

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 2nd December, 2009

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

IDENTIFICATION OF LAND FOR RESETTLEMENT OF 2007 POST-ELECTION VIOLENCE IDPS

Mr. Mbugua: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) Could the Minister confirm whether land to settle Internally Displaced Persons (IDPs) who were displaced during the 2007 post-election violence has been identified, and if so, table the names of the land owners and the location of the land?

(b) How much money has been budgeted in the Ministry's current budget for purchase of the said land, and when does the Government intend to complete this process?

Mr. Deputy Speaker: Is the Minister for Lands not here? Let us go to the next Question by Private Notice.

INVASION OF FARMS IN BUURI/LOWER IMENTI FOREST BY HERDERS

Mr. Ruteere: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Livestock Development the following Question by Private Notice.

(a) Is the Minister aware that herders from Isiolo have invaded farms in Buuri and Lower Imenti Forest in North Imenti Constituency with herds of camel thereby destroying crops and recently-planted tree seedlings and exposing the dairy cattle in the region to diseases?

(b) Is the Minister also aware that ethnic clashes could result, considering that the herdsmen are heavily armed?

(c) What urgent measures is the Minister taking to ensure that camel herdsmen are relocated back to Isiolo?

Mr. Deputy Speaker: Minister for Livestock Development! Is he also not here? Let us go to Ordinary Question No.196!

ORAL ANSWERS TO QUESTIONS*Question No.196*

DISMISSAL OF MR. JOHN WACHIRA KIHIA

Mr. Deputy Speaker: Is Mr. Jeremiah Kioni not here? We will come back to this Question.

Next Question!

*Question No.311*IMPLEMENTATION OF UN FRAMEWORK CONVENTION
ON CLIMATE CHANGE/KYOTO PROTOCOL

Mr. Deputy Speaker: Ms. Shakila Abdalla! We will come back to the Question Hon. Members, Question No.373 by Mr. Ekwe Ethuro is deferred to tomorrow afternoon. Mr. Ethuro is out on Parliamentary business.

*Question No.373*TABLING OF PROTOCOL ON CATTLE
RUSTLING IN EAST AFRICA*(Question deferred)*

Mr. Deputy Speaker: Next Question, Mr. Alfred Odhiambo!

Question No.529

UPGRADING OF KHUNYANGU SUB-DISTRICT HOSPITAL

We will come back to this Question.

*Question No.427*CRITERIA FOR SELECTING BENEFICIARIES OF
SCHOOL FEEDING PROGRAMME IN ASALS

Mr. Deputy Speaker: Hon. Members, Mr. Peter Mwathi has communicated to the Chair. He has been allowed to be away. So, this Question will be posted on the Order Paper when he will be around.

(Question deferred)

Next Question, Mr. Emilio Kathuri!

Question No.509

ABANDONMENT OF KAMUTHATHA-
NDATU ROAD PROJECT

Mr. Deputy Speaker: Is Mr. Kathuri not here? We will come back to the Question.

Next Question, Dr. Boni Khalwale!

Question No.485

EXPENDITURE ON SURVEY/DESIGN OF
SIGALAGALA-BUTERE-SIDINDI ROAD

Dr. Khalwale asked the Minister for Roads:-

(a) whether he could confirm that the Government spent over Kshs22 million for survey and design of Sigalagala-Butere-Sidindi Road (D260) about four years ago;

(b) whether he could also confirm that this road will be factored into the 2010/2011 Budget for actual construction works; and,

(c) when he will upgrade the road to Class "E", considering that it connects Nyanza and Western Provinces.

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

(a) I am aware that the survey and detailed design of Sigalagala-Butere-Sidindi Road (D260) has been carried out at a cost of Kshs22,517,000.

(b) I am unable to confirm at this time that the construction of the road will be accommodated in the 2010/2011 Financial Year Budget. This is because my Ministry is in the process of finalising the Roads Sector Investment Plan, which will provide the framework for prioritising roads for construction, including the Sigalagala-Butere-Sidindi Road.

(c)The Roads Sector Investment Plan also includes a proposal for review of the classification of the road network. I, therefore, plead with the hon. Member to be patient and wait for the outcome of the Roads Sector Investment Plan Report.

Thank you, Mr. Speaker, Sir.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I have in my possession, a letter from the Ministry's Permanent Secretary (PS), Eng. Kamau, which confirmed that the Ministry was going to tarmac this road, following a Presidential directive to construct the same road, when President Kibaki visited the district, two years ago. In view of this particular affirmation by the PS, could the Assistant Minister confirm that he will ensure that the construction costs of this road will be included in the Budget of 2010/2011?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, the hon. Member is in possession of a letter, which I do not dispute. However, the Ministry has previously undertaken road investments without a clear programme, where roads were built without any planning

having been done. We are now coming up with a Five Year Development Plan for Roads, so that we can know which roads will be prioritised in the country in the next five years.

Mr. Deputy Speaker, Sir, I want to assure the hon. Member that, because of the rich agricultural area that the road in question serves, together with the huge tourism potential in Western Kenya, we shall prioritise it as soon as funds become available.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, the question is for the Assistant Minister to confirm. In the past, designs for important roads like this one would be done, but money would not be allocated in the subsequent budgets. So, nothing would go on. That is why Dr. Khalwale is very specific about getting confirmation from him. For instance, design work for the road from Kibwezi to Kitui Town has been done three times, but no money has been allocated for tarmacking it. So, could he give a specific confirmation that this road, together with the one in Kibwezi and Kitui, will be provided for in 2010/2011 Financial Year?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, my confirmation must be backed by availability of funds for doing the roads. We cannot come here to make declarations and end up not meeting them. So, I want to assure the hon. Member that we will give that road top priority, given the huge tourism and agricultural potential in that region.

Thank you, Mr. Deputy Speaker, Sir.

Dr. Khalwale: Mr. Deputy Speaker, Sir, this road is the direct link to Malinya Cultural Stadium which was launched by the Government last month as a major tourist destination. My problem with the Assistant Minister is that the Permanent Secretary, upon being directed by the President, wrote to us and said he was going to put it in the Budget last year, but he did not and now we are going to the next financial year. What else would you like the President to do for you to realize that he is serious that you put money there? The President gave the directive and the Permanent Secretary wrote, why can you not simply act on it? It is not a laughing matter!

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I have confirmed to the hon. Member that we will prioritize the roads. I do not know what more I can say to him at this particular stage.

Secondly, I have said that the site that was opened recently is a tourism site and we appreciate that. The Roads Sector Investment Programme that you are seeing is prioritizing areas in terms of productivity. This is both agricultural and tourism. I want to assure the Member that we will prioritize that road in the next financial year.

Mr. Deputy Speaker: Next Question, Mr. K. Kilonzo!

Question No.468

PAYMENT OF DUES TO FORMER
EMPLOYEES OF CIVIL AVIATION OF KENYA

Mr. K. Kilonzo asked the Minister for Labour:-

(a) why the employees of Civil Aviation of Kenya, now Kenya Civil Aviation Authority who were illegally dismissed have not been paid their dues, even after a court ruling on 7th November 2005 in their favour; and,

(b) when they will be paid their dues.

Mr. Deputy Speaker: The Minister for Labour! The Minister is not here!
Next Question by Ms. Martha Karua!

Question No.381

ACTION AGAINST NAKURU TOWN CLERK/
COUNCIL ASKARIS FOR DISRUPTION OF
MAYORAL ELECTIONS

Ms. Karua is not here! Next Question by Mr. Mbau!

Question No.526

NON-PAYMENT OF LEVIES BY KPLC
TO LOCAL AUTHORITIES

Mr. Mbau is not here!
Next Question by Mr. Yakub Dor!

Question No.535

CHOLERA OUTBREAK DUE TO WATER SHORTAGE

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

(a) to confirm that 194 persons have died in the country between January and November 2009 from cholera/diarrhoea as a result of the acute shortage of clean water; and,

(b) what measures the Government has taken to mitigate the situation.

Mr. Deputy Speaker: Where is the Minister for Water and Irrigation?

Can we start the Questions all over again?

Let us get Question No.1 by Private Notice by Mr. Simon Mbugua!

QUESTIONS BY PRIVATE NOTICE

IDENTIFICATION OF LAND FOR RESETTLEMENT
OF 2007 POST-ELECTION VIOLENCE IDPS

Mr. Mbugua: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) Could the Minister confirm that land to settle Internally Displaced Persons (IDPs) who were displaced during the 2007 post-election violence has been identified, and if so, Table the names of the landowners and the location of the land?

(b) How much money has been budgeted in the Ministry's current budget for purchase of the said land and when does the Government intend to complete this process?

Mr. Deputy Speaker: Where is the Minister for Lands?

*(Mr. Deputy Speaker consulted the
Clerks-at-the-Table)*

The Chair takes very serious view of the lackluster manner in which the Government does its business.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. The Deputy Prime Minister and Minister for Local Government is sitting in the House as we talk. Is he not in contempt for you to be asking these Questions while he just looks at you?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Deputy Speaker, Sir, there is no contempt. I would like to apologize on behalf of all the Ministers who are not here. I have a feeling that they may not have got the Order Paper on time.

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Clearly, the integrity of this House and the seriousness with which business should be transacted is being taken for granted by the Government. How can the Deputy Prime Minister stand on the Floor of the House and say the Order Paper did not arrive on time yet he himself is here? Would I be in order to request that the House be adjourned for the Government to go organize themselves and come and answer Questions properly rather than waste taxpayers' money here?

Mr. Deputy Speaker: Mr. Deputy Prime Minister, the business of the House including Questions are circulated one week in advance! At the beginning of the week, the Government has all the Questions. All the Ministries know the Questions and the day they will appear. It is, therefore, not fair to say the Ministers did not get the Order paper.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Deputy Speaker, Sir, this issue cuts both sides because there are also several Members of Parliament who are supposed to ask Questions but they are not here. I, therefore, think it is only fair that this time, your sword cuts both ways. It cannot cut one side and leave the other.

The truth is that I was in my office and this Order Paper had not arrived at the office. I did not even know at what stage my Questions were coming until I came here.

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Unless the Deputy Prime Minister is Information Technology (IT) challenged, it is very clear that this Order Paper is always posted on the Parliament website which is accessible to all Members of Parliament. Parliament has invested a lot of money to ensure that these Questions are received on time.

Mr. Deputy Speaker, Sir, is he in order to say that he continues relying on papers to be taken to his office while he can access this technology? Parliament has spent a lot of money to train Members of Parliament.

Mr. Deputy Speaker: Indeed, yes! Deputy Prime Minister, to begin with, you speak for the Government! Do not speak for Members of Parliament.

Secondly, you have the business in advance. Every Minister knows when he or she has a Question. That information is there and, therefore, there is absolutely no reason for Ministers not to be in the House. Unfortunately, when the Chair becomes harsh, decides to enforce the rules and sanctions Ministers and tells them that they will not

transact business, they are too happy not to transact any business in the House. This is the impression that the Chair gets.

What other sanctions can the Chair take in the absence of seriousness on the part of the Government? What do you have to say on this?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I cannot stop you from enforcing the sanctions but there has to be equity on this question of enforcing sanctions. I am not speaking for the Members but the truth is that there are several of them who have been unable to ask their Questions here, yet they are on the Order Paper. I am only pleading that the Chair, this time, becomes even-handed so that it cuts both ways.

Mr. Deputy Speaker: What the Chair does when a Member of Parliament is not available to ask his or her Question is to drop it. His constituents will see that the Member of Parliament is not serious. There is no worse sanction for a Back Bencher than that; for his constituents to see on television that he is not serious and not on time to ask his Questions.

On the Government side, unfortunately there is a limit to how much the Chair can go in sanctioning the Government.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. It is only on Friday last week when Members of Parliament held a workshop where none other than the Prime Minister claimed that chairs of Committees of this House are not patriotic; they are asking questions for money and that we are pushing the Government too hard. In view of those unfounded---

Mr. Deputy Speaker: Order! The statement of the Prime Minister at that place is not the subject of discussion today. The matter is Ministers not being available in the House to answer Questions!

Dr. Khalwale: Mr. Deputy Speaker, Sir, the Minister for Local Government is the able Deputy of the Prime Minister and the Prime Minister was speaking on behalf of the same Government which is inefficient to the extent that besides the things we task them on, even merely coming to respond to Questions, they are not able.

Mr. Deputy Speaker, Sir, can you rule that this Government is not able to function without a Leader of Government Business? It is the absence of the Leader of Government Business which is the reason they are not able to whip Ministers to come to this House. When are you going to name the Leader of Government Business?

Mr. Deputy Speaker: You realize all this storm in the House---

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I was following the proceedings of the House as I was running down from another meeting. Now the problem is that the Order Paper was not posted on the internet up to last night; up to this morning, there was nothing on the internet. The Order Paper was brought to my office at 9.00 a.m. That was when I was learning that this Question by Private Notice was coming up. I have rushed from another meeting to get to Parliament. Secondly, Mr. Mbugua was not available the last time when I was ready to answer this Question. He was sick and I accommodated him, and this particular Question was to come in the afternoon, if we follow the Hansard. I understand that this Question should be coming in the afternoon.

Mr. Deputy Speaker, Sir, I think in these circumstances we are being wrongly reprimanded, because even in my office, my staff understand that I take Parliamentary business very seriously. Before I go to bed I check the internet, first thing in the morning

I check the internet, and I know there are people like Dr. Khalwale here who never really give you peace of mind, if you flout the rules. I think you should find out what exactly happened before we are taken through the inquisition.

Mr. Deputy Speaker: The position as it is right now, based on the institutional memory of the Clerk's Department, is that this Question was there last week and was deferred to this morning. It is a Question by Private Notice, in which case you need only 48 hours; it is one that your Ministry should be available to answer. A Private notice Question is an urgent one. Nonetheless, Mr. Minister, proceed, apologise to the House and answer the question!

K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Clearly, you have heard the Minister explain that the order paper was not posted on the net, and they have not been able to get this information until today. There is a party that is not taking the business of the House very seriously.

So, would I be in order to ask you to rule on which side is not taking the House business very seriously, whether it is even Parliament itself which is now putting members of Parliament in adversarial relationships, because of their lack of communication in good time.

Mr. Deputy Speaker: The Chair is going to investigate it, and I will issue a communication from the Chair on the same.

Hon. Minister, are you ready with the answer, or you expect to answer this question in the afternoon?

The Minister for Lands (Mr. Orengo): The answer is on the way.

Mr. Deputy Speaker: We will come back to it, let us proceed on now. The Chair will give communication on the same.

Mr. Ruteere, Question No.2 by Private Notice!

INVASION OF FARMS IN BUURI/LOWER
IMENTI FOREST BY HERDERS

Mr. Ruteere: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Livestock Development the following Question by Private Notice.

(a) Is he aware that herders from Isiolo have invaded farms in Buuri and Lower Imenti Forest in North Imenti Constituency, with herds of camel thereby destroying crops and recently planted tree seedlings and exposing the dairy cattle in the region to diseases

(b) Is he also aware that ethnic clashes could result, considering that the herdsmen are heavily armed?

(c) What urgent measures he is taking to ensure the camel herdsmen are re-located back to Isiolo.

Mr. Deputy Speaker: Mr. Assistant Minister, apologise to the House for coming late to the House.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Deputy Speaker, Sir, I apologise to the House, and stand by the sentiments of the Deputy Prime Minister and Minister for Local Government, Mr. Mudavadi. I seek the indulgence of this House that this Question be deferred, because it cuts across a number of Government Departments. It talks about security, and I want the relevant Minister to answer it on Thursday next week.

Mr. Deputy Speaker: Order, Assistant Minister! The Question is by Private Notice. For questions by Private Notice, you need only 48 hours notice. The mere fact that the Question is by Private Notice indicates that there is urgency. It is a matter of a lot of importance; it is also very urgent; so, we can only give you time up to tomorrow, but, for sure, not next week.

The Assistant Minister for Livestock Development (Mr. Duale): Most obliged, Mr. Deputy Speaker, Sir.

(Question deferred)

Mr. Deputy Speaker: The Question will appear on the Order Paper tomorrow. Next Ordinary Question by Mr. Kioni.

ORAL ANSWERS TO QUESTIONS

Question No. 196

DISMISSAL OF MR. JOHN WACHIRA KIHIA

Mr. Deputy Speaker: Is the Question out of the country or in Nairobi on official Parliamentary business? In the event that he is not out of the country on Parliamentary business, the Question is dropped. If it is otherwise, then the Chair will reconsider its decision.

(Question dropped)

Question No. 311

IMPLEMENTATION OF UN FRAMEWORK CONVENTION
ON CLIMATE CHANGE/KYOTO PROTOCOL

Mr. Deputy Speaker: Question No. 311, Ms. S. Abdalla!
Any chance that Ms. S. Abdalla is unable to be with us this morning because of official Parliamentary business either inside or outside the country? Under the circumstances the Question is dropped, unless it is otherwise can be proved.

(Question Dropped)

Question number 529 by Mr. Odhiambo!

Mr. Odhiambo: Thank you Mr. Deputy Speaker, Sir. I rise to ask Question number ---

Mr. Deputy Speaker: Order, Mr. Odhiambo! You were not in the House to ask your Question at the appropriate time. You have come late. You apologise to the House and then proceed and ask your Question.

Mr. Odhiambo: Mr. Deputy Speaker, Sir, I apologise for coming late. I was in a traffic jam.

Mr. Deputy Speaker: Proceed!

Question No.529

UPGRADING OF KHUNYANGU SUB-DISTRICT HOSPITAL

Mr. Odhiambo asked the Minister for Medical Services what plans the Government has to upgrade Khunyangu Sub-District Hospital to a fully fledged District Hospital, given that the facility serves the people of Butula Constituency and the neighbouring Nambale and Ugenya Constituencies.

Mr. Deputy Speaker: Hon. Minister for Medical Services! Hon Deputy Prime Minister and Minister for Local Government, what do you have to say on behalf of your Minister?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I apologise and, propose that this Question be answered on Thursday, so that I can communicate with the Minister for Medical Services.

Mr. Deputy Speaker: It appears that the sanctions are not working very well, but the Chair's hands are tied in this case. I think there has to be some other radical way of dealing with it. The Question is deferred to tomorrow afternoon.

(Question Deferred)

Member for Manyatta, hon Kathuri!

Mr. Kathuri: Mr. Deputy Speaker, Sir, I also apologise for getting to the House late.

Question No.509

ABANDONMENT OF KAMUTHATHA-
NDATU ROAD PROJECT

Mr. Kathuri asked the Minister for Roads:-

(a) why the shaping and murraming project on Kamuthatha-Ndatu Road in Embu West District has been abandoned;

(b) to clarify whether the contractor has received any payment, and if so, how much;

(c) what action has been taken against the contractor; and

(d) when the contractor will be back on site and what was the expected date of completion of the project.

The Assistant for Roads (Mr. Kinyanjui): Mr. Deputy Speaker, Sir, it is the second time I am coming to this House to answer the same Question and the Member has not been in the House.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) The rehabilitation works on Kamuthatha-Nduta Road in Embu West District have not been abandoned. However, the contractor has been slow and unable to perform the work as per the work programme.

(b) The contractor has so far been paid Kshs1.7 million for the works already done.

(c) The contractor was issued with a written notice on 26th of October, 2009 to improve on the rate of progress, or face termination of the contract.

(d) As I have said above, the contractor is still on site. However, I cannot comment on the date of completion at this time since I am still waiting for the termination notice served on the contractor to expire.

Mr. Kathuri: The answer is good but there is a lot of “cheating” in it.

Mr. Deputy Speaker: Order! Order! Mr. Kathuri, you been in Parliament for about two years now.

Mr. Kathuri: I withdraw the word “cheating”. The answer is misleading.

Mr. Deputy Speaker: Yes, that is fair.

Mr. Kathuri: From the outset, it is important to let this House know that we have had a problem with that contractor. He is not on site, yet it is indicated that he is on site. In fact, he has not even paid the workers who were doing the shaping of the road. I would want the Assistant Minister to tell us the names of the contractors, their physical address and the directors, so that, at least, we can know who these people are and where to find them.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I think the hon. Member is contradicting himself. From the onset, he has said that the answer is good. Thereafter, he has said that it is misleading. So, I do not know which one to take, but for now, I will take the first part. The contractor is under the Roads 2000 Programme and he is covering a distance of 5.4 kilometres. The contract was awarded to Lawfords International Limited for a contract sum of Kshs6.6 million. The contract period was 120 days which is four months. The works should have been completed by 31st October, 2009. As I have indicated, we wrote a termination notice on 26th October, 2009, and we are waiting for that period to expire. The contractor has been unable to perform as per the works programme and hence we gave the termination notice.

Lastly, the contractor has 28 days to reply to the notice issued. However, if there is no improvement on the performance of the project, we shall terminate it. The Ministry will consult with the donor because the Roads 2000 is a donor-funded programme to ensure that the remaining works are re-tendered.

Mr. Ogindo: Mr. Deputy Speaker, Sir, of late there have been numerous questions on roads. I want the Assistant Minister to clarify the other systems of communication hon. Members have, as representatives of the people, to find answers to these Questions so that we do not have numerous Questions on roads being brought before this House. This is because there are engineers on the ground. For example, money has been sent to the ground to do some roads all over the country but those works are not being done. I have in mind the Kogwai Box Culvert in Rangwe Constituency. What system has the Assistant Minister put in place to ensure that we get answers at the regional level so that we do not congest this House with Questions on roads now and then?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, we do not mind the numerous Questions. However, as the hon. Member may have seen in last year's Budget, we are trying to devolve the roads funds from this financial year. We will be sending money directly to the constituencies and hon. Members will not come here to ask us Questions. Instead, it will be the other way round. We will disband the district roads committees and come up with the constituency roads committees where the hon. Members will sit. Therefore, it will be upon hon. Members to ensure that the works are, indeed, done.

Dr. Eseli: Mr. Deputy Speaker, Sir, the Ministry of Roads is one of the consumers of large amounts of money from the Ex-chequer and yet the road network is still very dilapidated. This is a case of a contractor who has failed to perform. Could the Assistant Minister tell us the criterion that was used to award this contractor the contract given the fact that he does not appear to have the capacity? This is a countrywide problem. I think the problem lies with the roads engineers on the ground who enrich themselves instead of doing the roads. What has the Assistant Minister done to ensure that the contractors who are awarded contracts perform?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I appreciate the question from the hon. Member and I think it is, indeed, a big problem in the country. We want to empower the local contractors because as soon as we award them contracts, they are unable to perform. I remember we have had Questions here where the Ministry has been accused of favouring foreign contractors. However, the issue of quality and timely delivery of service is extremely critical. My Ministry is currently undertaking a programme to build capacity for the local contractors in terms of finance and technical capacity. We believe that we will expand our capacity at the local level through this exercise. To conclude, I would also like to say that some contractors are not honest and as soon as they are paid the first installment, they go to other projects that are not related to the contract we have awarded them.

Mr. Mwangi: Mr. Deputy Speaker, Sir, while we appreciate the answer given by the Assistant Minister, the occurrence of Question, on non-performance by contractors is worrying. I would like to give an example of the road between Muranga and Sagana which has been on-going for more than five years and the contractor has not completed it.

Mr. Deputy Speaker: Order, Mr. Mwangi! The Question is on Kamuthatha-Ndatu Road in Embu West District. You cannot ask a Question about a road in Muranga and expect the Assistant Minister to give you an answer when he has come prepared to answer a Question on a road in Embu. If you have a general policy question that you want to ask, ask it!

Mr. Mwangi: Mr. Deputy Speaker, Sir, could the Assistant Minister inform this House what the Government has done with the contracts who are non-performers but still get contractors to build roads?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I agree with the hon. Member that we have a serious problem with contractors who bid for works, give very impressive records and then we meet in court once we have awarded them the contracts. This trend is, indeed, worrying because a lot of public money is wasted through such court cases. However, we have tightened the noose. We have made the qualification and pre-qualification for contractors more rigorous to ensure that those who get the contract will perform. In addition, we have included the performance bids and the bid bonds to ensure that those who do not comply with the terms of the contract are penalised.

Mr. Njuguna: Mr. Deputy Speaker, Sir, although the Assistant Minister has indicated that the Ministry has considered terminating the contract awarded to that contractor, what action will the Ministry take against the Resident Engineer who has allowed the present circumstances to prevail?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, the Resident Engineer is the representative of the Ministry with regard to the contract. In a situation where we have a problem, we get early warning signals from the Resident Engineer in terms of the problems that exist. Therefore, the problem cannot be with that engineer. The Resident Engineer raised the red flag early enough and we have communicated with the contractor who, many at times does not comply. So, I would like to state clearly that the resident engineers are not the problem but the contractors.

Mr. Kathuri: Mr. Deputy Speaker, Sir, Lawfords Contractor who appears to be a cowboy contractor also appears to be awarded many contracts by the Ministry. The works that he has already done on the road have deteriorated due to the delays. This definitely means a loss to him. Could the Ministry assure the residents of that area that the contractor will complete the road and not abandon it on grounds of insufficient funds? We want a guarantee that, that road will be completed with the money that has been allocated. Could the Assistant Minister confirm that the contractor will complete the road? What will the Assistant Minister do if the contractor does not complete the road?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I have indicated that that is the Government of Kenya (GoK) and donor-funded project. It is a partnership programme and I have clearly stated that the Ministry is not happy with the progress done on that road. Consequently, we have issued a termination notice to the contractor. We cannot compel the contractor to complete the road after giving him the termination notice and he does not respond. We will have to re-tender that contract and award it to a more serious contractor. That way, we will ensure that the people of Manyatta have their road in good time and also in the specified quality.

Question No.468

PAYMENT OF DUES TO FORMER
EMPLOYEES OF CIVIL AVIATION OF KENYA

Mr. K. Kilonzo asked the Minister for Labour:-

(a) why the employees of Civil Aviation Of Kenya, now Kenya Civil Aviation Authority, who were illegally dismissed, have not been paid their dues even after a court ruling on 7th November, 2005 in their favour; and,

(b) when they will be paid their dues.

Mr. Deputy Speaker: Is the Minister for Labour still not here? Hon. Deputy Prime Minister and Minister for Local Authority!

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I would like to request that this Question be deferred to tomorrow afternoon.

Mr. Deputy Speaker: It is so directed!

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I will not be in the House tomorrow afternoon because I will be attending a workshop. So, I would request that the Question be given another date.

Mr. Deputy Speaker: Is Tuesday next week okay with you?

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, it will not be possible because I will still not be here.

Mr. Deputy Speaker: What day is okay with you?

Mr. K. Kilonzo: Could I approach the Chair?

Mr. Deputy Speaker: You do not have to approach the Chair! Pick a day next week.

Mr. K. Kilonzo: Mr. Speaker, Sir, I will not be around the whole of next week.

Mr. Deputy Speaker: So, the week after?

Mr. K. Kilonzo: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Fair enough! The Chair directs that the Question appears on the Order Paper on Thursday the week after next week.

Ms. Karua: Mr. Deputy Speaker, Sir, may I apologize to the House for being late.

(Question deferred)

Next Question by hon. Karua!

Question No.381

ACTION AGAINST NAKURU TOWN CLERK/COUNCIL
ASKARIS FOR DISRUPTION OF MAYORAL ELECTIONS

Ms. Karua asked the Deputy Prime Minister and Minister for Local Government:-

(a) what action he has taken against the Nakuru Town Clerk and council *askaris* for the violence meted out on the outgoing Mayor, Councillor Gikari, during the mayoral elections on 24th July, 2009; and,

(b) whether he is satisfied that the said elections were properly carried out as provided for in the Local Government Act as well as the constitutional requirements of democracy.

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

(a) No action has been taken against the Town Clerk and the council *askaris* because no violence was meted out to the outgoing mayor, Councillor Gikari, during the mayoral elections on 24th July, 2009. In fact, it is Council Gikari who became violent when he realized that he was losing the election. The *askaris* restrained him from interfering with the electoral process.

(b) The elections were conducted in accordance with the Local Government Act and I am satisfied that they were done properly.

Ms. Karua: Mr. Deputy Speaker, Sir, I am surprised by the Deputy Prime Minister's answer. He has admitted that violence was meted out on the Mayor and then gone further to say that the elections were carried out in accordance with the Local

Government Act as well as the constitutional requirements of democracy. I would like to remind him that Section 1A of the Constitution – the one that brought multiparty democracy – clearly states that the Republic of Kenya shall be a multiparty democracy. Democracy presupposes free and fair elections. Also, the Local Government Act, because the Deputy Prime Minister insists that the elections were conducted in accordance with the Local Government Act, clearly states that the outgoing mayor shall preside over the elections. But if he is a candidate, then the councilors could choose one from among them to preside. Could the Deputy Prime Minister tell us how the councillors in Nakuru were able to choose one among them to preside over those elections, when the situation was so chaotic that his *askaris* were captured on television brutalizing the outgoing mayor and clubbing him with batons? Does he consider that as a reasonable force to restrain an unarmed person?

Mr. Mudavadi: Mr. Deputy Speaker, Sir, I want to state that in accordance with the Local Government Act, if the outgoing mayor is a candidate – and in this case, Mr. Gikari was a candidate – he cannot preside over an election. They sat and nominated one amongst themselves. They appointed Councillor Roseline Lai to preside over the mayoral elections, which is in accordance with the Local Government Act. Now, it is Gikari who realized that he was losing and then tried to disrupt the process. But he was restrained and the elections were conducted. We are satisfied that they were conducted in the proper manner.

Mr. Imanyara: Mr. Deputy Speaker, Sir, anybody who watches television must have seen the clips and the kind of violence that was meted out on that former mayor. Is the Deputy Prime Minister satisfied that the use of violence by the council *askaris* under the circumstances could be justified?

Mr. Mudavadi: Mr. Deputy Speaker, Sir, Mr. Gikari is the one who attempted to become violent and he was restrained. At the same time, I want to state that in other councils where there have been disputes about the elections, the losing candidates have gone to court and, in certain instances; the courts have nullified the elections where they believe there were injustices. Surprisingly, former Mayor Gikari did not report anything or file any case.

Ms. Karua: Mr. Deputy Speaker, Sir, it is not surprising that a Government that is a product of violence legitimizes violence. If, indeed, it is true that the former mayor is the one who started the violence two wrongs do not make a right. It was on television. I am not a witness and so, I would not know who started the violence. It was clear that the former mayor was being brutalized by several *askaris* with batons. Is the Deputy Prime Minister telling this House that in his view, elections that are accompanied by such brutality actually do satisfy the requirements of the Local Government Act and the Constitution? Is this Government legitimizing the use of violence?

Mr. Mudavadi: Mr. Deputy Speaker, Sir, we do not legitimize any violence. Indeed, the only reason why Mr. Gikari has not carried this matter further is because he knows that he was the provoker. He attempted to start the violence and he realizes that if he went to court, he will have difficulties in legitimizing his claim.

Mr. Deputy Speaker: Last question, hon. Karua!

Ms. Karua: Mr. Deputy Speaker, Sir, it is quite clear that even where there is provocation, the law would still assess whether the force to counter that provocation is excessive. Could this House get a direct answer from the Deputy Prime Minister and

Minister for Local Government whether the force that was used was reasonable, so that Kenyans can know whether the Government is sanctioning brutality and violence?

Mr. Mudavadi: Mr. Deputy Speaker, Sir, I did not watch that particular incident. But at the same time, if, indeed, Mr. Gikari feels aggrieved, one wonders to this day why he has not taken any legal action against those *askaris*.

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. Is the Deputy Prime Minister and Minister for Local Government in order to hide behind Mr. Gikari not taking action, while I am asking this question on the larger issue of violence in local Government elections, and, therefore, not answering whether he is satisfied that the use of brutal force is proper in elections?

Mr. Mudavadi: Mr. Deputy Speaker, Sir, the Question was about Nakuru. I have tried to confine myself to the incident in Nakuru. I have said that we do not condone violence in any form, but the truth of the matter is that Mr. Gikari has never gone to any court of law to challenge that election.

Mr. Deputy Speaker: Next Question by hon. Mbau!

Question No.526

NON-PAYMENT OF LEVIES BY KPLC TO LOCAL AUTHORITIES

Mr. Deputy Speaker: Is hon. Mbau still not here?
The Question is dropped!

(Question dropped)

Next Question, hon. Yakub!

Question No.535

CHOLERA OUTBREAK DUE TO WATER SHORTAGE

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

(a) whether she could confirm that 194 persons have died in the country between January and November 2009 from cholera/diarrhoea as a result of the acute shortage of clean water; and,

(b) what measures the Government has taken to mitigate the situation?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Deputy Speaker, Sir, first, I wish to apologize for coming in late. However, I beg to reply.

(a) My Ministry cannot confirm that 194 Kenyans have died between January and November, 2009 from cholera or diarrhoea caused by acute water shortage. This is because we have no competence to determine causes of death. In addition, cases of cholera cannot be attributed to water alone. There are several points along the cholera transmission path at which it can be spread, including food, personal hygiene, contaminated materials and contact between infected persons.

(b) My Ministry has ensured that all water consumed is properly disinfected by the use of chlorine and that it does not pose any danger to consumers. In this regard, we are working with other Government agencies and we have purchased and distributed over 400,000 tablets of Aqua tabs in those affected areas. During the drought period this year, my Ministry drilled over 500 boreholes and is currently involved in water tankering and has purchased and distributed that number of water tankers to help people cope with this situation.

Mr. Yakub: Thank you, Mr. Deputy Speaker, Sir. I want to thank the Minister for giving a well informed answer to the House. Regarding 194 Kenyans who have died during the period stated, this was confirmed by the Ministry of Medical Services.

Regarding the answer given to part “b”, the Ministry has ensured that all the water consumed is properly disinfected by use of chlorine. Could the Minister inform the House what practical actions they are taking at the district level to make sure that water is free of contamination?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, as I said, we ensure that the water that we give to people is clean. Maybe sometimes people get contaminated water but not from the sources where water is provided by the Ministry of Water and Irrigation. However, as I said, it is the duty of the Ministry of Water and Irrigation to ensure that water is as close to the people as possible. That is why we have ensured taking water closer to the people by providing water tankers. We have really bought a lot of tanks that we have brought to schools, health centres and even markets. Also, water bowsers have been taking water to these tanks.

Mr. Deputy Speaker, Sir, I believe that some of these 194 Kenyans who have lost lives. some are even within Nairobi. We have been combing Nairobi, including Kamiti Prison. Actually, we saw that the cholera outbreak in Kamiti was not about water. Our water is very clean. We took technical people there and they confirmed that the water there is clean. However, I agree that they maybe taking water that is not very clean. As a result, we are taking to them Aqua tablets to ensure that if they get water from sources that are suspicious, then they can use them to ensure that the water is not contaminated.

Mr. Affey: Mr. Speaker, Sir, I thank the Minister for the answer she has given, but she is aware that currently Turkana is suffering as a result of the outbreak of cholera. What specific measures is she taking to save more lives in Turkana?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, I have already directed that we take more water tanks to Turkana and collect most of the water bowsers that are not in use right now so that we can bring water closer to the people. There are some now in areas where we have gotten enough rains but since our aquifers have been recharged and boreholes are producing water, we can get all those water bowsers to Turkana.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, the issue of water shortage and spreading of disease is not an issue of Nairobi, but it is mostly a rural area issue. It is also an issue that is affecting many children. I would like the Minister to clarify to us, because this issue cuts across the Ministries of Health Medical Services and also the Ministry of Local Government what it is that he can do in conjunction with those other Ministries to ensure that they stop the death of children because of the spread of diseases through unhygienic conditions caused by water-related conditions.

Mrs. Ngilu: Mr. Deputy Speaker, Sir, unhygienic conditions are not as a result of water. We are ensuring that people get clean water, but we have been working in

conjunction with the Ministry of Public Health and Sanitation to ensure that--- For instance, as I said, we went to Kamiti Prison because I was interested to know whether the spread of cholera was water-related, but we found that the water is very clean. However, the areas are not properly cleaned. Where they cook, who cooks and what clothes they wear; there is so much to be done. I agree with the hon. Members that we should work with all those other Ministries to ensure that people are protected.

Ms. Karua: Mr. Deputy Speaker, Sir, since water bowsers have been cited as the cause for the first outbreak of cholera in Mukuru slums, what is the Minister doing to ascertain that those licensed to hawk water with water bowsers are using clean tanks that are not used as exhausters, and that they also prove that they have clean source of water?

Mrs. Ngilu: Thank you, Mr. Deputy Speaker, Sir. When we had very acute shortage of water, we contracted vendors and people who own water bowsers and we ensured that they were thoroughly inspected to see that they met the standards. However, sometimes you come across people who would just do the wrong thing. But we are on it to ensure that the water bowsers that are being used are thoroughly cleaned and they meet the standards.

Mr. Njuguna: Thank you, Mr. Deputy Speaker, Sir. As we thank the Minister for that elaborate answer, I would like her, further, to indicate to this House, which criteria was applied in considering the location of the 500 boreholes, because the people of Lari were left out in that arrangement?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, I had a map that showed the real areas that had acute water shortage. We continue to drill boreholes and deliver tankers and tanks. Therefore, if his area was one of them, I want to assure him that we will get to it and we will serve his people.

Mrs. Noor: Thank you, Mr. Deputy Speaker, Sir. If you remember very well, I am the one who raised the first Question on cholera outbreak in Kamiti Prison. After a thorough investigation, it was confirmed that water was clean. If you remember, the Minister for Public Health and Sanitation confirmed that there is shortage of drugs and testing kit for cholera outbreak. So, I would like to get the direction of the Chair on this matter because this is national crisis. It is cutting across various Ministries; Public Health and Sanitation, Medical Services, Water and Irrigation, Local Government and several others. People are dying in great numbers. Could the Chair refer this matter to the Committee on Health so that they can investigate the matter thoroughly and they can bring a report to this House?

Mr. Deputy Speaker: The relevant Committee does not need any direction from the Chair for them to originate the investigations. As you have put it very well, it cuts across many Ministries and it is upon the relevant Committees to rise up to the occasion and do a good job. They do not have to be directed by the Chair.

Ms. Karua: It should be directed to the Prime Minister.

Mr. Deputy Speaker: Should you wish to direct it to the Prime Minister, hon. Martha Karua?

Mrs. Noor: Mr. Deputy Speaker, Sir, because the issue needs co-ordination and because the Prime Minister is the supervisor and co-ordinator of the Government Business, we need a co-ordination committee to address this particular issue. It is a national crisis!

Mr. Deputy Speaker: So, you can put the Question to the Prime Minister and the Chair will gladly approve it.

Mr. Deputy Speaker: We will go back to Question No.1 by Private Notice. Mr. Mbugua will ask the Question. I do not know whether the Minister is here. Nevertheless, the Chair wants to state that, indeed, the directions were not clear as to whether the Question should appear in the morning or in the afternoon. Being a Question by Private Notice, it is not posted on the internet. For those reasons, the Minister may have the benefit of the doubt on this matter.

Hon. Mbugua, could you proceed and ask your question!

QUESTION BY PRIVATE NOTICE

IDENTIFICATION OF LAND FOR RESETTLEMENT OF 2007 POST ELECTION VIOLENCE IDPS

Mr. Mbugua: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) Could the Minister confirm that land to settle internally displaced persons (IDPs) who were displaced during the 2007 post-election violence, has been identified and, if so, could he table a list of names of the land owners and the location of the land?

(b) How much money has been budgeted in the Ministry's current budget for the purchase of the said land and when does the Government intend to complete the process?

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The identification of land to settle the internally displaced persons during the 2007 post election violence is in the process. In September, 2009, as outlined in the attached schedule which I have given to the hon. Member, several parcels of land were offered for sale to the Government either through the Provincial Administration or pursuant to notices published by the Ministry of Lands inviting expression of interest to sell land for that purpose. The parcels of land offered vary in size and locality and are mainly from the Rift Valley, Central, Coast, Eastern and Nyanza provinces.

The Ministry conducted due diligence including investigations of the titles, property profiles, site inspection and property valuation in order to understand every aspect of the properties prior to the purchase process. After the due diligence exercise by the Ministry of Lands, the Permanent Secretaries from the Ministry of Lands, Ministry of State for Provincial Administration and Internal Security, Ministry of Agriculture and Ministry of State for Special Programmes met on 8th October, 2009 to prioritize and advise on the purchase of land by the Government. The Permanent Secretaries identified and prioritized 33 farms which are contained in the schedule which I have attached to the answer to this Question, with a total acreage of 8,290 acres, for purchase to settle IDPs.

In line with the Government regulations of procurement, the identified parcels were adjudicated and approved by the Ministerial Tender Committee for direct procurement. Letters of offer were then done to the concerned bidders, but only 16 have so far responded. The total acreage for the 16 who have responded is 6,600 against 15,000 acres that are required to settle the estimated 6,802 IDP families. It should be noted that although some of the offers have been accepted, so far the Government has not procured any land. I want to emphasize that the Government has not procured any land

because the sale agreements are yet to be signed and transfers effected and registered. The draft sale agreements have been submitted to the Attorney-General for approval before proceeding with the purchase of the farms.

(b) The Treasury has allocated Kshs1.4 billion for the purchase of those parcels of land. The purchase of the 16 farms, once the bidders have responded, will be completed once the Attorney-General completes the draft sale agreement instruments. However, as more land is required, my Ministry, on 14th October, 2009, advertized a notice in the local dailies inviting expression of sale of arable land. The bids were received on 16th November, 2009 and are being evaluated by the technical team. Together with this answer, I want to lay on the Table the list of the farms which have been offered for sale, the ones which have been identified and the ones which bidders have accepted the offers.

*(Mr. Orengo laid the documents
on the Table)*

It should be noted that we, as a Ministry, were inclined to accept some offers in relation to some of the pieces of land which were either semi arid or arid, but did not meet the requirements.

Mr. Mbugua: Thank you, Mr. Deputy Speaker, Sir. I appreciate the answer that has been given by the Minister. He was very comprehensive. However, IDPs continue to suffer, two years down the line after the elections. Why do the IDPs continue to suffer? Once again, the Attorney-General is on the spotlight because that is an issue of looking at the draft agreements, approving them and returning them to the Minister for Lands, so that he can buy the land that should be occupied by IDPs.

Could the Minister confirm to this House whether there has been in-fighting in Government circles with regard to buying that land?

Mr. Orengo: Mr. Deputy Speaker, Sir, there has not been any in-fighting. Indeed, we found out that the Ministry of Lands alone could not take care of the exercise. That is why four Ministries are involved. The Office of the Attorney-General is involved in looking at the agreements and making sure that the Government will not be shortchanged in any way in those transactions.

Mr. Ogindo: Thank you, Mr. Deputy Speaker, Sir. I would like to get a clarification from the Minister. Noting that every Kenyan has a home and if we were to trace the origin of every Kenyan, we would trace their original homes--- I know that the Minister is just about to buy land. However, what precaution is the Ministry taking so that it does not end up buying what was originally Government land in the name of resettling IDPs?

Mr. Orengo: Mr. Deputy Speaker, Sir, hence the need for a new land policy. If you would approve my land policy, you would put me in a stronger position. However, you are making a very good point; that there are people who have been sitting on Government land and they are now offering the same land for sale. You will find that in most of those circumstances, they have not done anything on those pieces of land. The process of due diligence was also to establish that. If one wanted to sell land that was originally Government land, we wanted to find out exactly what that person had done on the land. We would also look back on the terms and conditions under which the land was given because quite rightly, you will find a situation where someone got Government

land for a stamp premium of Kshs6 million and would want to sell it for Kshs100 million. In those circumstances, obviously, the Government will be shortchanged. That is a matter which I am very much alive to. I am totally opposed to the idea of people hoarding Government land and then offering it back to the Government for sale.

Ms. Karua: Mr. Deputy Speaker, Sir, in view of the Minister's answer that no land has been bought, could he explain where the Government obtained the land that it recently re-settled IDPs in Rongai?

Mr. Orenge: Mr. Deputy Speaker, Sir, I am not aware that people have been re-settled. If they have been re-settled then they are squatting and basically, the situation is quite different. If they are re-settled without legal instruments then, as far as I am concerned, that is not the programme that is underway. The programme that is underway is that they should have title deeds to the land they are re-settled.

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

Mr. Deputy Speaker: Mr. Minister, do you want the hon. Member's information?

Mr. Orenge: Yes, Mr. Deputy Speaker, Sir.

Mr. Mwangi: Mr. Deputy Speaker, Sir, I would like to inform the Minister that the people who have been re-settled have been translocated from Mawingo in my constituency. Will those people move from one problem to another? Many families have been moved and we would like to know whether they are being translocated from one problem to another.

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. I am just asking you to rescue the House. The Minister is a member of the Government and the re-settlement of those IDPs from Mawingo to Rongai is a matter of public knowledge. Is the Chair satisfied that the Minister is in order to claim that he is not aware of the re-settlement programme? This is puzzling and actually belittling the House.

Mr. Orenge: Mr. Deputy Speaker, Sir, I am using the word "settlement" not only as a legal term but also as a position that is very clear in law as far as the Department of Settlement is concerned. If people are translocated into camps, are in situations where they do not have title deeds or there is no possibility of them getting those documents it is not settlement. As far as I am concerned, people may be in some camps or land somewhere but they should be re-settled on land to which they will be issued title deeds.

Mr. Ngugi: Mr. Deputy Speaker, Sir, I want to congratulate the Minister for this very honest answer which is only academic. The President issued an ultimatum that in 14 days time those people should be re-settled. Indeed, a group of us even went to Mawingo to persuade them to accept the Government's offer of two weeks. It is now two-and-a-half months since the President made the directive and yet the Minister is telling us that he is waiting for an agreement to be verified by the Attorney-General, who as we know, will take years to verify such an agreement.

Mr. Deputy Speaker: What is your question?

Mr. Ngugi: Mr. Deputy Speaker, Sir, the Ministry is too insensitive to fellow Kenyans that it cannot fast-track this process.

Mr. Orenge: Mr. Deputy Speaker, Sir, I am very sensitive especially when it comes to the inhuman conditions that Kenyans are subjected to. The ultimatum was not cast in stone. When we looked at the mechanics of carrying out the settlements, we found that people were going to be settled on pieces of land that had many legal problems. In

fact, the parcels of land that were identified before my Ministry was involved had many legal challenges and we insisted that we must carry out due diligence and look at their status. For instance, many of the people who were settled in Solio Ranch left because of lack of rain and other facilities. Those people thought that going back to where they came from was economically viable. So, there are many considerations to be taken into account. I would like to tell the hon. Member that fast-tracking without precautions may be disastrous in the end.

Mr. Ngugi: On a point of order, Mr. Deputy Speaker, Sir. The Minister is a lawyer, his Permanent Secretary is a lawyer and there are lawyers in the Ministry. What is the point of referring the agreement to the Attorney-General? He has not answered that question.

Mr. Orenge: Mr. Deputy Speaker, Sir, according to the Constitution, the Principal Legal Advisor to the Government of Kenya is the Attorney-General. So, whatever legal advice I give is inconsequential. There must be something on record to show that the Attorney-General gave advice, and that we acted in accordance with that advice.

Mr. Mungatana: Mr. Deputy Speaker, Sir, in his answer, the Minister has said that he intends to settle IDPs in parcels of land that have been identified from expression of interest for sale to the land bank. Amongst the provinces where those parcels of land are offered are Rift Valley, Central, Coast and Nyanza. I want the Minister to confirm to the House that he will give preference to settling the squatters in Coast Province before settling other people as he buys the land. There is fear that people will be brought to the land in Coast Province and those who are there by-passed. Could the Minister confirm that he will prioritize the settlement of squatters in Coast Province before he brings in other people because this might create political sensitivity?

Mr. Orenge: Mr. Deputy Speaker, Sir, the squatter problem in Coast Province is unique and this process does not involve the settlement of squatters in that province. However, I assure the hon. Member that we are putting more emphasis on proximity and other logistics as we carry out the settlement and relocation of the IDPs. It is pointless to relocate people from Kisumu, for instance, and settle them in Coast Province because transport and logistics alone will consume a lot of money. So, emphasis is put on proximity and finding land where those that are being settled will easily get along with the communities around. That is important, at least, from the experiences that we have had after the post-election violence and even before. Translocation of populations, although Kenyans are free to live anywhere, must be sensitive to the communities who should be involved in the processes. On the current programme for the resettlement of IDPs, I can assure the hon. Member that there is no possibility of them being taken to Coast Province. That is the case of those who were displaced as a result of post-election violence. If some are identified in Coast Province, then we will look for land in that province. The list I have given is purely to show you that we had large expressions of interest from various individuals from all over the country. In order to be transparent, I have given the full list of those who have offered their land for sale wherever it is situated.

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

Mr. Deputy Speaker: What is your point of order? What is not in order?

Mr. Ogindo: Mr. Deputy Speaker, Sir. Is the Minister really in order, in light of the recently enacted Fiscal Management Bill and in terms of prudent use of resources allocated to him, to use that money to buy land for IDPs when he knows very well that each and every one of them has a home? Why can the Minister not resettle those IDPs in their original homes so that we solve that problem once and for all?

Mr. Mbugua: Mr. Deputy Speaker, Sir, certainly, there is somebody who is sleeping on his job here. I must acknowledge that it is not the Minister for Lands, but it is the Attorney-General. I do not know what happened to the Government's policy on acquisition of land.

Could he tell us when he will buy that land for IDPs?

Mr. Orengo: Mr. Deputy Speaker, Sir, once the agreements are approved, I am quite ready. The money is available, but we should not really be rushed. The Attorney-General also should not be rushed. But since every person in Government is aware that the President himself considered that this is a matter of urgency, I hope that my colleagues and I will fast-track this acquisition of land.

Mr. Mbugua: On a point of order, Mr. Deputy Speaker, Sir. What timeframe? One year, two years, three years, four years, five years! Could he tell us the timeframe he is working on?

Mr. Deputy Speaker: Order, Mr. Mbugua! The minister tells you that you should ask the Attorney-General that question. He says as soon as the agreement is signed, he will do so. He is not the legal advisor of the Government. There is a legal document to be signed between the Government and the vendors. So, under those circumstances, you ask the right person. Put in a Question to the right Government Minister.

Next Question, hon. Odhiambo!

ORAL ANSWERS TO QUESTIONS

Question No.529

UPGRADING OF KHUNYANGU SUB-DISTRICT HOSPITAL

Mr. Odhiambo asked the Minister for Medical Services what plans the Government has to upgrade Khunyangu Sub district Hospital to a fully-fledged district hospital, given that the facility serves the people of Butula Constituency and the neighbouring Nambale and Ugenya constituencies.

Mr. Deputy Speaker: Hon. Minister, could you apologise to the House for coming late and answer the Question.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I would like to apologise to the House for coming late. That is mainly because I do not have an Assistant Minister. My Assistant Minister of yesterday is sitting over there.

Mr. Deputy Speaker, Sir, I would like to apologise and borrow from hon. Odhiambo's apology that I also was caught up in a traffic jam.

However, I beg to reply.

The Ministry's long term plan is to have at least a sub-district hospital in every constituency. It may not, therefore, be appropriate to justify expansion of Khunyangu on the premise that it serves neighbouring constituencies. It is likely that Khunyangu's workload would actually be considerably reduced if all the neighbouring constituencies had functional sub-district hospitals.

However, as a sub-district hospital, Khunyangu faces a number of challenges in meeting the needs of the catchment population for medical services. These include low bed capacity, absence of operating theatre and shortage of staff. These challenges have been captured in an infrastructure and staffing survey that the Ministry carried out recently in all gazetted hospitals. The findings of this survey will be used to mobilize resources to standardize hospital infrastructure across the country in the coming years. Provision of missing facilities in Khunyangu Sub-district Hospital will be given consideration within this national framework.

In the meantime, the Ministry is grateful that the local CDF is putting up an additional ward in the hospital. We pledge to provide equipment and staff when this ward is completed. As soon as it is completed, the equipment and staff will be ready to be supplied.

Mr. Odhiambo: Thank you very much, hon. Minister for giving that answer which is actually realistic of Khunyangu Sub-District Hospital.

In his answer, he indicates that there is a long term plan for his Ministry to provide such a facility in every constituency. However, I have been very specific in my Question. Butula Constituency already has such a facility, which he intends to provide in other constituencies in his long term plan. Now that Butula Constituency already has such a facility which is serving the neighbouring constituencies, why does he not treat this as a special case?

Prof. Anyang-Nyongo: Mr. Deputy Speaker, Sir, the hon. Member is right. Khunyangu Sub-District Hospital, indeed, has a bed capacity of 17 beds. It has also a maternity wing, a female/paediatrics ward and male ward. However, it has been put under pressure from patients from Ugenya and Nambale constituencies.

What we intend to do is to release the pressure from this sub-district hospital by ensuring that Ambira Sub-District Hospital which is currently under-equipped is fully equipped as a sub-district hospital. At the same time, Nambale, which has no hospital whatsoever, be provided with a sub-district hospital. We do know that Busia District Hospital is only 15 kilometres from Nambale. But Nambale Constituency deserves a sub-district hospital. Given the scarcity of resources, I am pleading with the hon. Member to be patient with us as we upgrade Ambira Sub-District Hospital and provide Nambale with its own sub-district hospital, so as to release pressure on Khunyangu Sub-District Hospital. We also shall reconsolidate the facilities in Khunyangu to give better services to the people in that particular constituency. However, upgrading it to a district hospital will have to be delayed until such time that the two constituencies neighbouring the hon. Member's constituency are also provided with facilities like the sub-district hospital in his constituency.

Mr. Kigen: Mr. Deputy Speaker, Sir, I appreciate what the Minister is doing to give every constituency at least some medical facility that measures to the standards of a district hospital. He says he has intention to do so. What immediate plans are in place for those constituencies that do not even have a sub-district hospital to enable them access

medical facilities? Some constituencies do not even have sub-district hospitals leave alone asking for upgrading to a district hospital.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, under the Economic Stimulus Programme (ESP), every constituency is being provided with Kshs20 million to invest in a health facility that will eventually be upgraded to a sub-district hospital.

The idea behind ESP is for a Member and their Committee in the constituency to identify a particular health centre which should be prepared to be a sub-district hospital and improve it.

Mr. Deputy Speaker, Sir, we have done a baseline survey of the whole country and we know exactly what exists where. That baseline survey was necessary for us to know where we can invest resources for added value. That is why I am appealing with the hon. Member for Butula that rather than begin investing in a sub-district to upgrade it to a district hospitals, let us use those resources in neighbouring constituencies which are in any case sending patients to his sub-district hospital and creating pressure there so that, that pressure can be released. As the Member invests the Kshs20 million in a health centre or that sub-district hospital, for that matter, we shall then synchronise our activities in that health zone because Ugenya, Nambale and Butula belong to the same health zone as far as far Ministry of Medical Services is concerned.

Mr. Imanyara: Mr. Deputy Speaker, Sir, I am glad that the Minister has raised the issue of the ESP and, as a result of it, in my constituency, we made available some Kshs20 million towards the upgrading of the district hospital only recently. However, we have encountered problems from the Ministry of Public Health and Sanitation, who insist that they are responsible for this money and will not allow us to put it in a hospital that falls under the Ministry of Medical Services. Could the Minister assure this House that the differences between the two Ministries dealing with matters of health will be resolved, so that we do not have those differences going to the grassroots and preventing us from performing the task of upgrading this hospital? So, could you inform the House why Githongo Hospital has not been upgraded, and why we are not able to utilise this money because of differences between your ministry and the Ministry of Public Health and Sanitation?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, the issue that the hon. Member has raised is very genuine and I think very sincere. It is upon us in Government to have this dialogue and ensure that these resources are used for added value. If we are going to have one centre of excellence in a constituency, it should be at a level that will add value to health delivery system in that constituency. The answer I have given to Members of Parliament, who have come to me about this issue, is that we should approach both the Ministry of Finance, which is responsible for the ESP, and the Ministry of Public Health and Sanitations to have a decent compromise. Indeed, in his case, Githongo Hospital, which has been upgraded to a sub-district hospital and still has many other facilities lacking, it would add value if the Kshs20 million is used to consolidate the development of that hospital instead of it being spent in another health centre where even more resources would be necessary to have effective services delivered. So, I will have dialogue with my colleague in the Ministry of Public Health and Sanitation, and see that we serve Kenyans better by responding to every particular specific situation according to the requirements of that situation, and we do not impose services in situations where what we impose may not necessarily add value to health delivery systems in an area.

Mr. Odhiambo: Mr. Deputy Speaker, Sir, the last question which hon. Imanyara has asked is very similar to what I wanted to ask. So, I wanted to put it to you like this: In your answer, it is as if you are leaving it upon us Members of Parliament to liaise between the Ministry of Finance and the Ministry of Public Health and Sanitation and be able to convince them for this money to go to a medical institution that is not a dispensary. In my constituency of Butula, I tried to use this money to bring up this Khunyangu Sub-District Hospital to a better hospital, but the Ministry of Public Health and Sanitation refused totally, and insisted that this money can only be used in a dispensary. In fact, they went further to say that dispensaries fall under the Ministry of Public Health and Sanitation, but Khunyangu Sub-District Hospital falls under your Ministry. So, could you please assist us and talk to your two colleagues, especially the Ministry of Public Health and Sanitation, so that they can give us leeway, particularly myself, to transfer this money from a dispensary to a health centre, in particular Khunyangu? This is because I have tried but the Ministry of Public Health and Sanitation has refused. So, could you assist me and other Members who have a similar problem; it looks like my brother---

Mr. Deputy Speaker: Order, hon. Odhiambo! You have made your point!

Mr. Odhiambo: Mr. Deputy Speaker, Sir, yes I have asked. You see, it looks as if my brother has a similar problem. So, you are the Minister. Could you come in and help us rather than leaving it upon us as Members of Parliament?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, yes, I am quite prepared to help. I said that we need a dialogue among the Ministries of Medical Services, Public Health and Sanitation and Finance, so that we can solve this problem. It is not a problem that is peculiar to Butula. We have just heard the hon. Gitobu Imanyara talk about Githongo Sub-District Hospital in his own constituency. Many other hon. Members of Parliament have approached me with similar issues. I think hon. Kigen has made a similar inquiry and received my comment. So, I think as a Government we should not be insensitive to issues at the local level, where Members of Parliament and the people are receiving the heat. However, I assure the hon. Member of Parliament for Butula, my friend, hon. Odhiambo, that I will definitely approach my colleague so that we can come up with an answer that is satisfactory not just to Members of Parliament, but also to the needs of the Kenyan people, for whom medical services are delivered and it does not matter from which Ministry.

Mr. Deputy Speaker: Hon. Elias Mbau has approached the Chair to explain himself. The Chair is satisfied that he should be given a chance, nonetheless, because of lack of time, his Question No.526 is deferred to tomorrow afternoon.

Question No.526

NON-PAYMENT OF LEVIES BY KPLC TO LOCAL AUTHORITIES

(Question deferred)

Next Order!

MINISTERIAL STATEMENT

CANCELLATION OF LOANS ADVANCED TO PASTORALISTS\RANCHERS

The Minister for Agriculture (Mr. Samoei): Mr. Deputy Speaker, Sir, subsequent to a request by the hon. Affey, I wish to make the following Ministerial Statement with respect to the Agricultural Finance Corporation (AFC), and the loan portfolio it currently dispenses on behalf of the Government.

Mr. Deputy Speaker, Sir, provision of agricultural credit is the core function of the AFC. Before 2003, the corporation was weighed down by a large portfolio of non-performing loans, and the Government approved a restructuring programme and an injection of funds aimed at resuscitating the institution. As a result of this injection of funds, the corporation resumed lending starting 16th May, 2003 with Schemes Nos. 16 and 17, which benefited small-scale and large-scale borrowers respectively. In June 2003, Scheme No.18, specifically targeted at livestock farmers, was launched in ranching areas; all these three schemes were funded by the Kenya Government as part of the AFC restructuring programme.

Under this programme, the Government injected Kshs260 million yearly into the AFC for five years to enable it resume lending programmes, which had nearly stopped before then. In 2004, the corporation resumed lending under the seasonal crop credit. This was facilitated by Kshs769 million, which was obtained from the Japanese International Co-operation Agency (JICA). This funding facilitated the establishment of a revolving fund, which has continued to fund programmes in the corporation to date. The AFC has given loans totaling Kshs3, 885,205,410 as of 31st October this year. Out of these developments, loans account for Kshs1.7 billion and seasonal credit loans amount to Kshs1.01 billion. Other loans, including coffee development loans, sugar development loans, group loans, livestock off-take loans, GTZ and AGMARK total Kshs1.14 billion.

Mr. Deputy Speaker, Sir, the post-election violence of 2007/2008 which disrupted farming activities in various parts of the country especially in the Rift Valley Province and the prolonged drought situation have seriously affected the loan payments to the AFC. The rate of delinquency has increased from an average of 30 per cent to an average of 40 per cent. In recognition of the difficult times experienced by the loanees, the corporation has come up with various measures aimed at alleviating the current loan repayment portfolio. The measures devised are not only to assist farmers to repay their loans but also to ensure that they remain in business. These measures include negotiation with farmers on mutually acceptable terms of payment, rescheduling of repayment, adjusting the repayment period and even refinancing.

However, as I said earlier, the four years of adverse weather conditions that have affected farmers negatively, the Government is in the process of auditing and classifying the various loans to consider which ones are not recoverable so that we can start the process of the Government taking over these loans through the provisions of this House, with a view to writing them off from farmers.

Mr. Deputy Speaker, Sir, as hon. Members are aware, once the corporation concludes the auditing of those loans, I will table the same in the Cabinet and then a Sessional Paper will be prepared for this House to come and consider the write-off of these loans and the refinancing of those loans through the Exchequer, so that we can

alleviate the big suffering that currently, many livestock and crop farmers are facing because of their inability to repay the loans because of the vagaries of the weather and because of other situations that go beyond their control.

With the parliamentary approval of the Sessional Paper, once it is tabled before this House, we should be able to implement the write-off of loans as was requested by the hon. Member.

Thank you.

Mr. Affey: Mr. Deputy Speaker, Sir, I want to begin by thanking the Minister for that comprehensive Statement. My interest was generated as a result of the threats that livestock farmers were facing from the bank. Because of the fact that the Minister himself has confirmed to the House that the pastoral farmers suffered four years of bad weather and the fact that, now, the Ministry is taking steps in order to relieve this pain from livestock farmers, I would like to get assurance from the Minister that as they are doing this auditing and classification of the loans and as this matter is going before the Cabinet and even before it comes to the House, that these farmers will not be threatened by any court action, by the AFC or by any other party. That, they will not lose their ranches as a result of their inability to pay the loans. What the pastoralists are asking for is what has happened to other agricultural farmers in this country. We know that the Government has gone out of its way to bail out coffee and tea farmers with fertilizers, seedlings and with such other support, but this has not been translated to the pastoral farmers in this country.

I would like to get assurance from the Minister that as they do this, they will also consider providing funds to the livestock farmers for restocking. In spite of the fact that they have got ranches, these people have also lost the only source of livelihood they had.

Could the Minister give an undertaking that, first of all, they will suspend any threats to these farmers and, secondly, they will provide funds for restocking to the livestock farmers in the country?

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: The information is for whom; is it to the Minister?

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): It is to the House, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: You can only do it if the Minister accepts. Does the Minister accept the information from your colleague in Government?

The Minister for Agriculture (Mr. Samoei): Yes, Mr. Deputy Speaker, Sir.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Thank you, Mr. Deputy Speaker, Sir. I know I am part of the Government, but I would like to inform the Minister that on 12th March this year, the President and the Prime Minister, through my request at a rally in the launching of the *Kazi Kwa Vijana* programme in Mashruu, they promised that the Government will look into AFC loans with a view to writing them off in order to ensure that farmers are not harassed.

Secondly, I personally wrote to the Minister and he did reply saying that the Government is considering options of helping the farmers. Under the circumstances, I would like to ask the Minister--- I would like to request--- I would like to inform the Minister---

Hon. Members: No! No!

Mr. Deputy Speaker: Order! Order! Order! You would like to inform the Minister?

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): I would like to inform him.

Mr. Deputy Speaker: You give him information from the Government perspective that is going to help him in discharging his duties.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): That is the information I wanted to give him.

Mr. Deputy Speaker: That is what I wanted to hear!

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Minister, proceed!

The Minister for Agriculture (Mr. Samoei): Thank you, Mr. Deputy Speaker, Sir. Indeed I want to confirm that the Government did make a pledge that the issue of non-performing loans, especially with respect to livestock farmers and many other farmers who were affected by four years of continuous drought, the post-election violence and other factors way beyond the reach and control of farmers, that we were going to consider, as a Government, taking over some of the loans. But, as I said here earlier, each loan will be assessed on its own merit so that those farmers who are able to pay should actually pay. There are farmers, especially large scale farmers, who are in a position to pay. I think it would not be prudent for us to shoulder responsibility for loans taken by farmers who are actually able to pay and use the Exchequer to settle those debts.

Mr. Deputy Speaker, Sir, as I said earlier, we are going to carry out an audit of the loans and since we have a branch network that helps to assess the capacity of every farmer to pay or not to pay, once that exercise is over - and I want to assure this House that we have already given instructions for that exercise to commence - we are going to take the necessary steps through the Cabinet and through this House so that we can actually write off loans for farmers who are not in a position to pay, especially those that have been affected by factors way beyond their control

Mr. Deputy Speaker, Sir, I also want to confirm that, indeed, hon. Nkaisserry wrote to me and I wrote back to him concerning the Government's position and commitment to writing off loans for farmers who are not able to pay, while we encourage all other farmers who are in a position to pay to do so, so that we can have money for onward lending to other deserving cases.

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. I am fairly satisfied with what the Minister has said, but he has evaded a very important aspect of my question. Could he assure the farmers that nothing will happen to them; their ranches or their property that they used as security to acquire the loans will not be attached until this auditing process is over and until they are able to assess who is able to pay and who is not? There is a danger that as they are doing this, farmers could lose their ranches.

Ms. Karua: Mr. Deputy Speaker, Sir, whereas it is laudable for the Government to bail out farmers who have loans with the AFC, is the Minister and the Government taking into account that AFC has been unable to pay its debts due to the many write offs in the past and currently its assets are under auction, is the Minister going to provide support to AFC to safeguard it and its property?

Mr. Deputy Speaker: Minister, could you take those two clarifications?

The Minister for Agriculture (Mr. Samoei): Yes, Mr. Deputy Speaker, Sir. I am not aware that AFC is facing any court action. However, I want to agree with the hon. Member that in the past, AFC has faced very serious management and governance challenges. As a result, this House will appreciate that, last week, we advertised the two most senior positions of Chief Executive and the Director, in charge of loans. The two officers will be recruited competitively as part of the wider scheme of ensuring that the governance and management challenges that have faced AFC become a thing of the past.

Mr. Deputy Speaker, Sir, six months ago, we changed the board of AFC. We now have in place a very competent retired senior banker as the Chairman of the AFC. This is part of the bigger plan of making AFC discharge its responsibility of providing loans to farmers efficiently and in an appropriate manner.

In responding to the issue raised by Mr. Affey, farmers, including ranch owners, who have the capacity to pay their loans, will continue to be requested, as it is normal, to pay their loans. Those who have been classified as people who are not able to pay will not be harassed by anybody, but will await the process of write off as I have stated in this House.

We have also asked development partners - and we want to thank JICA for giving us the initial Kshs768 million. We are currently in discussions with World Bank, International Fund for Agricultural Development (IFAD) and other donor agencies with a view of looking for additional money for onward lending to farmers.

Prof. Kamar: Thank you, Mr. Deputy Speaker, Sir. I was listening to the Minister as I was coming in. I am concerned about farmers, including those in his constituency who borrowed money last year from AFC. Apart from the ranches, there are those who are really the bread basket of this country. The farmers in Uasin Gishu and Trans Nzoia harvested very little this year. Could the Minister assure us that the approach he is taking in writing off the loans will cover the farmers in the larger Uasin Gishu and Trans Nzoia? This is because even this year they have harvested nothing. If you go to the ground, you will realize that they planted the seeds they were given by the Government and even used the fertilizer that was provided to them. However, all that went to waste because they never harvested anything. Farmers are actually dying to know what will happen to them. When the Minister says that the farmers will be persuaded without harassment, could he, please, distinguish so that we know that our farmers are really very safe?

Mr. Deputy Speaker: Much as the issue was on writing off of loans advanced to pastoralists and ranchers, if the Minister so wishes, he could respond to your concerns too.

Mr. Yakub: Mr. Deputy Speaker, Sir, we have farmers in Malindi, Kwale and Kilifi districts who had taken loans and they have been completely stranded for the last 18 months. Is there any way the Minister could assist through the AFC so that they can get some extra money and yield the fruits? They have failed to pay the loans because of the failure of the short rains. Is there a way the Ministry could assist the farmers, through AFC so that they yield their fruits and start paying the loans they had taken?

Mr. Deputy Speaker: It is, again, the same thing. The Ministerial Statement was about writing off loans advanced to pastoralists. Nonetheless, if the Minister so wishes, he will respond to that. Could we have a last one?

Mr. Ochieng: Mr. Deputy Speaker, Sir, about six months ago, I raised a similar issue to the Minister about sugar-cane farmers. He promised to bring a Sessional Paper. I would like to know when he is likely to bring the Sessional Paper to this House so that we can---

Mr. Deputy Speaker: Was it an issue on pastoralist farmers and ranches in Kajiado, Narok and other places where they have animals?

Mr. Ochieng': It was equally about the loans that farmers had borrowed.

Mr. Deputy Speaker: Order, Mr. Ochieng'! Do not dilute the efforts made by hon. Members by making it very general. If he so wishes, then he can proceed on. In any case, the Chair is an interested party. So, you will forgive the Chair for being passionate on this matter.

The Minister for Agriculture (Mr. Samoei): Thank you, Mr. Deputy Speaker, Sir. I appreciate the concern of hon. Members here about the loans advanced by the AFC. We are taking a comprehensive approach. We are looking at the loans that were given to pastoralists and ranchers. We are looking at it broadly because the organization is charged with the responsibility of lending to all categories of farmers be they livestock farmers, crop farmers and so on. That is why we have seasonal credit and a particular line for livestock.

When I say that we are assessing, auditing and classifying all these loans, we are not leaving any sector out of that classification whether they are farmers in Uasin Gishu, Trans Nzoia or the Coast Province as Mr. Dor was requesting. We are looking at a comprehensive approach to the loan portfolio that currently exists at the AFC. We will come up with one Sessional Paper that is going to take care of all the loan categories in all the different portfolios that are lent to us by the AFC. This is with regard to the ranchers, the pastoralists, and the seasonal crop farmers across the board. That is the approach we are looking at. We will consider even my own farmers in Uasin Gishu and Eldoret North in particular.

To answer what Mr. Polyins Ochieng asked, this is an exercise that requires a bit of time. We should be able to conclude that process by January, 2010. Hopefully, by the time we come back to this House in March, 2010, the Sessional Paper will find its way into the House.

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. This issue is very critical for nearly 70 per cent of Kenyans. I am happy with the Minister's clarification. I asked him to clarify something on the aspect of restocking. The drought, as we all know, was so devastating that livestock farmers in the country lost animals. What arrangements has the Minister made to find sufficient resources for these farmers to begin to restock their livestock?

The Minister for Agriculture (Mr. Samoei): Mr. Deputy Speaker, Sir, it is true that I did not respond to that issue. Indeed, that issue is being addressed under the Ministry of Livestock Development. The same way we are doing with seeds and fertilizer under the Ministry of Agriculture, we are going to provide money under the Ministry of Livestock Development for purposes of restocking. I think the hon. Member will be well advised to seek that clarification to the extent of restocking from the Ministry of Livestock Development. However, I know that there is a programme towards that end.

Mr. Deputy Speaker: Hon. Members, there are three Ministerial Statements that hon. Members are seeking. We will start with Mr. Mungatana, Mr. Affey and then Mr. Ruteere.

POINTS OF ORDER

ALLOCATION OF LAND TO SPECULATORS IN LAMU/TANA DELTA DISTRICTS

Mr. Mungatana: Mr. Deputy Speaker, Sir, I stand to seek a Ministerial Statement from the Minister for Lands. With the planned establishment of the Lamu Port in Lamu District, there has been a massive allocation of lands by the Ministry of Land to top politicians, “connected” people, civil servants and businessmen who are based in Mombasa.

This massive land allocation has affected both Lamu District and Tana Delta districts, which I represent. It appears to us that the more things change, the more things remain the same. In that Ministerial Statement, we would like the Minister to clarify the following issues:-

(1) who owns land exceeding 50 acres in those two areas, be it Government land or land allocated to them in whatever way;

(2) where land is allocated to companies, we would like to know the directors of those companies;

(3) how many local people have been allocated any land parcels in the Lamu and Tana Delta Districts, if any at all;

(4) we would like him to confirm whether he can cancel the titles or letters of allotment that have been issued to those speculators without any regard to sentiments by the local residents; and,

(5) we would want to know whether the Land Policy that is currently being debated in this House can apply retroactively, so that there can be cancellation of the entitlement of that land to these speculators, which has disenfranchised, disinherited and marginalised the local communities in that area.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Prof. Anyang’-Nyong’o, could you, on behalf of Government, confirm when we will have the Ministerial Statement issued?

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Deputy Speaker, Sir, the Ministerial Statement can be available on Thursday, next week.

Mr. Deputy Speaker: It is so directed that the Ministerial Statement be available on Thursday, next week.

Yes, Mr. Affey!

ISSUANCE OF ID CARDS IN NORTH EASTERN PROVINCE

Mr. Affey: Mr. Deputy Speaker, Sir, before I seek a Ministerial Statement, I want to find out what we can make of a situation where a Minister of Government comes here, gives a commitment to the country and the House, and even gives a directive to his

officers from the Floor of this House; but three weeks down the road, nothing happens and there is not even any reference made to the Questioner.

Mr. Deputy Speaker, Sir, I am saying this with reference to an undertaking made by the Minister of State for Immigration and Registration of Persons with regard to failure by Government to continue to register youths who want to acquire National Identity (ID) Cards in the North Eastern Province. The Government committed an illegality. This exercise was suspended without the knowledge of the Minister himself. He came here and gave an undertaking but, to date, nothing has happened. Young people who have just completed Fourth Form are in all Registration of Persons stations in the North Eastern Province but cannot have access to this very important document. I want the Chair's interpretation of what this means. The Minister made a categorical statement from the Floor of this House but nothing has happened. It seems that there is no intention, on the part of the Government, to do anything.

APPOINTMENT OF KEMRI MANAGING DIRECTOR

Mr. Deputy Speaker, Sir, I further wish to seek a Ministerial Statement from the Minister for Public Health and Sanitation regarding the failure by her to appoint a Chief Executive for Kenya Medical Research Institute (KEMRI). This very important organ of Government has not had a substantive Chief Executive Officer for many months now. The KEMRI Board advertised the job, interviewed and shortlisted some Kenyans, but it seems that the Minister has not taken any action to appoint a substantive Chief Executive Officer to manage this very important organ. Therefore, I would like the Minister to confirm the following:-

- (i) whether the Board, indeed, interviewed Kenyans for this job;
- (ii) whether she is, indeed, in receipt of the recommendations of the Board;
- (iii) when she intends to act on this particular request from the Board; and,
- (iv) whether she can table a list of those Kenyans who were interviewed and shortlisted for the job.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Prof. Anyang'-Nyong'o, can you give an undertaking on behalf your colleague? When will that Ministerial Statement be issued?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, likewise, the Ministerial Statement will be ready on Thursday, next week.

Mr. Deputy Speaker: It is so directed.

ERADICATION OF CATTLE RUSTLING IN BUURI DISTRICT

Mr. Ruteere: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the security situation in Buuri District, particularly for livestock farmers. I am particularly requesting this Ministerial Statement given the increased frequency of cattle rustling activities in that area by Samburu, Turkana and Boran tribesmen, who are normally heavily armed. They raid the area and drive away sheep and goats.

I would like to know what action the Minister is taking to contain the situation as he tells us how many cattle, sheep and goats have been stolen and how many have been recovered. He should also tell us what action he is taking to recover those animals which have not yet been recovered.

In his Ministerial Statement, he should also tell us how he is going to arm the Buuri people, so that they can confront the cattle rustlers, who launch the raids when they are very much armed; or how he is going to disarm those who call themselves “home guards”, who are given guns by the Government, who raid the Buuri people.

Recently, when residents of Buuri were protesting against cattle rustling, the Anti-Stock Theft Unit (ASTU) personnel shot dead two young men. We want to know why the young men were shot by the police, who should have been chasing the cattle rustlers? Why did they shoot dead innocent people?

I would also like the Minister to assure the people of Buuri that their cattle will not be stolen again.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Prof. Anyang’-Nyong’o, could you, again, make an undertaking as to when we will have the Ministerial Statement?

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Deputy Speaker, Sir, given the urgency of the matter, this one can be availed on Tuesday, next week.

Mr. Deputy Speaker: Could you, please, make sure that your colleagues in the Cabinet have this information, so that they can prepare themselves adequately?

Mr. Affey, you were on a point of order. What is it?

Mr. Affey: Mr. Deputy Speaker, Sir, I was waiting for direction from the Chair regarding the matter I raised on issuance of National ID Cards.

Mr. Deputy Speaker: Indeed, when a Minister gives an undertaking on the Floor of the House, it is imperative, that that Minister acts accordingly. So, under the circumstances, my presumption is that the Cabinet Minister present can make an undertaking to inform the Minister of State for Immigration and Registration of Persons to come here and tell us why he is not executing the policies he elaborated on the Floor of the House, and fulfilling the undertaking he gave to this House.

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Deputy Speaker, Sir, I will inform the Minister of State for Immigration and Registration of Persons to respond to the concerns to the House, and particularly the concerns of Mr. Affey.

Mr. Deputy Speaker: Next Order!

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Mr. Imanyara on 11.11.2009)

(Resumption of Debate interrupted on 18.11.2009)

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF THE CONSTITUTION OF KENYA (AMENDMENT) BILL TO BE GUIDED BY STANDING ORDERS

Mr. Deputy Speaker: Hon. Members, before I open the Floor for Members to contribute to this Bill, the Chair wishes to make some communication for the benefit of the Bill itself.

Hon. Members, I wish to remind you that consideration of the Constitution of Kenya (Amendment) Bill before us is guided by both the Standing Orders and the provisions of Section 47(2) of the Constitution. Standing Order No.68 (a) provides that before a vote is taken on a Constitutional amendment Bill, both at the Second and Third Reading stage, the requisite numbers of 65 per cent of 222 Members must be present in the House. Specifically, Standing Order No.68 (a) states:-

“In every instance where the Constitution lays down that a fixed majority is necessary to decide any question, the House shall not proceed to a Division on that question (Constitutional Amendment) unless and until a number of Members equivalent to such fixed majority is present at the time for directing the Division”.

The rules on Division are clearly set out under part 14 of the Standing Orders. Therefore, hon. Members as we take Order No.8, bear in mind that the Second Reading will only be taken if the requisite number prescribed by both the Standing Orders and the Constitution are ascertained to be present in the House.

In terms of numbers, 65 per cent of 222 adds up to 144.3 Members which is rounded upwards to 145 Members since the words used are, “Not less than 65 per cent of the Members of the Assembly, excluding *ex-officio* Members”. This House will accordingly not proceed to division unless there are at least 145 Members present in the House at the time of directing the Division.

Hon. Members, please, note further, that if the Division on that question results in a majority of “Ayes” but less than 145 Members and the “Nos” have not numbered 78 Members or more, Mr. Speaker may direct one further Division within seven days.

Thank you.

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. I would just like to seek your direction; it is quite clear that debate can proceed. It is only Division that we cannot go to when we do not have the prerequisite numbers. I would also seek your clarification on the fact that this Chamber should tolerate debate even on ideas some Members do not like so that they should stop interrupting debate on this Bill. We are waiting to contribute on this Bill and I support it.

Mr. Deputy Speaker: Hon. Members, the Chair will not accept or condone any interruptions unless it is within the provisions of the Standing Orders. If it is within the provisions of the Standing Orders, Members are free to do that. There is no way the Chair can gag Members.

Nonetheless, let us proceed on the Bill! Mr. Yakub was on the Floor and had 15 minutes more.

Please, proceed!

Mr. Yakub: Mr. Deputy Speaker, Sir, I stood to support this Bill last week. However, my fears are the consequences of not setting this Special Tribunal. The vast majority of inciters, suspects and those who sponsored the post-election violence may not be charged in our courts.

Secondly, we all know that very few Kenyans might be investigated and charged at The Hague. We all know that the procedure and process takes so long for anyone to get a ruling.

My other fear is that Kenyans might go to another General Election in 2012 and might not see justice done to those who were affected in the 2007 post-election violence. The unfortunate part if the local Tribunal is not set up is that, this Parliament would be seen to be defending impunity. This demonstrates lack of respect for the rule of law. This is the reason no one has been taken to court on the two major scandals; Goldenberg and Anglo Leasing.

Kenyans have lost confidence in our Judiciary and that is why very few election cases were taken to court on the 2007 post-election violence. I hope we will join hands with the about 50,000 Kenyans who visited the website and commented on this issue.

With those few remarks, I beg to support.

Ms. Karua: Mr. Deputy Speaker, Sir, I rise to strongly support this Bill.

It is to be remembered that the wave of election related violence started in 1991 during the advent of the multi-party system. That violence continued in 1992 during the elections. It was then, the Government of the day's weapon to try and stop the advent of multi-partyism. Thereafter, in every election, violence has been recurring and in 1997, it was a weapon by the then Government to try and scuttle the Opposition votes, especially in the Rift Valley Province.

In 2007, this violence was used as a tool to acquire political power. The Grand Coalition Government is founded on violence.

Mr. Deputy Speaker, Sir, this country is in a very precarious situation. If we do not break this cycle of violence by punishing impunity, we are creating a scenario where this country is likely to disintegrate in the next General Elections. We can only do that by enacting appropriate legislation like the one before this House.

When I was the Minister for Justice, National Cohesion and Constitutional Affairs, the Government did approve a similar Bill. It came before this House but some Cabinet Ministers from both sides of the political divide actively de-whipped Members not to support the Bill while they pretended to support it.

Mr. Deputy Speaker, Sir, the two Principals failed to give support to the Bill. None of them came here to contribute the way they came in person when there was a proposal to make the Grand Coalition Government that put them in the positions they are in. Their body language to the country and Members of this House was that the Tribunal Bill does not matter. Now, they are doing worse than that. We have not seen any of the Principals encouraging their supporters, Members or Ministers to come to this House and support this Bill.

I want to congratulate Mr. Imanyara for bringing this Bill to the House. The Government has all along been telling Kenyans that it is doing something about reigning in impunity and punishing the perpetrators of post-election violence. They were telling the international community and the International Criminal Court (ICC) that they were ready to put measures in place. By bringing this Bill, Mr. Imanyara has helped this

Parliament to call off the bluff by the Government. They never intended to do anything. That is why this Bill has been sabotaged time and again by the debate being curtailed by those who do not want even to hear the discussion go on.

Ms Karua: Parliament is a debating chamber where ideas should flow freely. Those who do not like a certain idea, must tolerate hearing the views of those who support it. This Parliament has not shown any tolerance during the debate on this Bill, and that is why the debate has had to be interrupted several times. Just today during Question Time, we saw the Government affirming use of violence as a tool during the answer to my Question by the Deputy Prime Minister and Minister for Local Government. It is okay to have violent Local Government elections. The only way Kenyans can rid themselves of violence is by lobbying their Members of Parliament to come into this Chamber and give support to this tribunal Bill, which should be able to put an end to, once and for all, violence as a tool of gaining political power.

Mr. Deputy Speaker, Sir, we are aware that the ICC has moved and we are sincerely hoping, at least I am sincerely hoping, that in a short while, we will hear of prosecutions. But the ICC cannot be enough; they will only deal with the top level offenders, those who bear greatest responsibility, those who incited, planned and funded violence. Some of them may be in Government. That is why they are able now to obstruct this Bill. But then, there are thousands of others who committed atrocities upon fellow Kenyans, ordinary citizens. It may be Members of Parliament, it could be members of the Executive; Ministers. It could be members of the disciplined forces. They all need to be brought to account. They all need to stand before a competent tribunal and face their accusers, be acquitted or convicted, and this is the only way we can reign in impunity.

I once again would want to congratulate my colleague, Mr. Imanyara, for bringing this Bill because it proves that the Government of Kenya is now admitting to the whole world that it is unable to fight impunity, especially as relates to election violence. It is, therefore, incumbent on us, and on Kenyans of goodwill, to say that if Parliament fails to pass this Bill, then as a nation, we need external help. We need help from our friends, from our neighbours, because we clearly cannot handle our affairs. I hear Ministers, I hear the Prime Minister, and civil servants claiming that Kenya is not a failed State. The strongest indicator that we are on the last stop towards a failed State is that we are a country that does not want to deal with issues of impunity and violence, like this one.

Mr. Deputy Speaker, Sir, I was a Member of the Serena team, leading the Government negotiations. We agreed that we would bring here a law and support it to set up a local tribunal to try the master minds and perpetrators of post-election violence. Simultaneously, we agreed to set up the National Cohesion and Integration Commission. We brought a law here, it was passed, and the Commission is in place. We agreed to set up the Truth, Justice and Reconciliation Commission (TJRC). We brought a law here, it was passed, and the Commission is in place. Those who are, therefore, saying that these issues of post-election violence are better dealt with by the TJRC are dishonest. We knew that we were going to have all these new bodies. We knew that the National Cohesion and Integration Commission, could not play the role that the TJRC was going to play, and we knew that the TJRC could not play the role of a local tribunal. The local tribunal is a court of law. The reason we are forming a local tribunal--- Let us be very clear. It is because there are fears that our judiciary may not be equal to the task. The few cases that

have been presented to the courts do not give Kenyans confidence that our courts can competently deal with this.

The conduct of the Attorney-General's (AG) office and the utterances by the AG himself have not given Kenyans confidence that his office can prosecute these matters. Our investigators, the police, have not given Kenyans confidence that they can investigate these matters. Therefore, the local tribunal is a by-pass. It is like a by-pass surgery, where an artery is by-passed and an artificial one replaces the natural artery when it is clogged. Our justice system is clogged; it is not working. The local tribunal is supposed to be a by-pass to create an adjudicator, courts, the special court and the appeal chamber, to create the prosecutor's office to by-pass the AG and his team, to create an investigators' office to by-pass our police, because we have lost confidence in our institutions.

The alternative to a local tribunal would have been an overhaul of our system. This Government is still not interested in reforms. I resigned as a Minister when I realized that all the reforms we would agree upon, the same members of Government would sabotage them. When I talk of Government, I mean the Executive. They would sabotage the efforts the Ministry I was in charge of was spearheading, and I decided I had no business engaging in a zero-sum game. It is better to be able to stand in the position I am standing in, exposing the reluctance of the Government, the refusal by the Government to fulfill its pledges to Kenyans, to fulfill its role.

A government that cannot protect the security of its people is not worth being called a Government. Failing to institute a mechanism, namely the local tribunal, to try the suspects of the post-election violence, is clearly a dereliction of duty by the Government. It is an indication that the Executive--- When I talk of Government, I may be including Parliament. At least, a few Members of Parliament are making efforts. Parliament, as an institution, is also likely to be counted among the anti reform forces by its conduct during the debate of this Bill. I am pleading with hon. Members that we should rise up to the occasion. We are not paid to run away from debate we do not like. We are paid to be here to make our views known for posterity. Let them be recorded on the Hansard. Let us hear those who oppose the local tribunal and why they would not want it. It is cowardly of the Executive, of the Ministers, of MPs to stay away from the Chamber, to sit on the fence and not to come here and clearly declare on which side they are, whether they are for a local tribunal or not, and the reasons thereof. They need to tell us if we do not enact a local tribunal, what other mechanism is there?

When we say that we should put reconciliation first, are we saying that reconciliation must be founded on opaqueness, or that it should be founded on obliteration of the rights of others? True reconciliation can only be based on truth and justice, and justice demands that the victims of post-election violence have their day in court, and are able to meet their tormentors, or the suspects, and prove their cases against them or hear the suspects over their defences. We cannot have true reconciliation that is based on ignoring the rights of others, especially the victims, and on ignoring the law. What right do we have as politicians, members of the Executive and as Parliament to ask the victims to go without redress? It is only a victim who can say in a court of law or before a tribunal that I forgive the perpetrator. We have no moral right to try to gloss over these matters and bury all these crimes without letting the victims have a say. It is clear that we may have forgotten our role. Our role is to represent the people and not ourselves.

We should not make political trade-offs on the sufferings of others; on the lives of others and on their loss of property. That is what is happening in this Parliament.

Mr. Deputy Speaker, Sir, I, therefore, want to add my voice and say that let everyone in Kenya know that the Truth, Justice and Reconciliation Commission (TJRC), which is principally dealing with historical injustices cannot be the forum to deal with perpetrators of post-election violence. The National Cohesion and Integration Commission cannot be that forum either. Our courts and criminal justice system has failed to rise to the occasion. I pray that the elected Members of Parliament will hear the cry of the victims for redress and justice; that they will hear the cry of Kenyans that we need to reign on impunity so that we may be able to save our nation. When one looks at what our prospects are and when we do not uphold the rule of law, it means that we disintegrate as a state and you can see the effects of failure to observe the rule of law. The amount of violent crimes; the threats that are being meted on Kenyans daily, including hon. Members like myself and others and the extrajudicial killings. The extrajudicial killings are again a confirmation that the Government adopts violence as a means because instead of combating crime through legal means, they have adopted summary executions as one of their strategies to combat crime; a strategy doomed to fail because with over 2,000 reported deaths, crime should have ceased by now but it is instead increasing. It is a wakeup call for the Government; a wakeup call for Parliament and a wakeup call for Kenyans that they judge the Government and Parliament as an institution by how faithful we remain to our pledges to them of the National Accord.

To wind up my contribution, Parliament was quick to embrace and enact, and the Executive as well, the law that brought in the Coalition Government. As politicians, we quickly shared power, continue, as a Government, including the institution of Parliament and earn our pay. However, on the promises for the reforms that make sense and actually improve the lives of ordinary Kenyans, we have been short of delivering. Since we have been blaming the Government, as a Parliament, we now have an opportunity to enact the Local Tribunal Bill to show that unlike the Executive, Parliament is a reform institution. It is a pity that it looks like Parliament is set to fail in this duty and that is why I appeal to my colleagues to come to this Chamber and make their views known on this Bill. If it is clauses in this Bill they do not like or the Bill itself, let them offer safeguards.

This Bill is an improvement of the earlier Bill in that it is explicit about the Attorney-General having no role and about the Bill not offering immunity to anybody, including the President and the Prime Minister. However, even though those clauses were missing in the earlier Bill, the Rome Statute does not offer immunity to anyone. It does not even require a parliamentary legislation to exclude that immunity. It is given but this Bill is an improvement in that it explicitly lets hon. Members know the boundary that the law is setting. I see no valid reason for anyone to reject this Bill other than for other motives. If there are good reasons, this is the debating Chamber. Let Members of Parliament and the Executive; those who have been given this opportunity by Kenyans stand here and offer their reasons. Let us not commit suicide as a country by allowing our nation to disintegrate because we legitimise the use of violence as a means.

[Mr. Deputy Speaker left the Chair]

[The Temporary Deputy Speaker]

(Prof. Kamar) took the Chair]

Madam Temporary Deputy Speaker, the failure by the Government to either take over or support this Bill means that the Government being a product of violence, because the Coalition Government is a product of violence, has itself internalized and embraced violence. We should remember that people fought because there were allegations of a stolen election. An hon. Member has recently said that elections were never stolen and that the party claiming that the elections were stolen did not win. This is an admission of the high level of impunity. You cause murder, raping, looting and killing of people knowing very well that you are advancing an unjust cause. This is the impunity we should uproot and, therefore, I strongly support this Bill.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Thank you very much, Madam Temporary Deputy Speaker. We stand at a time in the history of this country when history must not be falsified. We stand at a time in the history of this country when records must speak for themselves. We stand at a time in this country when those who have held public office must be prepared to bear the weight of that public office and the actions they take when they are in public office. We stand at a time in the life of this country when we moralise from the high pedestal of self gratification and may be paid for dearly when the truth comes as the TJRC does its work.

With regard to what led to the tragedy in this country following the elections of December 2007, a little bird tells me that those who travelled at night to go and intercede with the Chairman of the defunct Electoral Commission of Kenya (ECK) so that the forces of democracy could be subverted so that an election could be stolen, will have to bear with Kenyans to plead with them to come forth and seek reconciliation with the injured souls of this country. I say that because the Coalition Government was born out of necessity. Necessity is always the mother of invention. Necessity invented the Coalition Government so as to ensure that Kenyans could, under a certain political order, live in peace and earnestly start the process of reform, which those who are now speaking from the high pedestal of moral uprightness were, themselves, in the middle of putting it together. I plead with them to rise up to the occasion and face history squarely and say history can never be falsified.

Madam Temporary Deputy Speaker, yes, this country may, indeed, be faced with what could possibly be called a failed State, but which is not a proper scientific term to define and describe this nation. I know that the nomenclature "failed State" has been used in recent years in social science discourse to describe states which can no longer guarantee peace, order and institutionalized governments. This country faces several problems of insecurity and inherited structural violence in our society which is, perhaps, caused by gross inequalities and unresolved historical injustices. But that does not mean that it is a failed State, scientifically speaking. The State, indeed, suffers from bad governance and the society is, indeed, bedeviled by corruption. Today, we are seeing levels of violence and insecurity unparalleled in the history of this nation. We are seeing irresponsibility on the part of security agents, which should be guaranteeing security to the people that now, are presiding over insecurity at times. These are, indeed, terrible problems that bedevil this nation. But I do believe that we have, again, in this nation, men and women who are committed to make this nation better, both in and outside the Government. We have in this nation people who have been in this struggle for very long

and will never give up because of afro-pessimism. We also have in this nation men and women who have always stood firm at the moments of trial and have, themselves, been tried falsely and otherwise. We have in this nation people like my friend, hon. Imanyara here, who have slept in police cells and chained to hospital beds for their political convictions. They have more right to stand up and speak in high moral tones. But others who, because of opportunism, try to do so, history will judge them harshly.

Madam Temporary Deputy Speaker, as I stand here today, I have said before and did say when we went to Githongo with hon. Gitobu Imanyara, Right Honourable Raila Amolo Odinga and hon. Orengo that we were for this Bill. That is because when the Government brought a Bill to this House for the formation of a local tribunal, Members of this House turned it down. It would have been better if that Bill was debated and the kind of amendments that hon. Imanyara has now brought to the House made, to make a local tribunal stronger. But because of populism, that Bill was turned away lock, stock and barrel. No opportunity was given for sound minds to prevail, reason and take the order of the day and amend it so that it could provide an opportunity for a process of justice for the post-election offenders to be brought before the law. So, we should not falsify history, claim easy victories and tell any untruths.

Madam Temporary Deputy Speaker, this Parliament was categorical that a local process would not be fair, just or transparent. This Parliament joined a national chorus saying “do not be vague, go to the Hague,” and that is history. It cannot be falsified. As we stand here today, therefore, we must confess our sins and say we made a false step. We should have looked at the issue more critically, made the necessary amendments to that Bill and soberly distinguished between a local process for justice and an external process for justice. What was going to be different was that, that external process was going to deal with certain specific forms of alleged crimes and violations of human rights. The local tribunal was going to deal with issues that it could handle locally. But when we, in populist tones, dismissed any local process saying “do not be vague, go to the Hague,” we forgot that the Hague cannot handle everything and that if, indeed, we want justice for post-election offenders, we, as a nation, must take responsibility and ensure that the institution we put into place can rise up to the international standards of justice, promotion of human rights and democracy.

Parliament was and still remains doubtful of the ability of the local Judiciary to deal with this issue. It is in that regard that hon. Imanyara found it fit to propose a process that would be locally based, but would not be subject to the vicissitudes of the local Judiciary. The hon. Member for Gichugu was Minister for Justice, National Cohesion and Constitutional Affairs and claims that she was responsible for trying to bring reforms to the Judiciary. Time is now ripe for the hon. Member to write a book and let us know exactly what trials and tribulations she went through, the proposals she made, how tenaciously she pursued them and who stood in her way. That is because if, indeed, we were going to have a constituency of reformers in and outside the Government, we should have known those proposals and become champions, being mobilized by her noble self.

Madam Temporary Deputy Speaker, I have personally supported hon. Imanyara’s Bill for good reasons and not any chanciest sentiments or populist inclination. The reason is that this nation knows that on our television sets, we did watch people driving to Naivasha, stopping *matatus*, pulling passengers out of those *matatus* and hacking them to

death and letting the *matatus* run over them. I watched that video personally in the studios of *Nation Newspapers* in the night it occurred and got a copy. The Right Honourable Raila Odinga, hon. Joe Nyagah, hon. Omingo Magara and I were present at Masaba Hospital the night when 26 people, who had been butchered to death by the security forces of this nation, were ferried from Kibera. I saw a young girl aged 14 who apparently had been watching television in her mother's house and was shot to death in cold blood. She was brought to Masaba Hospital in a pick-up. I also saw a young man of 17 years whose head was blown away by a bullet and the back head was as wide as the crater of Mt. Longonot. That night, as we were driving back to Pentagon House, we said: "We are right to resist the injustice done against the Kenyan people by a stolen election, but we must rise up to the reality of the situation." The security forces had gone rogue and were determined to beat their own people to submission because of popular rebellion against undemocratic imposition of an unfair decision.

Madam Temporary Deputy Speaker, these people had no arms to resist this kind of behavior, and it is better a soldier lives to fight the battle another day than to unnecessarily die on the battle field. We, therefore, decided that let this cost take course. Let us find a compromise for the promise that we gave Kenyans that another time, given a reformed Kenya, a democratic Constitution and a constituency of reformers willing to push this country ahead after more than two decades of struggle for democracy, that this compromise was a historical necessity and that, this necessity had to invent the form of Government suitable for this time in history of Kenya.

Madam Temporary Deputy Speaker, the Coalition Government was not going to be an easy process. We had no doubt in our mind that it was going to be easy. The Coalition Government was not going to be constituted by angels or people speaking from the high pedestal of morality. It was going to be a Government of necessity meant to fulfill some agenda set out in the National Accord. The Coalition Government expected that we, who were signatories to the National Accord, would remain faithful to our word for the sake of Kenyans and not for the sake of any career. That is where when the Right Hon. Amollo Raila Odinga speaks so passionately about the conservation in this country, it is because of the spirit of the Coalition Accord and that for once, let us stand up and be counted for the right of Kenyans and, for the social justice in this nation. Not for any other sentimental reasons that can distinguish us as the only sheep among the hyenas; but can distinguish us as simple Kenyans playing our role in the context of our time. The context of time requires consistency of views and consistency in historical record keeping so that we may not deviate from the path we have trodden. We cannot deviate from the stars in the skies on which we fixed our vision to deliver this nation from oppression, economic backwardness and retrogressive thinking.

Madam Temporary Deputy Speaker, I want to appeal to this House, the time is ripe for men and women of goodwill to reason together and to stop selling the needy for a pair of sandals, as Prophet Amos once said, but realizing that the needy, the weak and the down trodden need to be uplifted to be fortified and be strengthened to know that the path to democracy and prosperity is never easy. It is a journey that sometimes is zigzag, that at times may appear to be turning backwards, but if we fix our eyes in the high stars in the sky for which men and women of great vision are known, we shall travel that path and that will make possible the enactment of a new Constitution in this Republic, for which many *wazalendo* have put their lives on the line and have suffered for many years; a

suffering of which opportunists do not know the cost, but a suffering from which opportunists quite often reap big rewards; either as instant heroes or as creepers into the excellence of power from which they seek to subvert the course of democracy, either lip-servicing reforms or outwardly sabotaging reforms.

Madam Temporary Deputy Speaker, as we sit here today in this august House, I want to appeal to this Parliament that in wisdom, we shall shine together but in pettiness and self pity, we shall sink. I now remember the words of Ted Kennedy, the late senator from Massachusetts, in his autobiography, published a few months before he passed on. He said that in the Kennedy family, we were always taught never to fear taking unpopular stance and never to give into self-pity, even when we are suffering and odds are against us. But we were taught the discipline of perseverance because resoluteness is the essence of struggle; perseverance brings victory in the end.

Madam Temporary Deputy Speaker, I must congratulate my friend, hon. Gitobu Imanyara, whose political career has been punctuated by a high sense of perseverance and a good dose of resoluteness in an atmosphere of calmness and of never claiming easy victory and shunning simple untruths to gain favour with anybody. So, we must examine this local tribunal proposal for what it is worth. Whether it is going to advance justice of Kenyans and not just simple retribution, whether it is going to make the course of history better for this nation, it is marched to democracy, whether it going to uphold and advance the commitments of the National Accord---

For those reasons, I appeal to the House to rise up on the pedestal of wisdom to debate and pass this Bill.

Thank you.

The Temporary Deputy Speaker (Prof. Kamar): Thank you. Any other hon. Member wishing to debate. If there is no any other hon. Member, then I will call upon hon. Imanyara to give a response.

Mr. Imanyara: Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity. Indeed, as my good friend, Prof. Anyang'-Nyong'o, says, it requires men and women of great courage to stand in the face of a determined executive and say no to impunity.

I, therefore, wish to thank those hon. Members who have stood even against the advice of their party leaders to support this Bill. I wish to commend hon. Mungatana for rising to the occasion at a time when the intention to sabotage this Bill was being exhibited most shamelessly. I wish to commend hon. Rachel Shabesh, hon. Eugene Wamalwa, hon. David Ngugi, hon. Nderitu Mureithi, hon. Martha Karua, and finally, hon. Prof. Anyang'-Nyong'o, for rising to the occasion to say; the culture of impunity in Kenya must come to end. Indeed, it will come to an end one day. It may not be today, but let those people out there claiming victory because this Bill has not passed not sleep one more night thinking that the culture of impunity has succeeded, because it has not succeeded!

We, therefore, commend the efforts of the international community and, particularly, the International Criminal Court (ICC) for recognizing early enough that there was absolutely no political will on the part of this Government to get a local tribunal established and, therefore, begin the process of bringing justice to those who bear the greatest responsibility for the post election violence well before the next elections are held in 2012.

QUORUM

Mr. Chepkitony: On a point of order, Madam Temporary Deputy Speaker. I realize that there is no quorum and yet we are debating a very important constitutional issue in the House.

The Temporary Deputy Speaker (Prof. Kamar): I have confirmed that there is no quorum. Please, ring the Division Bell.

(The Division Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, we are unable to raise the requisite quorum. Therefore, the House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 12.20 p.m.