that is the Committee of the Whole House. The consequence of that is that we will then go to Order No.9. That is the Second Reading of the Tobacco Control Bill.

Thank you.

Next Order!

BILLS

First Reading

CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL

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

Second Reading

THE TOBACCO CONTROL BILL

(The Minister for Health on 5.7.2007)

(Resumption of Debate interrupted on 5.7.2007)

Mr. Speaker: Was anybody on the Floor? Where is hon. Wamunyinyi? By being absent, he is deemed to have concluded.

Mr. Sungu, do you want to contribute?

Mr. Sungu: Yes, Mr. Speaker, Sir.

Mr. Speaker: Proceed!

Mr. Sungu: Thank you, Mr. Speaker, Sir. I stand to support this Bill on tobacco control.

Mr. Speaker, Sir, this Bill was before this House last year and we debated it fully. In fact, we managed to pass it at the Second Reading. Unfortunately, we were not able to continue any further than that because we ran out of time.

Mr. Speaker, Sir, there are a few key issues on tobacco that need to be revisited, apart from what we said last year. One, tobacco is the most preventable cause of death, disability and disease in Kenya and the world over.

Mr. Speaker, Sir, the second point is that the growth, manufacture, sale and use of tobacco in Kenya is not effectively regulated, despite the Cabinet approval of the need for regulation.

Mr. Speaker, Sir, the third thing is that, internationally, Kenya has ratified the Framework Convention on Tobacco Control by the World Health Organisation (WHO) and yet, in this country, we have not domesticated that convention.

Mr. Speaker, Sir, the fourth issue to look at is the very fact that there is public pressure all over this country to have laws controlling smoking. Even councillors in this country - Nairobi City Council, Nakuru Municipal Council, Mombasa Municipal Council and other - have made bylaws to control areas where tobacco can be smoked.

(Applause)

[Mr. Speaker left the Chair]

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

But Parliament is still left behind. I want to say that it is incumbent upon the Ninth Parliament of the Republic of Kenya to ensure that there is a proper legal framework within which tobacco can be used and grown in Kenya.

Mr. Temporary Deputy Speaker, Sir, as I said earlier, we had gone through this only last year, and this matter has been debated. So, I will just go through a few things. I want to say that from the farmer to the consumer, Kenyans are faced with grave health problems as a result of tobacco use. Tobacco contributes to diseases and this is well known. It also increases poverty. The

money that is earned in selling tobacco does not enrich the farmer or the factory worker, and this is a fact. It is a fact that tobacco creates wealth for a few, mostly foreign individuals, who own the manufacturing companies like the BAT, Philip Morris and so on. The Ministry of Health spends millions of shillings every year treating diseases related to tobacco use such as cancer, skin diseases, chest problems and spontaneous abortions, which are due to chemicals in the tobacco, yet there is no provision in Kenyan laws to allow for compensation for these victims. As a result, many lives have been lost yet little attention is given to tobacco control. HIV/AIDS, which has led to fewer deaths in this country, has been given a lot of publicity and attention by this Government and in Parliament.

Mr. Temporary Deputy Speaker, Sir, in the year 2004, about 22,000 tobacco farmers were paid only Kshs600 million for their work. If you calculate, this works out to about Kshs27,000 per family per year, or Kshs2,250 per month. This kind of meagre earnings make farmers to live in poverty, and expose them to food insecurity because the land cannot be utilized for food production. As a result, they cannot have enough money to feed on.

The statistics available indicate that approximately 27 per cent of Kenyans smoke regularly, and that means that about six million Kenyans, men and women, are trapped in this prison of tobacco addiction. It is disheartening to note that according to the Global Youth Tobacco Survey, approximately 13 per cent of our pupils in schools have already been addicted to tobacco smoking. This means that approximately over one million of our children are already addicted to smoking. They have already embarked on a career of smoking tobacco at that very early age. Another 45 per cent, according to this survey, of our youth in secondary schools are also smokers. As a result, many of them will die before the age of 45 years because of tobacco addiction.

Mr. Temporary Deputy Speaker, Sir, it is stated, according to statistics, that Kenyans smoke approximately 10 billion cigarettes in one year, which is, roughly speaking, about 330 cigarettes per Kenyan per year, or one cigarette per Kenyan per day. Consider that the average cost of two packets of cigarettes is now over Kshs100. Compare that to the price of milk and bread. It is definite that the milk and bread is less expensive. It is fairly obvious that we are misusing our scarce resources by burning them away in smoke, which is harmful to our health, when we can easily use them to feed our people; but there is a way out.

The slavery of tobacco addiction can be fought. We owe Kenyans, as a Parliament, a duty to give them a legal framework within which this malaise can be regulated and controlled. We must not--- I want to congratulate the Minister, as well as other organizations such as NACADA, and the officers at the Ministry of Health and the World Health Organisation (WHO), for trying to make sure that the use of tobacco is prioritised, as a matter of urgency, in terms of control and regulation. This issue must be dealt with now because it affects our children.

Mr. Temporary Deputy Speaker, Sir, the main objective of having a law to regulate and control tobacco use is to protect present and future generations from the devastating health, social and environmental, as well as, economic consequences of tobacco use, consumption and, above all, exposure to second-hand smoking. The person speaking now was one time, in a *matatu*, forced to inhale smoke, although I was not a smoker. When I complained to the person smoking right in front of me, he told me: "*Wewe nunua gari lako!*" I had to leave the *matatu* because the smoke affected me, but I did not have to leave that *matatu*. This only happened because there was no legal framework to provide for the protection of those who may not be smoking. Therefore, I want to support this Bill fully, because even non-smokers have rights. I want to add, also in urging this House to pass this Bill, that, in fact, the Bill does not intend to stop people from smoking all together. It only intends to provide a legal framework in which they can smoke peacefully in an environment where others are protected from the harmful effects of their second-hand smoke. In their favour, it also provides a legal framework in which there can be compensation if it is proven

that one has suffered because of tobacco.

The issue of tobacco control is an international one. It is so important that right now in the Congress it is a major issue that is cutting across the political divide in the USA. In many countries, it is now illegal to smoke in public places. In Ireland, tobacco use was banned a long time back. In the UK, with effect from 1st July, 2007 you cannot smoke anywhere in public. In the City and the State of New York in the USA, Bloomberg has brought countless amounts of money to help in the control of tobacco, yet we know also that the tobacco is very powerful, indeed. It has fangs; it can bite! We know what companies like Philip Morris have done. Kenyans need to wake up to the fact that some of these companies have now relocated to other areas, and to Kenya in particular. The BAT, because of legislation by a Parliament which is younger than ours--- The Parliament of Uganda, our sister Parliament, passed laws to ensure there was control of tobacco. As a result, the BAT closed its Jinja factory and brought it to Nairobi. We are being openly abused by the tobacco industry. Therefore, I want to urge this Parliament to carry out its noble responsibility of protecting Kenyans by passing this law.

Mr. Temporary Deputy Speaker, Sir, noting that there are many people interested in discussing this Bill, I will stop there.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Poghisio): It seems like no one is interested.

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, as matter of information, we discussed this Bill last year and passed the Second Reading stage. Therefore, it is just a matter of procedure, so the Mover could be called upon to reply.

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Sungu, you have just spoken. You cannot now begin to direct the affairs of the House.

I will, therefore, now call upon the Mover to reply.

The Assistant Minister for Health (Dr. Kibunguchy): Mr. Temporary Deputy Speaker, Sir, as I reply, I would like to thank all those who have contributed to this Bill. As has been pointed out, we had exhaustively discussed this Bill in the last session and the enthusiasm then was very evident. I want to welcome the comments that have been made about this Bill. I want to say that we will take all those comments when we come to the Committee of the Whole House and see how we can turn a good Bill into an even better one.

Mr. Temporary Deputy Speaker, Sir, let me just comment on one or two things that were raised. One is that this Bill is a result of very intense consensus. We have held discussions with the industry and stakeholders. So, we have come up with a Bill that we think will be able to overcome some of the small bottle-necks that we are seeing being experienced by the councils and municipalities in the country like Nakuru, Mombasa and Nairobi. They have tried to put forth the by-laws that people should not smoke in the public. We have seen certain bottle-necks cropping up. Those are very well addressed in this Bill. This Bill gives a period within which certain things will be put in place.

There is a very clear transition period of nine months. Within this period, we expect that people in the hotel industry will put forth areas for smokers and separate them from non-smokers. We will expect that within those nine months, the tobacco industry will have enough time to label the packets very clearly with the signs as we have pointed out. Once we pass this Bill, we shall bring order into this sector.

Secondly, I would like to say that we are not banning smoking, as some people might suspect. This Bill is very clear. What we are doing according to the two fundamental issues in this Bill is to make sure that non-smokers are protected from second-hand smoke. The second thing that we are doing is to make sure that we do not introduce smoking to the young ones in our midst. Those are the two fundamental issues that are contained in this Bill.

Mr. Temporary Deputy Speaker, Sir, questions were raised about the issue of packets that are being exported. We have said in this Bill that we will have very clear signs that the cigarettes are manufactured in Kenya for export only. I know some hon. Members raised this issue. I want to say that we have discussed this issue with the stakeholders and we think that it is very important that it remains in because it takes care of the illicit trade.

The issue of sponsorship was raised. It is sometimes not easy to differentiate sponsorship from advertisement. If we are going to - and we are saying that we are banning the advertisement of tobacco and tobacco products completely - introduce sponsorship, it will be introducing advertisement through the back-door. It was also stated that it becomes very difficult and, I agree, to enforce this law when you say that some areas which cigarette smoking should not take place are the residential areas. But we are saying that, this will protect our children and the people who work for us in the home.

As I said, this is a product of consensus. I am sure that when we come to the Committee of the Whole House, we shall deal with a few amendments, so that we can make this Bill even better. With those few remarks, I beg to move.

(Question put and agreed to)

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

THE SQUATTERS SETTLEMENT BILL

Mr. G.G. Kariuki: Mr. Temporary Deputy Speaker, Sir, I beg to move that a Bill for an Act of Parliament to provide for the identification and acquisition of unutilized land for the purpose of settlement of squatters---

The Temporary Deputy Speaker (Mr. Poghisio): Are you reading the Bill as it is on the Order Paper? You should move as it is on the Order Paper first.

Mr. G.G. Kariuki: Mr. Temporary Deputy Speaker, Sir, I wish to move that The Squatters Settlement Bill be now read a Second Time.

QUORUM

Mr. Ahenda: On a point of order, Mr. Temporary Deputy Speaker, Sir. There is no quorum here. There is no quorum and such an important Bill is going on.

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Ahenda, I thought you had seen that earlier. You are seeing it now! It is true there is no quorum. I do not need to check. So, I order the Division Bell to be rung.

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Poghisio): Order! We have a quorum now. You may proceed, Mr. G.G. Kariuki!

Mr. G.G. Kariuki: Mr. Temporary Deputy Speaker, Sir, before the bell was rung, I was trying to explain the purpose of bringing this Bill to the House. I would appeal to the hon. Members to really take interest in this Bill.

The Temporary Deputy Speaker (Mr. Poghisio): Order! Is your microphone functioning?

Mr. G.G. Kariuki: Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghiso): Use a better microphone.

Proceed!

Mr. G.G. Kariuki: Mr. Temporary Deputy Speaker, Sir, the Quorum Bell was rung before I started explaining the main reason for bringing this Bill, which has been circulated and read by the hon. Members.

When I started to draft this Bill, it took me some time to talk to all the people who are concerned, so that they could give me their advice as to the best way we could draft a Bill of this nature.

First of all, I think it is important for us to ask ourselves: "Who is a squatter? How did this come about?" The problem of the squatters started many years ago, as far as back as 1904, when the Europeans or colonisers took over African land after they chased the Africans away from their land. As the African land was demarcated by the colonisers, the White men were given more land than they were able to till or manage. Having chased the indigenous people from their own land, they were given bigger tracts of land than what they expected.

Those who got land by force from the Africans later on agreed or allowed the Africans to come back and work for them. They even allowed them to bring cattle for grazing from the so-called native reserves. Africans continued to farm alongside the Europeans who had invited them to do that, until there came a time, towards 1948, when the White men found out that the Africans who were invited on this acquired land were becoming richer by having more animals than them. In 1948, they decided to stop the progression by making sure that no African on those lands would be allowed to keep more than 30 head of cattle and goats.

When that happened, the White farmers or settlers decided now to control the influx of the Africans from their reserves, to the already acquired land. When that happened, the Africans were finally given the terminology of being "squatters." Instead of being called disgraced people, the name was changed to "squatter." That meant that those people were now there illegally.

Mr. Temporary Deputy Speaker, Sir, from then on, our people have been suffering because after Independence, when the Africans took over the leadership of this country, they continued acquiring huge tracts of land without, really, considering the people who were working on those tracts of land. Now, that situation continued. This lack of proper land management has put this country into a very dangerous situation. It is very likely that the issue of land could bring problems in this country. I think it is high time this National Assembly decided to make a law that will require the Government to be responsible for those people who are called squatters by settling them. This is because, as it is today, the Government is not compelled by any law to consider the settlement of squatters as a policy. It is just a matter that is such that when a Minister feels that he can, this time round, use politics, or humanitarian grounds, he may decide to buy land for the purpose of settling squatters. That has happened, especially after we got Independence. A lot of land was bought, but it did not satisfy the squatters, because those people who were well-to-do were given more land than the squatters.

Mr. Temporary Deputy Speaker, Sir, you can see that there is an urgent need now that before this Parliament is dissolved for the General Election, it needs to leave a legacy of some kind. A law needs to be put in place to make sure that people who are landless, or mainly people who are squatters--- People have been chased from forests and homes, especially during the clashes. People are now living on roadsides. In fact, people in all the urban areas, townships, and cities are being hunted down like they do not belong to those places. So, there is need for creating a board, or an authority, that will harmonise those who have and those who do not have, especially in terms of land.

Mr. Temporary Deputy Speaker, Sir, this Bill intends to establish a board or an authority

that will be responsible for several things. One, it will be responsible for purchasing land for squatters. It will be responsible for acquiring land which is found to be idle. That will, actually, be determined by the board. The board will also identify landless people. There must be an authority of some kind through which the Government and the people of Kenya will look for ways of settling those who may be landless. For example, in the current Budget, we have voted about Kshs1.3 billion for the purchase of land for the purpose of settling the landless. There is no board or authority to handle this matter. Now, this money can be used as and when the Minister finds it necessary to buy whatever he wants to buy for whichever people.

Mr. Temporary Deputy Speaker, Sir, this is most disappointing, and we need to think about it very seriously. You will find people in Nairobi, or elsewhere, whose small kiosks have been knocked down by people who were given authority by some authorities within the city councils, county councils or municipal councils. People are chased away as if they do not belong there. The Bill says that if a person has lived in a place for more than five years, nobody has a right to chase him away from where he is until he is given an alternative place. I think that we are not asking for too much by asking the House to ensure that whenever people are being chased away, the Government must have an alternative place for them.

Mr. Temporary Deputy Speaker, Sir, I, therefore, think that there are people who have been chased from Government land, including forest land. Sometimes the Government takes all the equipment, in terms of security, to chase people from a certain area, yet they have lived there for more than five years with the full knowledge of the Government and the local council. They have the audacity to come and chase away people from the area that they have been occupying. History will not judge us fairly if we do not find a way of solving this problem. Indeed, it is a problem. If there is an argument about identification of land, let us not forget that there have been absentee landlords in this country. This debate has been coming to this House, now and then, but nothing has ever been decided. This is the time to say that if land is idle, it has to be acquired. Such land should be purchased. I am not talking about taking over land like what is happening in former Rhodesia, that is Zimbabwe. I am saying that idle land should be valued and taken over by the Government for the purpose of settlement.

Mr. Temporary Deputy Speaker, Sir, the way of settling people, according to the Bill, is that there should be a committee in every constituency and district, which should be responsible for identifying who a genuine squatter is. The format of application for one to qualify as a squatter is explained in the Bill. Also, for people not to be transported from this corner to the other without the knowledge of members of a constituency committee, the local, or constituency committee, will determine whether those people should be accepted in that area. That can only happen if there are no squatters there. Therefore, this Bill has taken care of everything. It has taken into account the fact that there are many other laws which do not prevent this Bill from being the way it has been proposed here.

The Bill, which is cited as the Squatter Settlement Act, 2007, is very clear. The drafting of this Bill went through all the stages. After having been drafted by us, it was taken to the Attorney-General. It does not conflict with any law, as we know it.

Mr. Temporary Deputy Speaker, Sir, with regard to the proposed Board, I think that the Minister is given power to manage the Board. Here, I thought that it should not be so independent that the Minister will have no power over it. The appointment to the Board will be done by the Minister in consultation with Commissioner for Lands, and all other people involved in land matters. The Board shall determine the purchasing, acquisition of land and settlement of squatters. It will have its own agents. It will delegate power to the local or constituencies committees. There will be two committees, one for the constituency and the other for the district. These committees will be given power by the Board. Therefore, there will be no conflict, because of the way the Bill

has been drafted. The way members of the committees will be appointed is fully explained in this Bill.

Therefore, this is a very short Bill, which I would not like to spend a lot of time talking about, because we have quorum problems. Hon. Members are busy because they would like to be in their respective constituencies. In the interests of those who are here, I beg to move this Bill and request hon. Angwenyi--- He is not here. Could I, please, ask hon. Dr. Wekesa to second it?

Mr. Sungu: I am here!

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghio): Order, Members! Order!

The Minister for Science and Technology (Dr. Wekesa): Mr. Temporary Deputy Speaker, Sir, I rise to second this Bill.

This Bill has come at an opportune time. As you know, it is only the other day that the Minister for Finance set aside Kshs1.3 billion for the purpose of doing exactly what this Bill wants. It is necessary to recognise the efforts of the previous Government in settling Kenyans. It should not be lost to Members of Parliament, and Kenyans at large, that, we, in Kenya, did not approach the issue of settlement in the proper way. If you look right across this nation, you will see that before Independence, we had the so-called "White Highlands". In 1963, the Europeans were given the option to either continue farming or leave this country. They were given ample time to either sell their land to the Government through a programme called "willing-buyer-willing seller" or continue farming.

Mr. Temporary Deputy Speaker, Sir, this process went on very well. During the Kenyatta regime, many Kenyans were settled in the so-called "White Highlands". It was a very well structured process. Even the squatters who took over the Europeans farms were given training in both livestock management and agriculture. They were given loans to enable them farm. So, we had a very civilised way of turning the former *mzungu* farms to their owners, who were the indigenous Africans. I am saying this because we can see that elsewhere a process has destabilised the economy. I have in mind the situation that has happened in Zimbabwe. I have visited many countries. Zimbabwe was in exactly the same status as Kenya. There, the process of transferring land from the *mzungu* to the African was not properly structured. You can see that this has affected the economy of a country such as Zimbabwe, which depended mainly on agriculture.

I do not want to go out of the subject. All that I am trying to say is that we should be grateful to the process that was put in place after Independence. The Kenyatta regime tried as much as possible to settle people in the so-called "White Highlands". While touching on the history, I also want to say that the structures that were put in place to settle people have never been revamped. This Bill is actually going to address that issue. A lot of water has passed under the bridge. Now, we need to zero in on the so-called landless people in our nation. You know that our economy depends on agriculture. So, the way we handle our land issue is still very important to us, as Members of Parliament.

Mr. Temporary Deputy Speaker, Sir, what happened recently and created a large number of displaced people, through tribal clashes, as I saw it happen in my own district, did contribute a lot to people moving from land they had legally acquired, or which land they had been given by the Government. Many people still stay at market centres and towns. They have been rendered landless, not through their own fault but because of what we call "the tribal clashes of 1991 and 1992", which continued up to 1994. Also, during the process of land acquisition between 1963 and 1974, the Government of the day forgot the fact that there were many people working on the so-called "European land". So, when the land distribution was undertaken, not everybody was given

land.

It would have been very proper if during the purchase of those huge farms in the Rift Valley everybody, who could prove that he had worked on those farms was given accommodation. However, that did not happen. In particular, the scheme that was referred to as "willing-buyer-willing-seller" never took into consideration the people who had previously worked on those farms. The people who went to the Rift Valley region and bought land from the *mzungu* actually cleared workers from those farms when settling in them and hired their own workers, thereby rendering the former workers landless. Those people are still with us. Many generations now reside in market places. They are completely landless.

Mr. Temporary Deputy Speaker, Sir, we also had the so-called land grabbers of the Moi era. This created a lot of landless people. We know of people who grabbed forest land. The grabbers chased away the people who had been living on that land for a long time. People grabbed land in urban areas. In Nairobi, a lot of plots were grabbed by individuals. In my own town of Kitale, and in my own district of Trans Nzoia, there were many instances of individuals grabbing land and chasing away people who had lived on that land. If I heard the Mover of the Bill properly, he has suggested that if anybody can prove that he has lived on a piece of land for more than five years, the Government of the day must consider it its duty to make sure that such a person is settled. So, we have landless people because of our historical background, right from the transition from the Colonial government to our present Government. Also, through land grabbing, many people were made landless. Farms and plots were grabbed and people were chased away from those plots. Those people are very many in this nation, right from Mombasa to Kitale---

QUORUM

Mr. Ojode: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very important Motion, but it looks like we do not have a quorum.

The Assistant Minister for Tourism and Wildlife (Mr. Ndile): *Wewe! Wewe!*

Mr. Ojode: That is the truth of the matter! *Unamwambia nani "wewe"?*

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! You simply have to rise up and bring to the attention of the Chair that there is no quorum. You do not have to add other things!

I can see very clearly that there is no quorum. Therefore, I order that the Division Bell be rung!

Mr. Ojode: *Mr. Ndile, usiongee kama---*

The Assistant Minister for Tourism and Wildlife (Mr. Ndile): *Wewe wacha---*

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! *Nyinyi watu namna gani?*

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members, due to---

Mr. Ogur: On a point of order, Mr. Temporary Deputy Speaker, Sir. But we are already 30!

The Temporary Deputy Speaker (Mr. Poghisio): Order! Order! Dr. Wekesa, you have 15 minutes to finalise your contribution when debate on this Bill resumes.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghisio): Hon. Members, because of lack of quorum, this House is, therefore, adjourned until Tuesday, 24th July, 2007, at 2.30 p.m.

The House rose at 5.00 p.m.