

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 3rd February, 2009

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

CONDOLENCES TO FAMILIES OF NAKUMATT DOWNTOWN SUPERMARKET/ MOLO FIRE VICTIMS

Mr. Deputy Speaker: Hon. Members, as you are aware, our nation is in a state of mourning. On Wednesday, 28th January, 2009, over 30 Kenyans lost their lives during a fire tragedy at Nakumatt Downtown Supermarket. On Saturday, 31st January, another fire tragedy occurred on Nakuru-Eldoret Highway and over 110 Kenyans lost their lives. Hundreds are in hospitals.

I convey our message of condolences to all the families of all those who lost their lives and those who were injured in the tragedies. We, as a House, join our fellow Kenyans in mourning with the families and relatives and friends of the departed friends.

We pray that Almighty God will give them comfort, courage and strength during this sad and tragic moments in their lives. We wish those in hospitals quick recovery. We will, in our tradition, stand for a minute in silence in honour of the departed Kenyans.

*(Hon. Members stood up in their places
and observed a moment of silence)*

NOTICE OF MOTION

ADOPTION OF REPORT ON CONDUCT OF "ARTUR BROTHERS"

Mr. Imanyara: Mr. Deputy Speaker, Sir, with your permission, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Joint Sessions of the Departmental Committee on Administration, National Security and Local Authorities, and Administration of Justice and Legal Affairs on the investigation into the conduct of the "Artur Brothers" and their associates laid on the Table of the House on 27th September, 2007.

QUESTIONS BY PRIVATE NOTICE

SACKING OF LAICO REGENCY
HOTEL STAFF

Mr. Midiwo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Labour and Manpower Development the following Question by Private Notice.

(a) Could the Minister explain why 172 employees of LAICO Regency Hotel (formerly Grand Regency Hotel) have been laid off despite Government assurance in the House on 29th April, 2008 that the jobs were secure?

(b) What urgent steps will the Minister take to ensure that the employees do not lose their jobs?

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Deputy Speaker, Sir, I seek the indulgence of the House that I answer the Question next week because the Managing Director, who is the Chairman of LAICO Regency Hotel, has gone into hiding and we cannot trace him. Our officers have been camping there, since Friday, but they have not been able to get him.

Mr. Deputy Speaker: This Question should appear on the Order Paper next week!

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. This is a Question by Private Notice. I believe that the Government has the powers to apprehend these guys. We have always said that there is something fishy about LAICO Regency Hotel. That is now manifesting itself. They need to answer this Question because the lives of Kenyans are in danger.

Mr. Deputy Speaker: Hon. Assistant Minister, that Question is by Private Notice and next week may be too far.

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Deputy Speaker, Sir, this is a very weighty issue. It involves quite a number of employees. As you understand, the new managers of LAICO Regency Hotel, as it appears, are very complicated people. We want to address the root cause of these problems. If you can give us up to Thursday, with the help of other Government agencies, we would trace the Managing Director.

Mr. Deputy Speaker: Is Thursday, next week okay?

The Assistant Minister for Labour (Mr. Ojaamong): Yes. That is okay.

Mr. Deputy Speaker: That Question is deferred to Thursday, next week.

(Question deferred)

DISMISSAL OF MOSES KIYIER
FROM KENYA AIR FORCE

Mr. Shakeel: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Defence the following Question by Private Notice.

(a) Could the Minister explain the circumstances under which Senior Private Moses Otieno Kiyier (Service No.107099) in the Kenya Air Force was dismissed from service?

(b) Why has the Ministry taken so long to respond to an appeal lodged by the said officer?

(c) Could the Minister consider reinstating the officer in service?

Mr. Deputy Speaker: Where is the Minister of State for Defence? What about the Leader of Government Business? Could we have a response from any senior Minister?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Deputy Speaker, Sir, I will make sure that the Question is answered tomorrow.

Mr. Deputy Speaker: Tomorrow afternoon?

The Minister for Water and Irrigation (Mrs. Ngilu): Yes, Mr. Deputy Speaker Sir; tomorrow afternoon!

Mr. Deputy Speaker: The Question is deferred to tomorrow afternoon.

(Question deferred)

RETENTION OF RECEIVER-MANAGER IN
MUHORONI/MIWANI SUGAR FACTORIES

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

(a) Could the Minister justify the continued retention of the non-performing receiver-managers in Muhoroni and Miwani Sugar Factories?

(b) Could the Minister reveal the outcome of the interviews done following advertisements carried in the local Press and state when the new receiver managers will report?

(c) Could the Minister give an update on the progress of the intended sale of Miwani Sugar Factory to Kibosi Sugar Company or any other deal?

(d) When will the Minister table the audited accounts of Miwani and Muhoroni sugar companies?

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

(a) The receiver-managers at Muhoroni and Miwani Sugar Factories are in office because their contracts have not yet expired.

(b) There is no outcome of the interviews for the posts of receiver-managers following the advertisements carried in the local dailies because the interviews have not taken place.

(c) I am not aware of any intended sale of Miwani Sugar Factory to Kibosi Sugar Company, because Miwani Sugar Factory is on the prioritized list of companies in the programme approved by the Cabinet for privatization.

(d) I intend to table the audited accounts for Miwani and Muhoroni Sugar Companies as soon as the receiver-managers make the audited accounts available.

Mr. Mututho: Mr. Deputy Speaker, Sir, could the Assistant Minister confirm that, indeed, he recruited new managers? Could he also confirm that somebody in the Government wrote a letter barring the removal of these managers?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, I am not aware of any recruitments that have been done so far with regard to the replacement of receiver-managers. However, I am aware that the receiver managers were shortlisted and the interviews were due to take place on 21st January, 2009. Following the enquiries done at the Office of the Prime Minister, interviews were put on hold for further consultation within the Government.

Mr. Shakeel: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to say that Miwani Sugar Factory, which neighbours my constituency--- The owners are Sujid Singh and Malkiat Singh. Could he confirm if this is the case or not?

Mr. Mbiuki: Thank you, Mr. Deputy Speaker, Sir. I want to assure this House that Miwani Sugar Factory has not been sold. It is a subject of a court dispute, details of which are *sub judice* to this House.

Mr. Linturi: Mr. Deputy Speaker, you have heard the Assistant Minister say that the receiver-managers of Muhoroni Sugar Factory are in office because their contract has not expired. Could he tell us why they advertised for jobs to replace the receiver-managers if they are still in office? When is the contract of the current receiver-managers bound to expire?

Mr. Mbiuki: Thank you, Mr. Deputy Speaker, Sir. The contract of the current Receiver-Managers is due to expire on 9th February, 2009. We have already shortlisted new

receiver-managers who are due for interviews as indicated on 21st January, 2009. Unfortunately, the interviews were put off following enquiries from the Office of the Prime Minister. This was to facilitate further consultations.

Mr. Mututho: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to misled this House that, indeed, nobody interfered with the process, yet he has met the Prime Minister more than twice?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, we cannot call that interference because the interviews were due on 21st January, 2009. All the invitees were ready and the Board was willing to go on with the interviews. Unfortunately, following consultations within the Government, the interviews were put off.

However, now it has been agreed that the interviews will proceed as earlier planned and the appropriate recommendations will be forwarded to the Kenya Sugar Board (KSB) for consideration and concurrence by the parent Ministry. I want to assure this House that the interviews will take place as earlier scheduled and we will get a new team of receiver managers before the 9th of this month.

Mr. Olago: Mr. Deputy Speaker, Sir, the sugar industry is the mainstay of--

The Assistant Minister for Water and Irrigation (Mr. Kiunjuri): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Mututho to say that the Prime Minister called twice without substantiating his claims?

Mr. Deputy Speaker: Proceed, hon. Olago!

Mr. Olago: Mr. Deputy Speaker, Sir, I was saying that the sugar industry is the mainstay of the population of Kenyans in Nyanza and Western provinces. The Ministry has been discussing the replacement of the receiver managers without involving the farmers. Could the Assistant Minister inform the House how the Ministry coordinates with the farmers before it engages the services of the receiver managers?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, the performance of the current receiver managers has been wanting. After consultations between the Government and all the stakeholders, we have advertised the recruitment of the said receiver managers, so that we can get the best one, who will turn around Muhoroni Sugar Factory and expedite the sale of Miwani Sugar Factory. We had to put off the interviews, so that, at the end of the day, we can have wide consultations within the Government and among all the stakeholders.

Mr. Deputy Speaker, Sir, I would like to assure this House that there was no interference, whatsoever. The fact that the Prime Minister called off the interviews does not mean that there was any interference. He coordinates and supervises the activities of the Government. So, this is within his docket.

Mr. Mututho: Mr. Deputy Speaker, Sir, I am not satisfied with the answer. Indeed, I want to table a document which shows that those contracts have been extended on those instructions.

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

Could the Assistant Minister tell us when we the new receiver managers will be appointed?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, the contracts were extended to 9th February this year. That is from the time we advertised for the replacement of the said receivers.

It is in our knowledge that the contract was extended from last year to 9th February this year. I want to assure this House that new receiver managers will be there by 9th February this year.

The Assistant Minister for Roads (Dr. Machage): On a point of order, Mr. Deputy Speaker, Sir. With your permission, would I be in order to insist that the document that has just been laid on the Table of the House, first of all, be seen by you to authenticate whether it is a proper document before

the House or not? It is going to be used and quoted by the House as an authenticated document.

Mr. Deputy Speaker: First, a document is laid on the Table and the Chair has the responsibility to see that it is a proper document. But, nonetheless, we will proceed to the next Question.

Mr. Nguyai: Mr. Speaker, Sir, I have not seen the written answer to this particular Question. Would I be in order to request that I first have a look at it before I ask my Question?

Mr. Deputy Speaker: Hon. Minister for Finance, is it true that you have not furnished the hon. Member with the written answer?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, this is a Question by Private Notice. The reply just came today and we already forwarded it to Parliament.

Mr. Deputy Speaker: From the institutional memory of the House, I am actually reminded that when it is a Question by Private Notice, the Minister has a discretion whether to give or not to give a written answer. Proceed with your Question, hon. Nguyai!

KPC'S ABILITY TO SERVICE BANK LOAN

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

(a) Could the Minister confirm that a consortium of five local banks that signed Kshs8.2 billion loan arrangements with the Kenya Pipeline Company (KPC) have questioned the ability of the latter to service the facility in the face of the major financial and oil scandal involving the distributor?

(b) What plans are in place to forestall possible bankruptcy proceedings following the company's fraudulent release of 126 million litres of fuel worth Kshs7.6 billion to Triton Oil Company?

(c) What remedial measures is the Government taking to ensure that this problem will not impact negatively on the economy, particularly in the face of local and global recessions as well as the current drought and famine?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, I beg to reply.

(a) It is true that the KPC secured, as indicated, a loan of Kshs8.2 billion from a consortium of local banks to finance the Nairobi-Eldoret Capacity Enhancement Project. The banks are the Barclays Bank of Kenya, the Citibank, the NA, the Commercial Bank of Africa, the Kenya Commercial Bank and the CFC Bank. The facility was signed between the KPC and the banks on 5th December, 2008.

(b) I am not aware that any bank, or oil marketer, is singly or jointly planning to institute bankruptcy proceedings on the KPC. The Government has, however, been in constant consultations and has held several discussions with the banks and the oil marketers. Further, the Government has mobilised its investigative agencies, including the Kenya Anti-corruption Commission (KACC) and the Criminal Investigations Department (CID) to ensure that the matter is fully investigated. The KPC has also appointed PriceWaterHouseCoopers to conduct a thorough forensic audit of the issues surrounding the Triton case.

Further, PriceWaterHouseCoopers will review the other collateral financing agreements between the KPC and other oil marketers to ensure that they remain valid to facilitate continued business relations between the KPC, oil marketers and financiers.

(c) The Government, through the Central Bank of Kenya which is its fiscal and monetary agent, has reviewed the possible impact of the exposure on the potential loan losses on the balance sheets of banks in Kenya that provided the facilities to Triton. This review has confirmed that the concerned banks have adequate capital to cushion them against any potential losses. The other

measures include a review of the internal control systems at the KPC, a review of the open tender system for crude oil products procurement and importation, among others.

Mr. Deputy Speaker, Sir, further more, the Government will use the findings of the ongoing investigations to ensure that any identified weaknesses are addressed and internal controls of the KPC are strengthened.

Mr. Nguyai: Mr. Deputy Speaker, Sir, somebody somewhere disappeared with Kshs7.6 billion that was obviously lent through the syndication of those banks to the KPC. Has the Government given any guarantees to these banks that the money will be recovered? Is it not wrong to presume that there will be no bankruptcy proceedings against KPC, taking into account that Kshs7.6 billion has disappeared from the banks?

Dr. Oburu: Mr. Deputy Speaker, Sir, the banks are likely to lose the Kshs7.6 billion. Measures have been taken to ensure that the assets of M/s Triton are seized. Already, they have been seized. They have been placed under receivership by the Kenya Commercial Bank (KCB). The assets have already been seized by the KPC. That will mitigate the losses. They might not recover the full amount. Negotiations are going on with the financiers to cushion them against further losses.

The most serious side is, of course, the confidence issue. This is because it is not only Triton which is enjoined in this collateral arrangement. The collateral arrangement is between many other locally based firms which need that facility in order to continue importing oil. The Government is doing everything possible to ensure that confidence in that collateral system is restored and maintained.

Mr. Baiya: Mr. Deputy Speaker, Sir, it is within the public domain that when this scandal emerged, certain bank managers were sacked. Could the Assistant Minister explain why they were sacked if the scandal was being perpetrated entirely from the KPC?

Dr. Oburu: Mr. Deputy Speaker, Sir, the whole saga could not have happened if there was no conspiracy between the employees of the bank, the employees of the KPC and the businessman himself. So, definitely, there was conspiracy. This does not mean that the bank, as an institution, was involved. But the bank has a right to investigate. If, internally, it finds anybody culpable, it deals with him. I am not aware of any managers who have been sacked by the banks.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, the Customs Department officials have been on record as saying that the Government lost Kshs2.5 billion through this oil scam by Triton. How did the fuel leave the Customs warehouse without this money being paid? Was the Government trying to abet this crime?

Dr. Oburu: Mr. Deputy Speaker, Sir, I am not aware that the Government lost Kshs2.5 billion in this scam. However, as to how the fuel---

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. This is, indeed, worrying! The Customs Department officials are on record as saying that they lost Kshs2.5 billion and the Assistant Minister is saying that he is not aware of this. Would I be in order to request the Chair to ask him to go and come back with an answer to confirm or deny that, indeed, the Customs Department lost Kshs2.5 billion in this scam?

Dr. Oburu: Mr. Deputy Speaker, Sir, the fuel was funded and it might have left the custody of the KPC without following the proper procedure. The proper procedure is that the banks who finance imports give letters of "no objection" before the fuel is released to the Customs Department. The customers managed to convince some employees of the KPC to release this product to them without getting the necessary authority from the banks.

Mr. Deputy Speaker: Order, Dr. Oburu! Hon. Assistant Minister, the argument by the hon. Member is that the presumption is that there are Customs warehouses and fuel cannot be removed without paying the Customs Duty. Are you saying that actually, the Customs Duty had been paid?

Dr. Oburu: Mr. Deputy Speaker, Sir, once the fuel comes into the custody of Kenya Pipeline Company (KPC), the duties are paid upfront.

Mr. Deputy Speaker: Order, hon. Assistant Minister! Are you sure you are prepared to vouch for the authenticity or the veracity of the statements that you are making? Are you not misleading the House?

Dr. Oburu: No, Mr. Deputy Speaker, Sir, I am not misleading the House. If the hon. Member has any evidence that duties were actually not paid, then let him table that evidence.

Mr. Nguyai: Thank you, Mr. Deputy Speaker, Sir. I find it very interesting to realise that the hon. Assistant Minister is not very aware of what a Customs bonded warehouse is. However, there is a fuel shortage in this country. It only takes common eyes to see the acute shortage.

The banking sector has lost Kshs8.2 billion and, naturally, it is freezing its financial facilities to the oil industry. What measures is the Government taking to ensure that the confidence within the banking sector is restored towards the oil industry and, particularly, KPC?

Dr. Oburu: Mr. Deputy Speaker, Sir, as we speak now, the banking sector has not lost confidence in the collateral financing arrangement with KPC. We are praying that they should not. We are talking to them to assure them that, that was an incident and not a practice. It was an incident which was committed once and it would never be repeated again. As it is, many other companies are still enjoying the collateral financing arrangement with the banks and the system has not been interfered with.

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

*(Mr. K. Kilonzo stood up
in his place)*

Mr. Deputy Speaker: Are you on a point of order, Mr. Imanyara? Hon. K. Kilonzo, go on with your point of order!

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. In view of the fact that the Assistant Minister has said that the Customs Department did not lose any money, would I be in order to ask him to table the Customs Declaration Form to show that, indeed, the Customs Department received its dues?

Dr. Oburu: Mr. Deputy Speaker, Sir, that is a different Question altogether---

Mr. Deputy Speaker: Order, Assistant Minister! It is not a different Question!

Dr. Oburu: Mr. Deputy Speaker, Sir, even if it is not a different Question, I could not have known that the Customs Department, which carries out its normal duties, would have to give its documents on every payment that is made by its customers. It is, therefore, a different matter. The Customs Department handles oil every day and there are many issues of payments. So, I do not have that document. But if the hon. Member wants it, it can be produced.

Mr. Imanyara: Mr. Deputy Speaker, Sir, could the Assistant Minister confirm that what he is calling "this unfortunate incident" happened after the unlawful extension of the contract of the Managing Director of KPC by the Government without the knowledge of the Board of the Directors of that company? Could he confirm or deny that, that incident happened after the unlawful extension of the contract of the Managing Director by one of his colleagues?

Dr. Oburu: Mr. Deputy Speaker, Sir, I am not aware that the Managing Director of KPC was sacked. What I am aware of is that he was sent on forced leave pending investigations into the scam.

Mr. Imanyara: Mr. Deputy Speaker, Sir, what I am referring to is the extension of the contract of the Managing Director of KPC. It was the period of that extension that was utilised to commit "this incident" as you call it. It was not an incident! It was a well calculated "incident" to steal from the Kenyan taxpayers!

Dr. Oburu: Mr. Deputy Speaker, Sir, the discretion of employment, or extension of the term, is within the powers of the Minister for Energy. Therefore, there is nothing illegal about that extension.

Mr. J. Kamau: Thank you, Mr. Deputy Speaker, Sir. The Assistant Minister has told us that some assets of Triton had been seized. Could he tell us the value of the assets that have been seized so far?

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, I cannot tell you the value of the assets because they have just been seized and the process of valuation is about to begin.

Mr. Deputy Speaker: Hon. Nguyai, last supplementary question on this!

Mr. Nguyai: Mr. Deputy Speaker, Sir, what I would like to know is this: With that particular situation, does KPC now have the financial capacity to extend the pipeline to the western region?

Dr. Oburu: Mr. Deputy Speaker, Sir, within the Government Budget, we do not have the capacity to extend that line. That is why we sought assistance from a consortium of banks to help us extend that pipeline.

As it usually happens, when there are queries particularly about a lender, banks, sometimes, try to make a review of their positions. Therefore, the banks that had committed are still making a review of the ability of KPC to service the debts which they want to extend to us. We are persuading them that KPC is not affected and it will be able to service the debts.

ORAL ANSWERS TO QUESTIONS

Mr. Deputy Speaker: Next Question! Hon. Were!

Question No.384

RAID ON KTN PREMISES

Mr. Deputy Speaker: Question dropped!

(Question dropped)

Question No.417

SHORTAGE OF WATER IN SAMBURU EAST DISTRICT

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

- (a) whether she is aware that Lerata and Sere-Olipi boreholes in Ewaso Nyiro, Samburu East District have broken down and the communities have no other source of water;
- (b) whether she is aware that the rain-harvesting water tanks at Nkaroni and Nkutuk Ongiron water services in Samburu East have dried up due to severe drought; and,
- (c) what urgent measures she is taking to provide water to the affected communities.

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

(a) I am aware that Lerata Sub-location is served by three boreholes of which two are functional and in good working condition, while the third one that had broken down is under repair. Sere-Olipi Market is served by two boreholes, a dam and a shallow well.

One of the boreholes is functional and in good working condition while a generating set for the other borehole was vandalized and the Samburu County Council is constructing a permanent pump house to house that generating set.

(Eng. Maina consulted loudly)

Mr. Deputy Speaker, Sir, could you protect me?

Mr. Deputy Speaker: Order, hon. Members! Eng. Maina, consult as much as you can in very low tones!

The Assistant Minister for Water and Irrigation (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, under part "b", I am aware that the rain harvesting tanks at Nkaroni and Nkutuk Ongiron and other water structures that depend on rain water dry up during drought.

(c) My Ministry is collaborating with other Government departments and communities to repair the broken down pump at Lerata B borehole and the vandalized generating set at Sere-Olipi. The Ewaso Nyiro North Development Authority (ENNDA) is scheduled to drill and equip one borehole in Nkutuk Ongiron and rehabilitate Sere-Olipi dam in the current financial year 2008/2009. May I call upon the beneficiaries of water schemes countrywide to protect those facilities against vandalism.

Mr. Letimalo: Mr. Deputy Speaker, Sir, I wish to thank the Assistant Minister for attempting to answer the Question. From the answer that he has given, at least he has explained the arrangements they have put in place to provide water to these affected areas except for Nkaroni. Could he inform the House what plans he has to provide water to Nkaroni area which entirely depends on rain harvested water?

Secondly, previous attempts have been made on sinking boreholes but the results have always been negative because the water table is very low. What guarantees can he give that the borehole they are sinking at Nkutuk Ongiron is going to yield any positive results?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, the Member of Parliament should appreciate that we have been carrying out a lot of work in trying to get boreholes that can yield water. We have sent all our experts along that area to make sure that the next borehole that we sink will have water but that one cannot be blamed on us. However, we are also trying other options to see whether we can distribute water to the said area.

Mr. Letimalo: On a point of order, Mr. Deputy Speaker. I asked specifically about Nkaroni because it has not been mentioned in the answer. Could he inform the House what arrangements he has for that particular area that entirely depends on rain harvested water since it is the dry season and they are not getting this water?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, we have an emergency fund of over Kshs500 million and all that we want is information from the hon. Members especially from North Eastern Province and other arid and Semi-Arid Lands (ASALs). They can come up with their proposals so that we can use this emergency fund that we have to at least make sure that they will not suffer especially during this dry spell.

Dr. Nuh: Mr. Deputy Speaker, Sir, it is not only in Lerata but in many constituencies in the ASALs. The National Water and Pipeline Corporation (NWPC) sunk several boreholes and in my own constituency in a small village by the name Bandare they sunk two boreholes. Even in your constituency Lagdera, they sunk two boreholes there but up to date, they have not been commissioned. The Ministry is not even telling us whether they struck water or oil.

Could the Assistant Minister inform the House when the Ministry will do some audit and when these boreholes are going to be commissioned or maybe if they are going to come back and go on with some more works?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, it is true that in 2006/2007 a lot of boreholes were drilled and capped and, therefore, they cannot yield water. We have the funds available now and we are going to make sure that in the next two months, all these boreholes will be operational.

Mr. Letimalo: Mr. Deputy Speaker, Sir, the arrangements that have been put by the Ministry are long-term plans. Could the Assistant Minister consider in the short-term [**Mr. Letimalo**] assigning a water boozer to Samburu East District so that these areas can get water for irrigation and hence food?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, you cannot have emergency issues which are long-term. If you talk of emergency it is immediate. If the case is genuine that there is no water for especially schools, we are going to make sure that there are water boozers immediately. Immediately means you come to my office tomorrow and on Thursday, water boozers will be there.

Question No.271

FATE OF STALLED LBDA
HEADQUARTERS PROJECT

Mr. Deputy Speaker: Order! Hon. Chanzu has communicated with the Chair and he is unable to be here with us due to circumstances beyond his control. This Question is deferred to Thursday afternoon this week.

(Question deferred)

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

Question No.455

CONSTRUCTION OF SEWERAGE SYSTEM
IN MAKUTANO TOWNSHIP

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

(a) whether she is aware that Makutano Township in Meru Municipality is not connected to the main sewer line, hence exposing the population to health hazards; and,

(b) what steps she is taking to correct the situation.

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

(a) I am aware that Makutano Township is not connected to Meru Municipality sewerage system.

(b) Meru Town sewerage system was constructed back in the colonial era and augmented in 1974. The system is presently overloaded and cannot accommodate more connections especially from Makutano Township unless more rehabilitation and augmentation works are undertaken.

Studies have been conducted for rehabilitation of Meru Town sewerage system including construction of a new treatment work and extension of Makutano Township and Kooje Estate established at an estimated project cost of Kshs700 million. My Ministry will include the project in the Financial Year 2009/2010 budgetary proposal.

Mr. Ruteere: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for the reply he has given. However, knowing that Meru Town is growing at a very fast rate and buildings are coming

up every other day, Makutano Town itself has a very high population.

Could the Assistant Minister inform the House what emergency measures he is putting in place, so that before the financial year 2009/2010 something can be happening to facilitate the expansion of the sewerage system?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, the people of Makutano have lived with this problem and there is no shortcut about this. It is only that we undertake projects which will be a long-term.

I cannot give any better answer than giving Kshs700 million to carry out a serious project to make sure this problem is sorted out once and for all. Be patient, hon. Ruteere.

Mr. Mututho: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister say that Makutano people have lived with this problem. Makutano Township is bigger than Kajiado Township and yet he is taking this matter very casually. Could he assure the House that he is going to undertake urgent measures to control that problem?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, we are talking of a sewerage line and it's main construction. You cannot have a main construction of a sewer line and have a branch of the sewer line.

Mr. Deputy Speaker, Sir, you do agree with me that it is either full dose or no dose at all. We are to take it seriously and that is why it is not being taken casually. Committing Kshs700 million from the Ministry of Water and Irrigation means almost committing over 15 per cent of our budget in one project. That is a very serious measure.

Mr. Imanyara: Mr. Deputy Speaker, Sir, I better declare my interest in this area because this is where my mother-in-law comes from.

(Laughter)

Mr. Deputy Speaker, Sir, I appreciate the Assistant Minister's answer but given that the Government is committed to finding a lasting solution to this problem, could he consider incorporating this in the supplementary estimates rather than in the budget for the following year?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, our supplementary budget might not even be Kshs700 million. Therefore, to be honest, let us wait for the next Budget. It is a huge allocation. Please, bear with us. The only question I can answer now is whether we are really committed to doing it. Yes, we are very committed. Thank you for disclosing your interest.

Mr. Ruteere: I would like to thank the Assistant Minister and request that he takes the shortest time when the financial year comes.

Question No.321

REVIVAL OF KVDA IRRIGATION
PROJECTS IN ARROR/TOT

Mr. Kaino asked the Minister for Regional Development Authorities:-

- (a) whether he could explain what benefits the Kerio Valley Development Authority (KVDA) has conferred on the people of Marakwet District since its establishment,
- (b) what steps he will take to ensure the district benefits from the activities of the Authority; and,
- (c) what steps the Ministry will take to revive the irrigation projects previously undertaken by KVDA in Arror and Tot which have nearly collapsed.

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Deputy Speaker, Sir, I beg to reply.

- (a) Kerio Valley Development Authority has undertaken the following project programmes in

Marakwet District:- The first one is Tot Project. The project was initiated in 1982 to encourage and assist the community to grow food crops to alleviate famine situation. It covers 120 acres of land from which 80 households benefited each getting one acre to grow dry land high breed seed maize and sell it to seed companies. The project continued successfully until the escalation of insecurity in the area; that is, cattle rustling and clan conflicts that interrupted its progress.

The project covers only 43 acres furrow irrigation. Out of this, KVDA uses 20 acres for demonstration purposes. The rest is used by farmers to grow seed maize for sale to seed companies.

Secondly, we have the Aror Irrigation Project. The scheme covers 100 acres under overhead sprinkler irrigation. Seventy households have benefited directly each being allocated 1.25 acres to grow cereals and pulse seeds for sale to seed companies and for local consumption. The Tot and Aror projects benefits to the community are:-

- (i) Employment of 35 permanent staff; 200 temporary staff per season;
- (ii) Self-employment to the local farmers
- (iii) Improved food security
- (iv) Income earning from the sale of seeds
- (v) Increased school enrolment
- (vi) Extension services

The third project is Tot and Aror Agro-forestry Nursery, in addition to the Tot and Aror Food projects, the authority has established agro-forestry nurseries at Tot in Tot Division and Aror in Todwa Division. The Tot Tree Nurseries produce over 80,000 seedlings and Aror tree nurseries produces over 100,000 assorted tree seedlings per season respectively.

These tree nurseries have encouraged farmers in Marakwet and Baringo districts to adopt the cultivation of high quality improved varieties of mangoes, citrus, avocados and so on. Benefits to the community are: Self employment to local farmers, income from sale of improved fruit varieties to major towns in Eldoret, Kisumu, Nakuru, Nairobi and so on. There is natural benefits from consumption of fruits, improved forest cover from the growing of fast maturing dry land tree species, increased school enrolment, extension services.

We also have Chesongoch Livestock Multiplication Centre. The project was started in 2006 on a 221 acre farm located in Tot Division and will benefit all livestock breeders in Marakwet and East Pokot districts---

Mr. Deputy Speaker: Order, hon. Minister! It is a very long answer and you need to have it very precise. If you cannot do so, lay the document on the Table. If the hon. Member has got a copy of the answer well in advance, he will be able to prosecute that much more easily.

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Deputy Speaker, Sir, the hon. Member wanted to know what the KVDA has done in his constituency. Unless I tell him all these, he will not be satisfied.

Mr. Deputy Speaker: Hon. Minister, you cannot read a seven page answer here on the Floor of the House.

The Minister for Regional Development Authorities (Mr. Gumo): I agree with you, Mr. Deputy Speaker, Sir. I can lay the document on the Table. In short, the KVDA has done a lot. If we had enough money, I am sure the KVDA would have done a lot more. As you are aware, there are more projects which are in the programme including electricity generation and irrigation.

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

Mr. Kaino: Mr. Deputy Speaker, Sir, I want to thank the Minister for the answer that he has given. However, this morning I was in his office and we discussed this matter with his Assistant

Minister who gave me satisfactory answers.

Mr. Deputy Speaker: Fair enough. Next Question.

Question No.458

UPGRADING OF EMALI-UKIA ROAD
TO BITUMEN STANDARDS

Mr. Kiilu asked the Minister for Roads:-

(a) whether he is aware that Emali-Ukia Road (C99) is badly damaged and becomes impassable during the rainy season; and,

(b) when the Government will improve this road to bitumen standard.

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

(a) I am aware that the Emali-Ukia Road (C99) is damaged by heavy traffic and becomes impassable during rainy season when the four drifts across the road gets overtopped by floods.

My Ministry has planned to rehabilitate this road and improve its drainage system in the current financial year. I have allocated Kshs2,375,965 for this purpose.

(b) My Ministry has no immediate plans to improve the road to bitumen standards as our current plans.

Mr. Kiilu: Mr. Deputy Speaker, Sir, I want to commend the Assistant Minister for accepting that this road is an important one and that it gets damaged when it rains. This road links six districts of the two Mbooni districts, Makueni, Nzau, Kajiado and Lotokitok. This road is the lifeline of the people living in these six districts. Is the Assistant Minister satisfied that the Kshs2.3 million that he has set aside will address the problems that farmers in this area face during the rainy season?

Dr. Machage: Yes, Mr. Deputy Speaker, Sir. As per the advice I have been given by the technical people, I am satisfied.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, Kshs2.5 million is not enough to repair this road. Given that the Assistant Minister has said that he is satisfied, could we invite him to accompany us to the area so that he can witness how this road has been damaged and assess for himself whether Kshs2.5 million is enough to repair that road?

Dr. Machage: Mr. Deputy Speaker, Sir, whereas I appreciate the invitation by the hon. Member to visit his area, I would still require the technical people to advise me on the same. I can come. We can arrange.

Mr. Kiilu: Mr. Deputy Speaker, Sir, since the Assistant Minister has no plan of improving this road to bitumen standards, and having agreed that it is not possible to improve it, could he consider improving the four drifts by constructing bridges, which will make the road passable?

Dr. Machage: Mr. Deputy Speaker, Sir, I still confirm to this House that I have a lot of interest to improve this road. I will consider improving the drifts to bridge status, if funds allow.

Mr. Speaker: Next Question, Mr. Pollyins Ochieng!

Question No.529

UPGRADING OF SONDU-KUSA ROAD
TO BITUMEN STANDARDS

Mr. Ochieng asked the Minister for Roads:-

(a) whether he is aware that Sondu-Kusa Road (D218), which is critical in supporting economic activities in Nyakach Constituency, is not tarmacked and is in a poor state of

repair; and,

(b) when the Ministry plans to upgrade this road to bitumen standards.

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

(a) I am aware that the road classified as D218 - 01, Sondu-Kusa, which is important in supporting economic activities in Nyakach Constituency, is not tarmacked. However, the road is motorable and Kshs4 million has been allocated for grading and spot-gravelling works, which are now ongoing.

(b) The Ministry has no immediate plans to upgrade this road to bitumen standards. However, a road investment plan is being carried out for all roads in the country, and this road is being considered along with the others. This investment plan is scheduled to be completed this financial year.

Mr. Ochieng: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for the answer he has given. I would, however, like to inform him that as of yesterday, there was no gravelling work taking place on this road. I was there personally.

At the same time, the Kshs4 million that the Ministry has provided for gravelling of this road may not be sufficient. Could the Ministry consider allocating more funds for proper gravelling of this road?

Dr. Machage: Mr. Deputy Speaker, Sir, I will endeavour to investigate the allegations by the hon. Member to the effect that no work is being done on the ground. I use the Floor of the House to order the District Works Officer to make sure that work is done.

Regarding the issue of allocation of finances, I have done the best I can, within the finances available in my Ministry. I will always consider to increase this figure, if money will be available.

Mr. Ochieng: Mr. Deputy Speaker, Sir, if they are not able to improve this road to bitumen standards in this particular financial year, will it be possible for them to do it in the next financial year?

Dr. Machage: Mr. Deputy Speaker, Sir, I have clearly said that a road investment plan is scheduled to be completed by the end of this financial year. All the roads in this country will be assessed and prioritised. As I said, this road could be one of those to be given priority. Let us wait for a while.

Mr. Deputy Speaker: Next Question, Mr. Washiali!

Question No.549

POSTING OF OCPD/POLICE OFFICERS
TO MUMIAS DISTRICT

Mr. Washiali asked the Minister of State for Provincial Administration and Internal Security, given the escalation of crime and cases of thuggery in Mumias Constituency, when he will post the Officer Commanding Police Division (OCPD) and more police officers to the newly gazetted Mumias District.

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

It is true that there are isolated cases of crime within Mumias Constituency, but the situation is under manageable control. The Government is in the process of posting OCPDs to Mumias and all other areas, including the newly created districts.

Mr. Washiali: Mr. Deputy Speaker, Sir, I would like to take this chance to thank the Assistant Minister for the answer he has given. However, he has mentioned in his answer that Mumias has isolated cases of crime.

Mr. Deputy Speaker, Sir, as the Member of Parliament representing Mumias Constituency, I would like to inform him that crimes are reported every day. People are mugged every day. Cattle are

stolen twice or thrice in a week. It is very unfair for him to have used the words "isolated cases". I would want him to tell us when he will be sending an OCPD to our district.

Mr. Ojode: Mr. Deputy Speaker, Sir, I did mention here that the police officers are undergoing training. After which, we will post them to areas where we do not have OCPDs, including Mumias.

I want to confirm that he will get an OCPD as soon as the officers finalise their course.

Mr. Deputy Speaker: Last question, Mr. Washiali!

Mr. Washiali: Mr. Deputy Speaker, Sir, the Assistant Minister has said that he will send an OCPD as soon as possible. I have heard this response before regarding other areas for which hon. Members sought to know when he would send an OCPD. Could he come out clearly and tell us exactly when he will be sending the OCPD, because "as soon as possible" is not a good answer.

Mr. Ojode: Mr. Deputy Speaker, Sir, I will post the OCPDs as soon as they are through with their course. This is a high level management course.

I do not want to give the hon. Member somebody who has not gone through the managerial course, because I know that he will have a problem with that kind of person. So, let us wait for the officers to complete their course and then we will post OCPDs to Mumias and other areas, where we do not have OCPDs.

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to avoid answering the question by refusing to give a specific date? Training programmes for police officers have time-frames. Why can he not give the estimated time within which the officers will be through with the training, after which they will be posted?

Mr. Ojode: Mr. Deputy Speaker, Sir, it will take some process. As I said, once the course is over, we will identify those to be posted to district headquarters. So, hon. Members should not have a problem with that undertaking. Let them complete their course and then we will post them.

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

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

Mr. Washiali: Is the Assistant Minister in order to continually avoid answering the question? It is his Ministry which trains the officers. Why can he not tell us when these officers will complete their course, so that we know when to expect an OCPD in our district?

Mr. Ojode: Mr. Deputy Speaker, Sir, I have said that we will post the OCPDs once they are through with their course. It could be next month or two months thereafter. Let us agree that once they complete their course, we will post them. I will try to fast-track the exercise and ensure that an OCPD is posted to Mumias immediately the officers complete the course.

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

Question No.555

ERADICATION OF CATTLE RUSTLING
IN MUTITO CONSTITUENCY

Mr. K. Kilonzo asked the Minister of State for Provincial Administration and Internal Security:-

(a) considering the persistent cattle rustling in Malalani border town of Mutito Constituency and the shooting of one Mr. Kavunduu Kithome at Iiluni Market by cattle rustlers in August last year, what action the Minister is taking to eradicate cattle rustling in the constituency; and,

(b) when he will bring back the Anti-Stock Theft Unit (ASTU) to the area as promised by the Government early last year.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I received an answer that was not quite satisfactory. I request to answer this Question next week on Thursday.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, allow me first to give my sympathy to the Assistant Minister for the public lashing they received yesterday from the First Lady. I want to assure you that, as far as I am concerned, you are doing a good job!

(Applause)

I agree that the Question should be answered on Thursday next week.

(Question deferred)

Mr. Deputy Speaker: Next Question. Hon. Mwakulegwa!

Question No.492

STREAMLINING OF YEDF DISBURSEMENT
PROCEDURES IN TAITA DISTRICT

Mr. Mwakulegwa asked the Minister for Youth Affairs and Sports:-

- (a) whether he is aware that the Youth Enterprise Development Fund (YEDF) disbursement in Taita District is riddled with irregularities;
- (b) what steps he will take to quicken the process and also streamline the procedures of disbursement; and,
- (c) whether he could table a list of groups that have benefited from that Fund since its inception.

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that the YEDF disbursement in Taita District is riddled with irregularities. The disbursement of the Fund has been, and continues to be, done in accordance with the laid down procedures. The constituency component of the Fund is disbursed by the community committees, of which the area hon. Member of Parliament or his representative is a member.

(b) The Fund has entered into an agreement with the Postal Corporation of Kenya (PCK) through their Posta-Pay Product to quicken the process. The Fund releases money to the PCK, together with the details of the approved groups. The PCK branches then write cheques to groups in their respective jurisdictions.

(c) The list of groups that have benefited from that Fund in the districts since its inception is available and I lay it on the Table.

*(Mr. Kabando wa Kabando laid
the list on the Table)*

Mr. Mwakulegwa: Thank you, Mr. Deputy Speaker, Sir. I would like to thank the Assistant Minister for his answer. Who convenes the meetings? How are the meetings convened? That is because I have never been called to attend any meeting and their office is about 100 meters away from mine. I have pleaded, begged and I have never been called to any of the meetings!

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. The answer given by the Assistant

Minister is, obviously, correct. Hon. Members of Parliament are automatic members of the YEDF committees in their constituencies. If that answer is applied as it is, is it in order for hon. Mwakulegwa to ask the question he is asking in the House, when he is a member of that committee?

Mr. Kabando wa Kabando: Thank you, Mr. Deputy Speaker, Sir. Indeed, I also want to thank the hon. Member for supporting the Ministry.

Mr. Deputy Speaker, Sir, I must actually note that nearly 13 months after the hon. Member was sworn in, he has not had an opportunity to sit at the Constituency YEDF Committee. I think there is a question that needs to be addressed locally in that particular constituency. That is because every hon. Member is a member of the constituency YEDF committee through his or her nominee. I would advise the hon. Member to consult his constituency youth officer so that he gets that corrected.

Mr. Deputy Speaker: Are you satisfied, hon. Mwakulegwa?

Mr. Mwakulegwa: I am satisfied, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Okay. That is fair enough! There are a few hon. Members who want to stand up on points of orders.

Proceed, hon. K. Kilonzo!

POINTS OF ORDER

ESTABLISHMENT OF CEMENT FACTORY IN MUTOMO DISTRICT

Mr. K. Kilonzo: Thank you, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Deputy Prime Minister and Minister for Local Government with regard to limestone mining and setting up of cement factory in Mutomo District.

Mr. Deputy Speaker, Sir, the Minister should clarify whether his Ministry was approached by Bamburi Cement Company in August, 2006, to resolve the issue of mining rights in Mutomo District, between Kitui County Council, Bamburi Cement Company and Athi River Mining Ltd.

Secondly, Mr. Deputy Speaker, Sir, the Minister should also clarify whether, pursuant to a tripartite meeting chaired by his predecessor on 1st October, 2007, the dispute was resolved and it was agreed that in order to adhere to the rules of fair play, no company will be given rights of exclusivity and that both factories be issued with mining rights in separate locations of Mutomo District.

Thirdly, Mr. Deputy Speaker, Sir, whether the Ministry communicated with the Ministry of Lands on the 18th of October, 2007, confirming the issue of a mining licence to Athi River Mining Ltd.

Fourthly, Mr. Deputy Speaker, Sir, I would like the Minister to clarify whether he is aware that Bamburi Cement Ltd, in contravention of the agreement, has written to His Excellency the President, seeking his indulgence to invoke his rights under the Constitution to confer possession of the trust land within Kitui County Council to the Government and, subsequently, issue exclusive rights to them.

Lastly, Mr. Deputy Speaker, Sir, what is the position of the State towards the investments of private investors in this country, whether international or local, and whether the Government supports monopoly in any venture in this country.

With that, Mr. Deputy Speaker, Sir, I want to lay the following documents on the Table for the perusal of the Minister.

Thank you, Mr. Deputy Speaker, Sir.

*(Mr. K. Kilonzo laid the
documents on the Table)*

Mr. Deputy Speaker: Is the Minister here? Leader of Government Business?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Thank you, Mr. Deputy Speaker, Sir. We will communicate that to the Deputy Prime Minister and Minister for Local Government and, hopefully, he should be ready with a Ministerial Statement by next Thursday.

WINDING UP OF GTV
CABLE NETWORK

Mr. Midiwo: Thank you, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Information and Communications with regard to the winding up of GTV Cable Network on 30th January, 2009.

Mr. Deputy Speaker, Sir, in the Ministerial Statement, I would like the Minister to address the issue of the monies collected from subscribers for the month of February, while GTV knew it was going out of business. I would like the Minister to address the criminal elements and tell Kenyans if anybody, either the directors or their local representatives, have been apprehended because, truly, there is some criminal intent.

Mr. Deputy Speaker, Sir, I also want the Minister to address the fate of the employees of GTV; whether they have been paid; whether they are safe and whether they have been properly compensated.

Lastly, Mr. Deputy Speaker, Sir, I would like the Assistant Minister to address the issue of the danger of exploitation. What measures will he put in place to make sure that other foreign companies do not come here, collect money and take off?

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Deputy Speaker, Sir, I want to give an undertaking to the House that I will come up with a statement addressing all the issues the hon. Member has raised on Thursday, next week.

CANCELLATION OF TRAVEL AGENCIES
CONTRACTS BY BRITISH AIRWAYS

Mr. Thuo: On a point of order Mr. Deputy Speaker, Sir. I wish to request a couple of Ministerial Statements, the first of which is directed to the Minister for Transport. It relates to the fact that the British Airways yesterday cancelled, or terminated, the contracts of all travel agencies in Kenya.

This is a serious issue; despite the fact that the British Airways gave as a reason the fact that they are suffering from the world economic recession, it seems to me manifestly unfair that they would cancel, or terminate, those contracts without even seeking to negotiate a reduction in commissions. In answering, I would also like the Minister to address himself to the fact that, that is likely to be copied by other carriers and, therefore, throw into jeopardy the entire travel agency sub-sector, with the attendant job losses that will negatively impact the Kenya travel industry. That is my first point of order.

The second one---

Mr. Deputy Speaker: Order, Mr. Thuo! Is the Minister for Transport here?

The Assistant Minister for Transport (Mr. Mwau): Mr. Deputy Speaker, Sir, I have heard about the Ministerial Statement that is being sought by the hon. Member. It relates to contracts that involve foreign companies and local companies. It is a weighty issue that will require indepth research. In those circumstances, we will, definitely, give a Ministerial Statement and trace this matter to its roots by Thursday next week.

(Laughter)

Mr. Deputy Speaker: Order, Mr. Assistant Minister! When will you have the Ministerial Statement?

The Assistant Minister for Transport (Mr. Mwau): By Thursday next week.

Mr. Thuo: On a point of order, Mr. Deputy Speaker, Sir. I had consulted the Assistant Minister and he had promised that, in view of the urgency of this matter, and the fact that his office intervened last week, to give me an answer tomorrow.

Mr. Deputy Speaker, Sir, I really do not appreciate that he is now changing goal posts. Could I have my answer tomorrow as agreed?

Mr. Deputy Speaker: If it is true that you actually talked on the sidelines, outside the House, of course, he cannot be held responsible for that.

Nonetheless, given the weight of the matter and the many Kenyan entrepreneurs who are also involved in this, would you be in a position to give the answer sooner than you have indicated?

The Assistant Minister for Transport (Mr. Mwau): Mr. Deputy Speaker, Sir, my concern is the nature of the Ministerial Statement that is being sought. It will require us to look into contracts between foreign carriers and local agents. That is not a matter that can be looked into overnight.

For that reason I was asking to be given enough time, so that the answer that will come to this House, and the way those foreign carriers will be dealt with, if they are wrong, will be precise and to the point. That is why I said I wanted to be given up to Thursday. But to indulge my comrade, I will say, maybe, Wednesday afternoon.

Mr. Deputy Speaker: Mr. Assistant Minister, the contracts between the carriers and the agents notwithstanding, you have a role as the regulatory body, and I am sure you have a policy on that; that clearly does not need a lot of research. Are you still sticking to next week Thursday or Wednesday, even with the additional information you have now? It is purely a regulatory matter that essentially falls within the mandate of your Ministry.

The Assistant Minister for Transport (Mr. Mwau): Mr. Deputy Speaker, Sir, all this will require us to speak to the foreign carrier and the local agents. Once the information is gathered, the Ministerial Statement will be comprehensive on Wednesday next week.

Mr. Deputy Speaker: Mr. Thuo, are you comfortable with that?

Mr. Thuo: Obviously not, Mr. Deputy Speaker, Sir. You have consistently ruled that there is no difference between one and the other. Clearly there must be, but since I cannot force him to move much faster, what can I do?

Mr. Deputy Speaker: You have no choice under the circumstances!
Please, proceed!

Mr. Thuo: Mr. Deputy Speaker, Sir, my second request is to the Minister for Youth Affairs and Sports.

Mr. Deputy Speaker: Is it a question or a statement?

Mr. Thuo: A statement, Mr. Deputy Speaker, Sir. I am glad you all understand it for what it is.

GOVERNMENT POSITION ON WRANGLES IN FOOTBALL MANAGEMENT

My second Ministerial Statement is to come from the Minister for Youth and Sports, and it has to do with the issue of football in Kenya. It seems that the Government has been indecisive in

dealing with FIFA, particularly with regard to the two local bodies that are fighting for control of football in Kenya.

I would like the Minister to issue a statement clarifying the position of the Government on this particular issue. In doing so, I would also like her to address herself to the recent visit she made to Zurich, where it was agreed that there would be a meeting in Kenya by 5th February, 2009, which is later this week, to have one party hand over to the other.

I would also like her to address the fact that we have seen in Kenya the High Court and the Court of Appeal give rulings that have not been given effect by the Registrar of Societies, probably with the help of the Ministry; she will clarify that. Why does it seem that Kenyan football must be handled by particular individuals to the detriment of the soccer fraternity in Kenya.

I would also like her to clarify whether the Government will support the dissolution of the Kenya Football Federation (KFF), as recommended by the FIFA legal opinion or what they think ought to be the way forward. Does she also understand the consequences of a FIFA suspension, and are we willing to go down this road with the attendant negative consequences for the youth of Kenya?

I will ask that in giving a date, the Minister - again, I had a chat with her - indulges us by coming fairly early because the purported meeting is on Thursday, and she had promised that she would respond by tomorrow.

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Mr. Deputy Speaker, Sir, true, as enumerated, steps have been taken and there are pending meetings, including the one on Thursday. There were sessions today in the Attorney-General's Office to get our local legal opinion to complement the FIFA legal opinion. Therefore, it will be reasonable for the House to expect a response by Wednesday next week. Given that the House will be dealing with certain details on Thursday, some matters may be pushed to the next business day, and that takes us to early next week.

Mr. Thuo: Mr. Deputy Speaker, Sir, I am perplexed because I keep speaking to the wrong person. I am getting response from a different person. I had talked of a "she" and a "he" has responded to my request. We had agreed on a response tomorrow.

It is not that I wanted a response tomorrow for the sake of it. According to the letter, whose copy they have, and which I am quite happy to table here, FIFA has made it clear that after 5th February, 2009, we will be in serious trouble as we will be facing suspension. I do not think it will do to postpone a response to next week. There must be a position they are going to take in the meeting of 5th February, 2009. It is no use keeping the matter away from us, and then we later deal with the consequences of failure. Could we have, at least tomorrow, and on an interim basis, their position before they head to the Thursday meeting?

Mr. Deputy Speaker: Mr. Assistant Minister, are you in a position to respond?

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Mr. Deputy Speaker, Sir, if a Ministerial Statement tomorrow will exclude detailed and comprehensive matters that will be used in the resolution of the dispute, we are agreeable.

Mr. Deputy Speaker: Are you happy with that, Mr. Thuo?

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

MINISTERIAL STATEMENT

SHORTAGE OF SUPER PETROL IN PARTS OF THE COUNTRY

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, I beg the indulgence of the House to make the following Ministerial Statement regarding the current shortage of Super petrol

in some parts the country.

Mr. Deputy Speaker, Sir, first, my Ministry would like to acknowledge that there is, indeed, shortage of Super petrol in some parts of the country. This has been there for the last four days. This shortage has been caused by two principal factors.

The first is a breakdown at the refinery. The refinery produces 70 per cent of the country's Super petrol requirement and the balance of 30 per cent is imported through Kipevu Oil Storage Facility. On 19th January, 2009, one of the two Kenya Petroleum Refineries platformer complexes which produces Super petrol broke down. The refinery immediately informed the industry on its inability to restore production due to this breakdown and requested it to make arrangements for importation of additional quantities of Super petrol, until the complex is repaired.

The industry has since made alternative arrangements and two vessels have been brought in with a combined quantity capacity of 36 million litres. Of this 36 million litres of petrol, we have 7 million litres now in Nairobi, 3.8 million litres in Kisumu, 3.1 million litres in Eldoret and 1.8 million litres in Nakuru. There is also 17 million litres of petrol which is currently in the pipeline, being pumped to the Nairobi Terminal and all this is expected to be received in Nairobi by Thursday, 5th February, 2009, that is, the day after tomorrow.

Mr. Deputy Speaker, Sir, the second reason for the shortage is import delay. The industry imports 30 per cent of the country's requirement which is not provided through the refinery. The country's requirement of this 30 per cent was expected to be received in the country on 22nd January, 2009. Because of the prevalent piracy situation and hijacking of vessels off the coast of Somalia, all vessels calling on Mombasa are experiencing delays, as they have to wait for escort by foreign navy vessels through these dangerous waters.

The consignment which was supposed to arrive on 22nd January, 2009, arrived late on 31st January, 2009, carrying 32 million litres of petrol. This vessel is currently discharging at Kipevu Oil Storage Facility and is scheduled to complete discharge on Wednesday, 4th February, 2009, that is, tomorrow. The supply situation is, therefore, expected to normalise once the industry vessel currently discharging the 32 million litres of petrol completes discharging tomorrow.

Mr. Deputy Speaker, Sir, regarding the February supplies, the Ministry called for an urgent tender on 20th January, 2009, and we expect to receive 52 million litres of petrol from this consignment. The consignment is due for delivery by 10th February, 2009. The recent Press reports that the congestion of vessels at the Port of Mombasa is due to one industry player holding a haulage of Super petrol, which has led to the current shortage, is not correct. The vessels which are awaiting discharge at Mombasa are carrying diesel and kerosene, which are now in plenty of supply in this country. Therefore, the shortage of Super petrol is not caused by any unfair allocation by the industry.

Mr. Deputy Speaker, Sir, in order to ensure security of supply of petroleum products in this country on a sustainable basis, the following measures are being undertaken:-

1. Work is on-going at Kipevu Station No.14. Once this work is completed, we expect the pumping capacity at the Kenya Pipeline to increase from the current 440 million litres per hour to 880 million litres per hour. This work is expected to be completed in August this year.

2. My Ministry is also making arrangements to empower the National Oil Corporation of Kenya, to import 30 per cent of the national requirements of petroleum products in this country every month, with effect from the end of March this year.

3. My Ministry is also consulting with the Infrastructure Committee of the Cabinet to empower the National Oil Corporation of Kenya to maintain and manage strategic oil reserves for this country, so that we can respond with releases in cases of interruptions of supply.

4. My Ministry is also emphasising to the Energy Regulatory Commission the need to enforce the Legal Notice which requires all oil marketers to hold, at least, 20 days of stock in addition to their working stock.

5. Lastly, my Ministry is discussing with the Kenya Pipeline Corporation with a view to speeding up the implementation of the new 14-inch Nairobi-Eldoret pipeline which, when accelerated, will remove the petrol tankers from our roads in Western Kenya. It is because of this dangerous mode of transport that we have witnessed the two tragic accidents which have caused Kenyans so much pain and suffering in the last few days.

Thank you.

Eng. Rege: Mr. Deputy Speaker, Sir, could the Assistant Minister assure this House that diesel will not be in short supply in this country?

Mr. Deputy Speaker, Sir, could he also advise this House how many vessels are wharfing around Mombasa Port carrying diesel, to ensure that there will be no shortage of diesel in this country.

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, I did not get the clarification sort by the hon. Member.

Eng. Rege: Mr. Deputy Speaker, Sir, how many diesel vessels are wharfing around the Port of Mombasa because the Minister explained that the ships that have not docked are carrying diesel and kerosene? How many of them have not docked? Could he also assure the House that we will not run short of diesel in this country?

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, we understand that there are three vessels awaiting discharge at Mombasa. When the long term measures that I have outlined are undertaken, including creation of strategic reserve capacity both in Nairobi and up country, then there will be no shortages of fuel in the country.

Mr. Midiwo: Mr. Deputy Speaker, Sir, thank you for giving me a chance to seek some clarification.

First of all, Mr. Deputy Speaker, Sir, all imported fuel, whether crude or refined, goes into the Customs warehouse at the Kenya Pipeline Corporation (KPC) until such a time that Customs Duty, Excise Duty and all other duties have been paid. Recently, when we had this crisis at Triton Petroleum Company, a lot of millions of litres of fuel were lost.

Could the Minister clarify to the House how much duty the Government lost in the whole saga? It is being said that it is in billions of shillings. In that criminal act, who are responsible and how come they have not been apprehended?

Secondly, recently, the Minister told us that by a certain date in January, and now we are in February, the National Oil Corporation of Kenya (NOCK) would take over some distribution capacity of fuel in the market. That was meant to stabilise the price of fuel. It has not happened and the price of fuel is still as high as it was two months ago, even though the international price of crude oil is now at US\$40 per barrel.

Could the Minister update this House and the nation what the state of that NOCK activity is? This country is waiting for it.

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, as far as I know it is not possible to have any product being sold in this country without paying duty. I believe that even for the Triton products, duty had been paid unless there is evidence to the contrary.

Secondly, regarding the price of fuel and the intervention by NOCK, it was the intention of my Ministry to introduce price controls with effect from the end of January. You will recall that there was a high level National, Economic and Social Council, which is the principal advisor to the Government on economic and social matters, which prevailed upon my Ministry not to introduce price controls but to empower NOCK so that it regulates prices in the market.

Mr. Deputy Speaker, Sir, for NOCK to be in a position to regulate these prices, it must control a significant share of the market. As I am talking now, NOCK controls about 5 per cent of the market. So it has very little impact. We are discussing with the Treasury to see whether there can be some cash injections into NOCK to acquire more petrol stations so that it can acquire more distribution network

and, therefore, increase its market share to a level where it can influence prices.

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. I just want to be clear that the Minister is telling us that no duty was lost in the Triton saga. Everybody knows that anything that goes into the Customs bonded warehouse can only leave after duty has been paid.

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, I can only repeat what the hon. Member has said. Nothing can leave a Customs warehouse unless duty is paid. Therefore, the presumption that we have is that because the Triton products left the warehouse, duty must have been paid. If the hon. Member has any information or evidence that duty was not paid, let him lay that evidence on the Table.

Dr. Khalwale: Thank you, Mr. Deputy Speaker, Sir. The activities of piracy in the Indian Ocean affects both local and regional trade. We would be interested to know what the Government is doing towards arresting insecurity which is caused by piracy so that the negative impact on our economy is alleviated.

Mr. Deputy Speaker: Mr. Minister, I think you will have to take about three questions and then you respond?

Mr. Thuo, please, proceed!

Mr. Thuo: Mr. Deputy Speaker, Sir, I wish to thank the Minister for his Statement. I want to deal with one small part of the Statement which has to do with the tragic accidents that he mentioned, particularly the one of Molo that was caused by a fuel tanker.

Mr Deputy Speaker, Sir, even as we remove the petrol tankers from the roads, an exercise I would commend, may I bring to the Minister's attention the fact that the pipeline passes through some residential neighbourhoods. Indeed, in a place like Mukuru kwa Njenga, the pipeline has in excess of 1,000 structures built on it or besides it. In view of what the Minister has said, could he clarify what they will do so that this tragedy waiting to happen does not happen?

Mr. Okemo: Mr. Deputy Speaker, Sir, I have two points for clarification. Could the Minister clarify the issue of the pumping rate increasing from 440 million litres per hour to 880 million litres per hour? I believe that when His Excellency the President went to Kibwezi to open the project, it was stated that, that project would increase the pumping capacity from 440 million litres per hour to 880 million litres per hour.

The Minister, in his Statement, has just told us that some works are being done in Mombasa and when complete, the pumping capacity will increase from 440 million litres to 880 million litres per hour. What is the current pumping rate? What is the effect of the project which the President opened?

Finally, I am surprised that the Minister has not touched on a very crucial issue regarding the handling of discharge of fuel from tankers. That is the issue of the jetty. At the moment, there is only one jetty in Mombasa. Therefore, it cannot handle more than one tanker at a time. I would have expected that in his long term planning, the Government would increase the number of jetties from one. This should be done even if it means having floating jetties. Is that an idea that has crossed the minds of the people in Government? Is it something they contemplate doing? It is important to address the systemic shortage.

Mr. Deputy Speaker: Mr. Minister, could you respond to those three clarifications?

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, I think we all know that piracy is a serious problem. It is an international crime and is being handled within the framework of international law. There is an effort being co-ordinated through the Ministry of Foreign Affairs. The foreign navies which are escorting the ships are part of that effort. I, therefore, believe that the Ministry of Foreign Affairs would be in a better position to make give details about this.

Mr. Deputy Speaker, Sir, regarding the dangers posed by the pipeline to our low income earners at Mukuru kwa Njenga, we are aware of the problem. Currently, through the Provincial Commissioner (PC), Nairobi, we are negotiating on how to resettle the people living on top of the

pipeline. This is because it is a very precarious living. Discussions are at an advanced stage and we hope they are going to be concluded soon.

Mr. Deputy Speaker, Sir, with regard to the capacity enhancement project, it is true that the capacity design was for 880 million litres per hour up from the current 440 million litres per hour. That design capacity has not been realised because of some challenges that we face at Kipevu where the oil enters the pipeline system. Currently, some engineering work is being done at PS No.14 at Kipevu which is scheduled to be completed in August, this year. Once that work is completed, we have been assured by the engineers and the consultants that we shall realise the capacity of 880 million litres per hour.

With regard to the issue of a floating jetty, it is a very interesting idea. We have got it from one of the Israel companies which actually wants to construct a floating jetty off the coast of Mombasa. We are looking at their proposal and as soon as we go through the necessary procurement systems, we will introduce that floating jetty.

Mr. Baiya: Mr. Deputy Speaker, Sir, the Minister has indicated that he abandoned the attempt to ensure that price controls are in place after being advised by the National Economic Council (NEC). It is also a fact that oil consumers in this country have continued to pay a price that is completely disproportional to the international market prices. This has been the case notwithstanding the fact that the prices of oil have been going down.

So, is it not true that the acceptance of advice from NEC by the Minister not to go ahead and effect price controls is what is exposing Kenyans to this problem? Is it also not true that part of the reason why Kenyans are paying dearly for petrol is because of the scandal involving Triton Petroleum Company? What is the Minister going to do about this? Kenyans need to benefit from the low prices of fuel internationally. After all, they paid dearly when the international prices went up.

Dr. Eseli: Mr. Deputy Speaker, Sir, further on the last speaker's question, I would like the Minister to confirm that, indeed, the NEC advised that we should not have any price controls given that the fuel is already overpriced. Is the NEC going against Parliament since we had opted for price regulation? Does the NEC have the right to go against Parliament? Do they have a right to suggest that the National Oil Corporation of Kenya (NOCK) is going to help regulate the oil prices when we very well know the capacity of NOCK? Why are we looking for mirages and hoping that those mirages are going to control our fuel prices? The Minister should clarify whether he is within the law to go ahead and implement the price controls since the NEC is definitely not assisting the economy of this country at all.

Mr. Gunda: Mr. Deputy Speaker, Sir, when the Minister was talking about petrol having been supplied to various parts of this country, he mentioned that it was supplied to Nairobi, Nakuru, Eldoret and Kisumu. He forgot to mention Mombasa. Could he confirm whether Mombasa and its environs, including Kilifi, have the petrol which has been out of stock for some time now? Since petrol comes to this country through Mombasa, it will be unfair for it to be supplied upcountry while we in Mombasa lose out.

Mr. Ogindo: Mr. Deputy Speaker, Sir, could the Minister clarify, against the background that this Government appears to have adopted a policy of lenience when dealing with heads of parastatals? When does he intend to call back the Managing Director of Kenya Pipeline Company (KPC), Mr. George Okungu? Things just appear to be getting worse ever since Mr. Okungu was sent on leave.

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, with regard to price control and advice from the NESC, I want to state that, indeed, under the Energy Act, the Minister has power to regulate the prices of petroleum products. However, the law does not apply in a vacuum. It takes into account the economic, social and political circumstances prevailing in a country in which it is being implemented. What the NESC requested us to do is to explore market mechanisms of regulating those prices. I am now working with the Energy Regulatory Commission (ERC) to see

what other market instruments we can introduce to ensure that Kenyans are not exploited by cartels because the market is simply not working.

With regard to the Triton affair, I would like to inform this House that the theft at Triton has not increased fuel prices in this country.

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to inform the Minister that my query was specific in the sense that we know, from the word go, that the NOCK does not have the capacity to regulate fuel prices in this country. So, for him to say that they are going to explore other methods of regulating the fuel prices, I think he is trying lose us somewhere. The Minister has to be very specific on what I queried.

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, I am not the type that loses people somewhere! Just keep track.

(Laughter)

Mr. Deputy Speaker, Sir, I said that I wanted to introduce price controls, but I am not the only decision-maker in this country. Secondly, I said that we are discussing with the Treasury to see whether we can inject more finances into NOCK to enable it to acquire more stations, see whether it can have strategic reserves and empower it so that it can be a prime sector in the oil industry. However, at the same time, I am exploring with ERC, other market mechanisms which we can use to bring down these prices. If you have any more ideas, please, give them to me and I will consider them.

With regard to the Triton affair, I would like that to be understood for what it is. Triton was a theft just like there can be a theft at the bank as a result of collusion by an outsider and an insider. However, that does not increase interest rates or other lending procedures within the bank. So, we are treating the Triton affair as an isolated theft within the petroleum system.

Mr. Deputy Speaker, Sir, I have held meetings with financiers and petroleum companies and oil will continue to flow into this country as normal. So, let us not overplay the Triton affair. I see a lot of angles being put in it and, sometimes, unfairly. But that is a theft and it is a theft!

Mr. Deputy Speaker, Sir, regarding the parastatal and especially the contract for Mr. Okungu--- I know this issue was raised by my colleague from Central Imenti when I was not here. But I would like to say that Mr. Okungu's contract was properly renewed. I renewed his contract just like I do for other managing directors. I do not know why we are singling out that one and not the others that I also renewed. The KPC is one of the corporations that received one of the best awards under the performance contracting.

I had no reason not to renew Mr. Okungu's contract. I was not a prophet to see what would happen down the road at KPC. Mr. Okungu is on compulsory leave to pave way for indepth investigations at KPC. If, after those investigations, he is found to be innocent, he will come back to work.

The only reason why he is out there is because the investigations are taking place. If he is, in any way implicated, then he will stay at home. I do not think that we should victimise any person merely because we have adopted in this country what we call "trial by noise." Let us have the facts and then we act after we get the facts.

Mr. Deputy Speaker, Sir, I also would like to confirm that there is petrol in Mombasa and the surrounding areas. We are not discriminating any country.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Next Order!

POINT OF ORDER

SECOND READING OF CONSTITUTION
OF KENYA (AMENDMENT) BILL
CONTRARY TO NATIONAL ACCORD
AND RECONCILIATION ACT

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

Mr. Deputy Speaker: What is your point of order, Mr. Imanyara?

Mr. Imanyara: Mr. Deputy Speaker, Sir, I seek your guidance on the following number of issues that arise directly out of business of this House last week.

Mr. Deputy Speaker, Sir, given that the period envisaged under the constitutionally guaranteed timeline has lapsed, I seek your guidance on the following matters:-

Mr. Deputy Speaker, Sir, one, whether proceeding with the Second Reading of the Constitution of Kenya (Amendment) Bill, Bill No. 25 is not an exercise in futility.

Mr. Deputy Speaker, Sir, two, whether proceeding with the Second Reading of the Bill is not undermining the reform agenda agreed by the President and the Prime Minister, and anchored in the Constitution through the National Accord and Reconciliation Act.

Mr. Deputy Speaker, Sir, three, whether in view of the provisions of Standing Order No.40(3)(a), proceeding with the Second Reading is not contrary to the spirit of the National Accord and Reconciliation Act as entrenched in the Constitution and, therefore, contrary to the Standing Orders.

Mr. Deputy Speaker, Sir, four, whether the Minister is not obliged to inform this House whether or not the envelope containing names of/and relevant information on those suspected to bear the greatest responsibility for post-election violence witnessed in this country as a result of Presidential Election announcement, has not been forwarded to the International Criminal Court.

Mr. Deputy Speaker, Sir, in seeking your guidance on these issues, I am aware that the consequence of the failure to obtain leave of the House last week, that the 45 days period within which the Government had to comply with recommendations of the Waki Report lapsed.

Mr. Deputy Speaker, Sir, two, the Waki Report forms part of the reform agenda contained in the National Accord Agreement signed by President Kibaki and Prime Minister Raila Odinga on 28th February, 2008.

Mr. Deputy Speaker, Sir, three, the agreement was entrenched in the Constitution of Kenya through the National Accord and Reconciliation Act, where it is contained as a Schedule.

Mr. Deputy Speaker, Sir, the preamble to the Bill which we passed as the National Accord and Reconciliation Act was cited as an Act of Parliament to give effect to the agreements on the principles of partnership of the Coalition Government to foster national accord and reconciliation.

Mr. Deputy Speaker, Sir, in paragraph 4 of the agreement that was signed by the President and Prime Minister, the agreements states boldly and categorically that, and I quote:-

"It provides the means to implement a coherent and far-reaching agenda to address the fundamental root causes of recurrent conflict and to create a better more secure and prosperous Kenya for all."

Mr. Deputy Speaker, Sir, in the spirit of the National Accord which is now entrenched in the Constitution, both ODM, PNU and their affiliate parties, following the mediation by His Excellency Koffi Annan and the Panel of Eminent African Personalities---

Mr. Deputy Speaker, Sir, on the part of PNU, there was hon. Martha Karua, hon. Sam Ongeru, hon. Mutula Kilonzo and hon. Moses Wetangula. On the part of ODM, there was hon. Musalia Mudavadi, hon. William Ruto, hon. Sally Kosgey and hon. James Orengo. It was witnessed by Koffi Annan. They signed an agreement styled Agenda Item 3 - How to Resolve the Crisis, whose Part 3 is entitled:-

Regarding the need for political settlement to resolve the current crisis, we agree on the following points:-

We recognise that there is a serious crisis in the country. We agree a political settlement is necessary to promote national reconciliation and unity. We also agree that such a political settlement must be one that reconciles and help the nation and reflect the best interest of all Kenyans. A political settlement is necessary - and I emphasize from that agreement signed - to manage a broad reform agenda.

They then listed the items of that broad agenda as:-

A comprehensive Constitutional reforms, comprehensive electoral reforms of electoral laws, the Electoral Commission and dispute resolution mechanisms, a Truth, Justice and Reconciliation Commission, identification and prosecution of perpetrators of violence, respect of human rights, parliamentary reforms, police reforms, legal and judicial reforms, commitment to a shared national agenda in Parliament for those reforms and other legislative, structural, political and economic reforms as needed.

Under Item Agenda 3, a Commission of Inquiry into Post-Election Violence (CIPEV) chaired by hon. Justice Philip Waki was formed through Gazette Notice No.4473 which began its sittings on 23rd May, 2008 and, thereafter, transmitted its report and recommendations to President Kibaki by a letter of transmittal dated 15th October, 2008.

(Mr. Kioni stood up in his place)

Mr. Deputy Speaker: Order, hon. Members. The Member is on a point of order!

Mr. Imanyara: Mr. Deputy Speaker, Sir, thereafter, the report and its recommendations were brought into the House and finally adopted without amendments by this House.

The recommendations were adopted without any amendments in Part 5 on page 475, and states as follows:-

"If either an agreement for the establishment of the Special Tribunal is not signed or the Statute for the Special Tribunal fails to be enacted, or the Special Tribunal fails to commence functioning as contemplated above or having commenced operations, its purposes are subverted, a list containing names of/and the relevant information on those suspected to bear the greatest responsibility for crimes falling within the jurisdiction of the proposed Special Tribunal shall be forwarded to the Special Prosecutor of the International Criminal Court. The Special Prosecutor shall be requested to analyze the seriousness of the information received with a view to proceeding with an investigation and prosecuting such suspected persons."

Finally, Mr. Deputy Speaker, Sir, the Agreement for the establishment of the Special Tribunal was signed, as I said, by both the President and Prime Minister in December last year, and the Government had 45 days from that date to ensure that the law was enacted. Parliament - and I must say that - was specifically recalled. We sat here for three weeks waiting for the Bills to be brought.

Mr. Deputy Speaker, Sir, the Government did not publish the Bill for the establishment of the Tribunal until 28th January, barely one day before and the House refused to grant that leave. Therefore, as we stand now, this House is *functus officio* and the envelope ought to have gone out the day following by operation of law. Therefore, is it not an exercise in futility? Is it not contrary to the law for this House to engage in the debate of this Bill which has been overtaken by events?

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I have listened carefully to my colleague and I would like to raise several issues before you answer.

Mr. Deputy Speaker, Sir, one, I believe that we are playing to the gallery. My belief is based

on the following points: This august House, barely a week ago on 27th January last week which was on a Tuesday, adopted the recommendations of the Waki Report. What were we adopting if we were going to adopt and then prevaricate before the same House?

Mr. Deputy Speaker, Sir, when the two principals signed the National Accord, one of the agreements as has been correctly stated, was far reaching reforms. Those far reaching reforms are listed in Agenda Item No.4. Agenda Item No.4, among other things, is about the setting up of this Tribunal. We did, as the mediation team and with the authority of the two principals, pave way for the establishment of the Waki Commission on Post Election Violence with the commitment that their recommendations will be implemented. Parliament is now on a journey to implement that Report. How then can the same Parliament argue after adopting the Report, that it is contrary to the law to implement that Report?

Mr. Deputy Speaker, Sir, I do not know which Minister can be asked to say whether the envelope has reached the Hague. As far as I know, that envelope is not with any of the Ministers of Government and certainly not with the Minister for Justice, National Cohesion and Constitutional Affairs. The envelope was handed by Judge Waki to His Excellency Kofi Annan who is not a member of this House. That is a matter outside this House but a matter that concerns us because it is what is forming the agreement between the two principals. We adopted and consented to those matters when we adopted the Waki recommendations.

Mr. Deputy Speaker, Sir, therefore, I want to say simply that what the House is doing here today is following up on its commitment to those reforms. I might wish very briefly just to say this: That the reason we are seeking to establish those institutions of the Tribunal is because we have within our national institutions, been unable so far to effectively deal with the post-election violence. So, we are acknowledging that our institutions have fallen short and we are also acknowledging that ahead of constitutional reforms, we need to take certain bold steps.

Mr. Deputy Speaker, Sir, I want to go to Standing Order No.40(1) which was referred to, that says:-

"Save as otherwise provided by this Standing Order, notice shall be given by a Member of any Motion which he proposes to move".

The First Reading of this Bill has been given. The Standing Orders also enumerate that, before giving notice of Motion, the Member shall deliver to the Clerk a copy signed by themselves; and the Speaker shall certify himself that in his opinion, the Motion proposed is not contrary to the Constitution".

Mr. Deputy Speaker, Sir, I am saying that nothing before this House is contrary to the Constitution. The Bill that I seek to move today has gone through the First Reading. This House most graciously consented to shortening the publication period to one day. If there was anything amiss, why did Parliament give leave? Parliament ought not to act in vain. They gave leave to shorten the period; denied leave to go to the second stage on the same day. We are now on a different day. I think this is a matter that you can give direction immediately to pave way for the moving of this Motion without any filibustering.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, I wish to plead with my hon. colleagues, in particular my learned friend, the hon. Gitobu Imanyara, the Member of Parliament for Imenti Central with whom I went to law school, that the doctrine of negating the work of this House so that what you refer to as operation of the law; that this House acts in vain, it is my humble submission that, that doctrine does not apply. This is because in its legislative capacity, this House cannot be subject to any other authority.

Mr. Deputy Speaker, Sir if indeed reference is made to the wrong statute which is basically what would apply in the case of the Hague, I want to say that Members will remember that, that same step was actually domesticated by this country. Therefore, I think we need to be bold enough, unless we want to declare ourselves a pariah state.

We want to be bold enough and say that what was contained in the Waki Report to which Minister Ms. Karua has ably referred to was just informative. Everything in that report was actually not written in stone. Therefore, the time-line that is contained therein cannot then be seen to be hard and fast and with the capacity to tie the hands of this august House.

Mr. Deputy Speaker, Sir, therefore, I want to urge that in the best interest of this nation, that this House stands up and be counted. Whatever issues that affect our citizens, I believe the best place to deal with them is here because this is a democracy like none other.

The hon. Member for Imenti Central has referred to the very giant and important steps that we were able as a country and House to take after the December 2007 elections. I think those steps have been appreciated internationally and I do not think that as long as we show commitment to the resolve that we committed ourselves to, I do not think that what is contained in the Waki Report becomes automatically operationalised with regard to the Hague.

Therefore, I want to plead that we really listen to the Minister moving it because I am sure that there are issues that are of serious concern to Members of this august House. Hon. Imanyara himself has referred to some of these issues. Let us be bold enough and discuss them. But for goodness sake, let us not give away the sovereignty of this wonderful land.

I beg to oppose that move by hon. Imanyara.

The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to seek your guidance in the manner that it has been presented?

Mr. Deputy Speaker, Sir, we all know the Constitution and we are familiar with Section 30 of the Constitution which confers legislative authority on this hon. Parliament. If you look at the Order Paper, Order No.7 says: "The Constitution of Kenya (Amendment) Bill (Bill No.25). (The Minister for Justice, National Cohesion and Constitutional Affairs), Second Reading". That means that the Bill is already the property of this House. The moment the Bill went through First Reading, it became our property. Above all, it is the property of 37 million Kenyans who are now living and those who will be born after that.

Mr. Deputy Speaker, Sir, the request before you is clearly out of order, according to me. It is out of order in the sense that the hon. Member is suggesting - and I have a lot of respect for him - I recognise his long experience in the law. He is out of order because this House has already taken possession of that Bill because it is in Second Reading.

Secondly, at the time that the hon. Minister rose to read that Bill for the Second Reading last week, the same hon. Member stood up and with the support of three other hon. Members, managed under Standing Order 99, to get this House and ultimately the country, to postpone the debate, that is Second Reading, to today. I am afraid that my original training is law and will always be law. No person should be allowed to benefit from his own wrongdoing or inequity.

Therefore, by seeking to stand up here and block us from debating this particular Bill in its Second Reading, my suggestion to the Chair, with respect, because you are my boss in this matter, is that your ruling should be that the hon. Member for Imenti Central is out of order.

Mr. Deputy Speaker, Sir, thirdly, the hon. Member has cited the National Accord and Reconciliation Act. As the hon. Minister said, we ourselves approved the Waki Report but that is not the way I am going. On top of the Waki Commission Report is a recommendation that after the principals signed an agreement to accept the implementation of that report, this House ought to pass an amendment to the Constitution entrenching a tribunal within 45 days.

Our principals on both sides, that is the President and the Right hon. Prime Minister, signed that agreement on 18th December, 2008. We have also been in two *kamukunjis* where the arguments being raised on the Floor of this House were never raised. Nobody raised the issue as to whether we had exceeded the period or whether we were on time.

I also want to salute the Office of the Speaker because this is the first time in the history of Kenya's Parliament to be sitting on 3rd February---

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

Mr. Deputy Speaker: Order, Mr. K. Kilonzo! The hon. Minister is on a point of order. You are out of order.

The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I wanted to pay tribute to the Office of the Speaker because, to my knowledge, this is the first time the Kenyan Parliament is sitting on 3rd February. This is because you recalled, on the request of the Government, Parliament to come and sit in order to push the passing of this particular law.

Therefore, my request to you, with respect is that you rule that the hon. Member is out of order and rule that we should proceed to the Second Reading.

Thank you.

Mr. Deputy Speaker: It is my prerogative to rule. You have made your point.

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, in response to my distinguished friend Mr. Imanyara, I just want to say the following: One, it should never be entertained in a Parliament of a sovereign nation that we are harbouring any ideas about ceding our authority and sovereignty as a nation. We should never entertain that at any time. We can only do that in circumstances where we have already made a law, ceding that authority or sovereignty of our republic.

The second issue is that the legislative authority, and that is to enact laws, is vested in this House as Mr. M. Kilonzo has pointed out.

We cannot run away from our constitutional duty to enact a Bill which is properly before the House just because Mr. Imanyara is talking about a timeline which has been given by an entity which is not recognised under the law. There is no entity that has given that timeline. Basically, what we have in the Waki Report are recommendations. As a sovereign nation, we can comply with those recommendations or we can chose not to comply with those recommendations.

Mr. Deputy Speaker, Sir, now that we have moved forward and adopted the Waki Report, it is our duty to discuss this Bill because we have already adopted the Waki recommendations.

My final point, which is more important, is that let not the threat of the Hague be used now and again. There are those people who have it at the back of their minds that people will necessarily go to The Hague. The Hague is not a Kangaroo court. I dare say, that probably, those envelopes that you are seeking to be opened may never be opened because, to my knowledge, that is not how the International Criminal Court operates.

There have been conflicts in the Sudan, Uganda and the Democratic Republic of Congo (DRC). If you look at the history of those conflicts and the matters which have been taken before The Hague, it is not more than some people who have gone to the International Criminal Court because the threshold is so high for it to act.

I think we are trying to show Kenya as a democratic nation which is prepared and ready to live with the requirements of the international criminal justice system. If you want us to be part of an emerging nation which respects the rule of law, we have to proceed with the debate on this Bill so that we can be seen to be part of the International Community which recognises some of these international crimes.

For that reason, I beg that we discuss this matter.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I want to disagree with both Ms. Karua and the Leader of Government Business when they say that the recommendations of the Waki Report are not cast in stone. Yes, it is true that at the stage when Mr. Waki was giving the report to His Excellency the President, his recommendations were not cast in stone. Since the President knew that there was need to cast those recommendations in stone, he took it to the Cabinet which approved them. But the President was not satisfied. He said: "Let us take it further to the institution of Parliament so that it is

completely cast in stone."

Mr. Deputy Speaker, Sir, the recommendations of the report having come here and Parliament having adopted all of them, including the timetable and the timeline, it means that timetable and timeline are cast in stone. That being the case, the five Members of Parliament who stood on Thursday last week and afforded this House an opportunity to do what we are doing now, we were simply giving an opportunity to this House to ask Members of the Cabinet and the Leader of Government Business: Now that you are time barred as per the recommendations of the Waki Report, could you, please, go back, if you so wish to introduce this Motion, to Cabinet and bring a Motion amending what we decided here on adoption? That Motion will come here and if it passes, we would have no problem in debating this particular Motion.

With those few words, I therefore, request that you rule that this Motion is not properly presented before the House and that the matter is so grave that all interested groups--- What is the rush? If you were in a hurry at that time and you wanted to beat the deadline, then you should not have come one day to the deadline. You should have utilised all the time you took before we came here. Now that you have defeated yourselves, you should give Kenyans an opportunity to debate this important issue. There is the Law Society of Kenya and other professional bodies in this country and the civil society groups who have pertinent issues that they would like to raise on this Floor.

I beg that you rule in support of Mr. Imanyara.

(Laughter)

Mr. Deputy Speaker, Sir, there was that particular mention, because I have a second point, which had started emerging. Only I wanted to say, by mentioning that name, is that if we treat the decision of this House, when we adopted this Motion, as not being cast in stone, then it will be the second time we will be taking Parliament for granted. During the Kimunya decision, we took Parliament for granted. We now want to take Parliament for granted again.

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

Mr. Deputy Speaker: Mr. Abdikadir, as the Chairman of the Departmental Committee on Administration of Justice and Legal Affairs, do you intend to make a submission here? Do you intend to raise a point of order?

Mr. Abdikadir: Thank you, Mr. Deputy Speaker, Sir. I am not raising a point of order, but rather giving my two senses work.

Mr. Deputy Speaker: Please, proceed.

Mr. Abdikadir: Mr. Deputy Speaker, Sir, Mr. Imanyara, kindly, lent me his proposal. On point number nine, it says "recommendations of the Waki Commission." In other words, Mr. Imanyara understands that Justice Waki's recommendations were exactly that - recommendations.

Secondly, under Section 30 of the Constitution, the legislative power of the Republic of Kenya rests in this House, but I would want to go to Section 46, which says:-

"Subject to this Constitution, the legislative power of Parliament shall be exercisable by Bills."

In other words, that power is exercisable through Bills.

Mr. Deputy Speaker, Sir, you have absolutely no power to stop debate on this Bill from proceeding, unless by the exercise through the law. This House can refuse to pass this Bill, because hon. Members so wish, and not because Justice Waki sets up a time-table. No time-table exists in the Constitution. In fact, it cannot exist because Parliament cannot be given a time-table on when to pass

Bills; not by Justice Waki, not by the Hague, and not by The Hon. (Dr.) Kofi Annan.

An hon. Member: But we adopted the Waki Report!

Mr. Abdikadir: Absolutely! We, indeed, adopted the Report!

Mr. Deputy Speaker, Sir, in equity, we say you must come with clean hands. Mr. Imanyara, by exercising the powers given to him, as an hon. Member of this House, and by using the Standing Orders of this House, stopped debate of this Bill in its first stage. He must, therefore, be stopped from coming round and saying, because of that delay, we are now out of order, and we must stop this process.

I completely agree with one part of argument - that, indeed, this is a debating Chamber, and that Parliament must be given the absolute best time possible for debate to be undertaken, so that people can express their different view points, for proposed laws to be amended. Parliament still has those powers. The Bill seeking to establish a tribunal is not cast on stone. Parliament can amend it. Parliament can even refuse to pass it. However, we should not be told to stop this process, because there is a proposal in the Waki Report.

Mr. Temporary Deputy Speaker, Sir, finally, the International Criminal Court (ICC) does not take direction from this House, or from Justice Waki. The prosecutor of the ICC may decide to go ahead with prosecutions, irrespective of whether we go ahead to pass this Bill to create a tribunal or not. Essentially, the ICC will possibly not go ahead and carry out prosecutions, if we can do this well and better. The whole idea of setting up the ICC was to deal with crimes against humanity or genocide when the nations that have the first jurisdiction are unable or unwilling or incapable of handling those matters. So, the first instance is to give those nations the opportunity to deal with the situation.

Mr. Deputy Speaker: Conclude your representation, Mr. Abdikadir.

Mr. Abdikadir: Mr. Deputy Speaker, Sir, in conclusion, I honestly believe that you absolutely have no power to stop this debate at this point.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, Mr. Abdikadir!

(Laughter)

Mr. Abdikadir: I withdraw, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Abdikadir, I appreciate the fact that you have a very fine legal mind, but you still need to study the Standing Orders and understand how Parliament operates.

Mr. Abdikadir: On a point of order---

Mr. Deputy Speaker: Order! Order! You are out of order! You do not respond to the Chair!

Hon. Members, I will give the final two minutes to Messrs. Namwamba and Olago. Please, do not take more than three minutes.

Mr. Namwamba: Mr. Deputy Speaker, Sir, I want to make a couple of very quick points. This House cannot afford to act in vain. We will be setting a very dangerous precedent if we take actions, or we merely posture, for no other reason, but to be noticed for the sake of being noticed. I wanted to make three points.

Firstly, in the tradition of the Westminster and even the Commonwealth system, this House can make and unmake any law or any Act in the governance of this country. This House is the manifestation of the sovereign will of the people of this country. There is no authority which is higher than this House, be it within or outside the borders of this country.

Secondly, it is absolutely important for this House to appreciate that the dates in the Waki Report are nothing, but a recommendation. The Waki Report, though adopted by this House, is not a piece of legislation that went through the mechanism of enacting law as established in the Constitution and the rules of this House. So, let us not tie ourselves to deadlines set by a team that merely gave this

House recommendations, as guidelines, and not to put a noose around our necks.

Finally, it would be manifestly erroneous and misleading for anybody to tell this House and the nation that merely because the Hague can act, that stops this House and this country from acting. The Hague can go ahead and even call ten or 20 people from this country for trial in the Hague, or in any other part of the world, but that action by the Hague would not stop the institutions of this country from proceeding and dealing with this matter.

We also need to appreciate. Anybody who has looked at the Bill that we should, really, be debating here as a matter of urgency and stop this posturing, would appreciate that the work of that tribunal will go beyond the so-called "envelope". There are other actions that must be undertaken by that tribunal, which will go beyond the so-called "envelope". So, we need to end this charade and proceed with this matter in a manner that reflects the dignity of this House

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Olago, please, take no more than three minutes!

Mr. Olago: Mr. Deputy Speaker, Sir, it is a pity that the House is trivialising a very serious issue like this one. The point of order raised by Mr. Imanyara is so grave that we should not break it down to the Hague or a local tribunal. It raises very fundamental issues on whether what we are doing in the House conforms to the law and is legal or not. The Waki Commission Report cannot be said to be just recommendations. The Report has been adopted by this House, and it is anchored in the National Accord. So, we must give it the great concern that it deserves.

The House is already out of time. That must be the reason as to why the Minister for Justice, National Cohesion and Constitutional Affairs invoked Standing Order No.99; so that we could expedite the process. We were asked to expedite the process, because we were out of time. Today, we are out of time by another four days.

The issue raised by hon. Imanyara is valid to the extent that it is asking the House to confirm whether the timeline that the Minister was worried about, and that has already expired, can be extended so that we can continue with the debate today.

Mr. Deputy Speaker, Sir, if we are going to debate without the timeline being extended, then we are acting in futility. This House should not act in futility!

Mr. Deputy Speaker: Hon. Olago, just for the curiosity of the Chair, if this House was to seek an extension, it would seek it from who?

Mr. Olago: Mr. Deputy Speaker, Sir, if the House--- It is not the House! I am asking the Minister for Justice, National Cohesion and Constitutional Affairs!

Mr. Deputy Speaker: From whom?

Mr. Olago: From His Excellency Honourable Koffi Annan.

(Loud consultations)

Mr. Deputy Speaker, Sir, that is the position because---

CONSIDERED RULING

AN EXTERNAL BODY CANNOT DICTATE
HOW PARLIAMENT CONDUCTS BUSINESS

Mr. Deputy Speaker: Order, hon. Members! The Chair is not going to bore you with a long and winding ruling. It is going to be very short so that we can proceed with the business of the House. Section 30 of the Constitution of Kenya says:-

"The legislative power of the Republic shall vest in the Parliament of Kenya, which

shall consist of the President and the National Assembly."

It does not say the President, the National Assembly, the Hague, Waki, Koffi Annan or anybody else for that matter!

(Applause)

Hon. Members, Section 46 says:-

"Subject to this Constitution, the legislative power of Parliament shall be exercisable by Bills passed by the National Assembly."

(Applause)

This is a sovereign State and this is the supreme organ or supreme body of this sovereign State. The other two arms of Government are creations of Parliament. Indeed, even if there is a clash between our own municipal laws and international laws, our municipal laws take precedence over them in here; in our country!

Nobody, no agreement or accord reached outside this House can dictate on the manner in which this House should legislate, including passing or amending constitutional provisions.

Under the circumstances, hon. Imanyara, you are out of order and the business of the House will proceed in accordance to the Order Paper of the day!

(Applause)

Hon. Minister for Justice, National Cohesion and Constitutional Affairs, proceed!

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Thank you, Mr. Deputy Speaker, Sir. I beg to move that the Constitution of Kenya (Amendment) Bill, 2009, be now read a Second Time.

Mr. Deputy Speaker, Sir, this Bill is the work of this House, together with the Mediation Team. We sat together unusually. This is the first time that Parliament, through its Committee, and through an informal meeting of the entire House, has scrutinised a Bill before it is published.

Therefore, Mr. Deputy Speaker, Sir, this Bill is as a result of intense consultations among hon. Members of Parliament and hon. Members of the Government.

Mr. Deputy Speaker, Sir, this Bill seeks to amend the Constitution and pave way for Parliament to enact, by a statute of Parliament, and notwithstanding any other provisions of our Constitution, to establish a Special Tribunal with the exclusive jurisdiction, in accordance with that statute that Parliament will establish, to investigate, prosecute and determine cases against persons responsible, in one word, for the post election violence.

Mr. Deputy Speaker, Sir, that is people responsible for genocide, gross violations of human rights, crimes against humanity or any other crime as may be specified in the statute, and which were committed in connection with the elections of December, 2007.

Mr. Deputy Speaker, Sir, this Bill is as a result of the deliberations in the National Accord and the subsequent agreement by the parties which established the Post Election Commission Investigating the Post Election Violence (CIPEV), otherwise known as the Waki Commission. Following those recommendations, it was agreed that a Special Tribunal be established to deal with the cases emanating from the post election violence.

Mr. Deputy Speaker, Sir, this Bill is coming about because we, as a nation, are accepting that there are inherent weaknesses in our national institutions; that is the investigatory, prosecutorial and adjudication institutions and, therefore, we have not been able, up to now, to deal with the issues arising from the post election violence.

*[Mr. Deputy Speaker left
the Chair]*

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

Therefore, Mr. Temporary Deputy Speaker, Sir, the Bill paves way to setting up a Special Tribunal that will be a three-in-one. Hon. Members will notice that---

(Loud consultations)

May I seek your protection, Mr. Temporary Deputy Speaker, Sir! The consultations are too audible! I cannot even think.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Members! Order! Hon. Members, we are about to begin a serious debate. Would you, please, lower the level of your consultations? That way, the Minister can proceed and conclude her remarks.

Thank you.

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Thank you, Mr. Deputy Speaker, Sir. Under Section 26 of our Constitution, prosecutorial powers are given to the Attorney-General and he alone has the mandate to commence and terminate criminal prosecution. Under Section 60, our High Court has unlimited original jurisdiction.

Mr. Temporary Deputy Speaker, Sir, under the areas in other sections, our other national institutions are given different mandates. It is, therefore, necessary that we introduce this amendment of the Constitution to enable us to set up a Special Tribunal that, for purposes of post election violence, we will be able to investigate, prosecute and also determine cases.

Mr. Temporary Deputy Speaker, Sir, the details of how that will occur will be set up in the Special Statute that will be tabled for debate after the passing of this amendment. It will also set out how the separation of the three functions will occur. But it is necessary that we agree to pass this Bill to enable us to establish that tribunal to completely rid off the country the ghost of election violence which started in the year 1992. It was repeated in 1997 and, finally, came to haunt us in 2007. If we do not act, it means that we are setting a stage where this nation, again, may be engulfed, this time, by violence that can cause total disintegration of the nation.

Mr. Temporary Deputy Speaker, Sir, there are, maybe, people who may worry about how much we can amend our Constitution. I wish to remind hon. Members that we have already passed the necessary laws for an overhaul of the Constitution. We have already accepted, as a nation, that we need to overhaul all our institutions and hence the urgency for a comprehensive constitutional review. But while awaiting that comprehensive review, it is necessary that we make this amendment to pave

way for a simultaneous action.

But while awaiting that comprehensive review, it is necessary that we effect this amendment to pave way for simultaneous actions that will enable us to clear the backlog of post-election, or election violence-related cases that are related to the 2007 General Election.

Mr. Temporary Deputy Speaker, Sir, subsection (2) of the proposed Section 3A provides that for the avoidance of doubt, the provisions of the statute shall not be deemed to be inconsistent with our Constitution. This is to enable the statute to operate without being seen to contradict other provisions of the Constitution. Because it is not necessary, it is not possible to amend all the sections. It is, therefore, necessary to have a clause that makes it quite clear that the operation of the statute shall not be deemed to be in contradiction of the Constitution.

Finally, it is time to take responsibility. We are the Assembly as national leaders of this country, and that is why this is a National Assembly. It is our duty to take responsibility to ensure that we put an end to impunity, to ensure that election violence ends once and for all, and that we hold each other to account whenever such things arise.

It is time for us to take responsibility, knowing that we have been brought here by the over 30 million Kenyans to look after their welfare. There are people who lost loved ones, people who were maimed by whoever maimed them and people who lost all their property. We are opening a door, so those people can ventilate their grievances in a court of law, and where they can have their matters investigated.

It is being said in whispers that So and So are responsible for post-election violence. We are paving way for such people, if unfairly accused, to clear their names. So, we are bringing in a mechanism to help Kenyans resolve whatever issues of a criminal nature arose in the election violence that was witnessed in connection with the 2007 General Election.

I will not go into what the statute will provide, because it will be premature at this stage, but it would be irresponsible for us, as the people entrusted with guiding this country, to start saying that we are looking to the International Criminal Court (ICC) to do our duty, because we are either reluctant or we are not bold enough to stand up and be counted. I would urge hon. Members, even those who may feel that they do not support this Bill, to let their reasons go on record.

Let Kenyans know why you are opposed to this Bill. Let us not try to pre-empt the discussion of this Bill. In this debating Chamber, let Kenyans hear loud and clear that either we want to end impunity, or we want to maintain, or perpetuate impunity by giving frivolous reasons. I would urge hon. Members to support this Bill, which they have, themselves, helped craft and pave way for the very important discussion on the special statute relating to the tribunal. This is your Bill and I put it before the House.

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

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. Now the Bill has been moved; I did not want to interrupt the Mover. According to the traditions of this House, when you are dealing with a Constitutional Bill, usually at the beginning, the Chair will ascertain that we have the two thirds and the debate will go on---

The Temporary Deputy Speaker (Prof. Kaloki): Order, Dr. Khalwale! We have not come to that point. We will come to it! Please proceed, Mr. Orengo, and second the Minister!

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

I have three very important things that I want to say about our decision to debate this Bill and eventually pass it. One, I think the President, together with the Prime Minister, and the parties in the Coalition, have made a very bold step compared to what has happened in the past. In the past, we have had reports which have come to this House and Committees formulated by this House. They have made reports, and I am glad with the intervention which was made by Messrs. Abdikadir and

Namwamba--- It will come out clearly that when this Parliament makes recommendations, it is upon the institutions of Government, or the line Ministries, to make those recommendations a reality.

In the past, we have had many Parliamentary Committees, which have made recommendations in this House and they were adopted by this House, but they have never seen the light of the day, especially on the area of impunity.

I remember that many years ago a report was prepared on the murder of the late J.M. Kariuki which required the Government and the relevant institutions of Government to take certain drastic steps, yet they did not do it. We have had to live with the fact that many years down the line, we have not determined who murdered J.M. Kariuki. Even the murder of the late T.J. Mboya remains unresolved.

I think this bold step that we are taking emphasises the fact that the age of impunity is gone, and the principals have decided to live by their words, and what they have set themselves to do; this Parliament has also decided to do the same. The recommendations required of us to enact a law that will enable a tribunal to be established, and a tribunal is the substance of the Bill which will be discussed after we have passed this Constitutional Bill. To that extent, this drastic decision that the two principals made will see the light of the day.

Mr. Temporary Deputy Speaker, Sir, the second point is that after the Second World War, it was not the Germans, but the victorious powers that set the Nuremburg Trials. Although they were held in Germany, it was not a local tribunal which tried the criminals, or those who were charged with offences which had been committed during the Second World War.

In Tokyo, Japan, a similar tribunal was established, but, again, under the direction of the UN and other agencies. Presently, in Sierra Leone, there is a tribunal, which, again, has been established basically under the auspices of the UN. That is a tribunal which was established by a foreign entity, but has jurisdiction in a sovereign country, which is a demonstration that if all the instruments of government have failed in a particular country--- We know the problems that Sierra Leone has undergone.

I am happy that in Kenya, we have not allowed a foreign institution, or power, to either establish a court through some instrument, for example through the UN Security Council, or through some arrangement, regional or otherwise; we are doing it through this sovereign Parliament, which has the authority to establish the tribunal. To that effect, we were saying in the beginning that we cannot allow ourselves to be guided, or managed by other institutions of government which are not part of the instruments of power in Kenya as a whole.

I believe that since this Bill is basically meant to set the stage for the ordinary Bill of Parliament, which is the Special Tribunal for Kenya Bill, 2009, the Constitutional Bill seeking the amendment of our Constitution is just an enabling Bill, so that for the reasons which Ms. Karua mentioned, we will not fall prey to unconstitutionality by way of what is contemplated in the Special Tribunal for Kenya Bill, 2009 being unconstitutional.

So, it is basically an enabling Constitutional Bill to pave way for the ordinary Bill of Parliament.

Now, under the Accord, the Principals and parties to that Accord, realised that Parliament had a very important role to play in this process. If you look at the Accord's legislation itself, in the Schedule, the last statements that are made in that Accord and signed by the Principals indicate that the rest of the process will now remain in Parliament. Therefore, Parliament is particularly required at this stage to ensure that this Bill sees the light of day.

Mr. Temporary Deputy Speaker, Sir, I am particularly a happy man that the provisions of the Rome Statute, which basically provide for international crimes--- I think it is important to understand international crimes and, especially, international humanitarian law and genocide as understood by international law is quite different from what we have in our statutes. Not every incident of murder, kidnap or rape is in itself an international crime. International crimes have got a very special threshold

and meeting that threshold is not easy. But it is important that Kenya begins in the right direction.

Mr. Temporary Deputy Speaker, Sir, there are many countries now which have domesticated international criminal law and, in fact, enacted the law which recognises the international tribunal, just like we have done under the International Crimes Act which was passed sometime ago. But this tribunal is special; in many ways an *ad hoc* tribunal because it has got a short span of life. It is for a specific period, covering specific offences. It has got a sunset clause which is found in the Constitutional Amendment Bill. In that regard, it will satisfy the need of dealing with issues of impunity and events that arose after the elections in 2007.

For these reasons and many others, I beg to second the Bill.

(Question proposed)

The Assistant Minister for Medical Services (Mr. Mungatana): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to also make by brief contribution to this Bill.

May I start by sending my great respect to the two Principals because they brought the country together at a time when it was apart. What they were doing at that time was to respond to what the ordinary Kenyan citizen wanted to hear. At that time, the Rt. Hon. Prime Minister and His Excellency the President could see the suffering of the people of Kenya outside. In response to that, they signed an agreement that brought peace to this country.

Many Kenyans after that have been asking: "What happened to those people who caused me - if I am a victim - to suffer the way I have suffered? What happens to that person who actually executed the act of violence on my house, children, wife and myself?" Kenyans have not had adequate answers to these questions. What happens to those people who have been mentioned informally and now have succeeded and become "big" people in this Government? There have been no answers to these questions. The ordinary mwananchi would like to see this issue resolved once and for all.

Mr. Temporary Deputy Speaker, Sir, I have listened very carefully to the Mover and Seconder of this Bill. All this Bill is trying to do is to set up a tribunal. This tribunal that is being sought here is given light in the Act, which is the Special Tribunal for Kenya Bill, 2009. I have looked at both these Bills, and feel very strongly and in good conscience that I am totally unable to support this Bill, as it is crafted. I have reasons for that. I want to urge the House not to support this Bill as it is brought before this House.

This Bill is seeking to set up a Special Tribunal. First and foremost, if you look at this tribunal, it is a huge monolith that is going to set up a parallel legal system in this country. If you look at the Bill that has been circulated, we are going to have several offices created. There is going to be the office of the public prosecutor, office of the defender, office of the registrar, a trial chamber, special prosecution court and an appeals chamber. This is a very big parallel structure to the legal system of Kenya that already exists.

Mr. Temporary Deputy Speaker, Sir, this Bill is going to incur a huge cost to the Treasury. If you read at the bottom, on the Memorandum of Objects and Reasons, the enactment of this Bill will occasion additional expenditure to public funds which shall be provided for through the Estimates. Right now, this country is suffering from hunger. If we are going to commit billions of shillings to set up another parallel system and, yet, our people are dying of hunger, is it proper for this House to support that kind of expenditure? I am standing here to say that it is not correct!

Then, as I have said, the Bill is seeking to set up a Special Tribunal. Just a cursory look at what is this Special Tribunal.

Mr. Temporary Deputy Speaker, Sir, the proposed Clause 9 is really offending. This is because it says that we are going to have a trial chamber. What is the jurisdiction of that trial chamber? The Trial Chamber's jurisdiction is to try people who bear greatest responsibility for crimes falling within

the jurisdiction of the tribunal.

Mr. Temporary Deputy Speaker, Sir, it also sets up the special magistrates court. What is their mandate? They are going to try the ordinary crimes that are contemplated under clauses 11, 12 and 13. So, we are already contemplating the setting up of a special court for those people who committed bigger crimes. We are going to have another court for the ordinary *mwananchi* who was sent to go and actualise the ideas of these bigger crime suspects. The question I am asking myself as I stand here is: "Is it really right to have two special courts, one for the big people who contemplated, funded and made plans for these things to happen and another for the ordinary person?" Are we saying that there is going to be a special procedure for the big people and a different procedure for the small people?

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Mungatana!

The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to anticipate debate on the actual Bill? We also have our opinion about that. What is before the House is the Constitution of Kenya (Amendment) Bill. However, in my view, the hon. Member is already trying to create doubts and fears in the minds of other hon. Members and the citizenry about the Bill itself. He is not remembering that a Constitutional Bill on the Floor is not amendable. However, the statute Bill is amendable and we can address his fears when we come to it. Is he in order?

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, if you read the purpose of this Bill, it says--- I would invite the hon. Member to listen. It says:-

"The Bill proposed to introduce a new Section 3A to anchor the Statute establishing the Special Tribunal for Kenya in the Constitution in order to insulate the tribunal against objections on grounds of unconstitutionality".

This Bill is all about the Special Tribunal. We cannot debate this Bill in the air. We have to debate it with the Special Tribunal in mind. Therefore, I think the hon. Member is out of order.

Mr. Temporary Deputy Speaker, Sir, if this House passes this Bill, it is entrenching a system where we have special procedure for those who are going to be eminent people or suspects and a different procedure for the ordinary. That is unacceptable to some of us.

Mr. Temporary Deputy Speaker, Sir, in Clause 35(8), it says very clearly that:-

"The names of persons under investigations shall not be made public or otherwise disclosed to persons other than those directly involved in the investigations before the indictment has been made".

Mr. Temporary Deputy Speaker, Sir, if you look at this whole, there is an attempt---

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Mungatana!

Mr. Abdikadir: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to persist to discuss a Bill that is not before the House? He has talked about Section 35. There is absolutely no Section 35 in the Bill before the House.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Mungatana, stick to the debate before us!

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, I am sticking to the debate. The Chair has already ruled that it is impossible to debate this Constitution of Kenya (Amendment) Bill without talking about it because it is seeking to establish the Special Tribunal.

The Temporary Deputy Speaker (Prof. Kaloki): Order! Mr. Mungatana, stick to the debate before us!

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, I am saying that the Special Tribunal is going not only to be costly to the people of Kenya but is also not a priority. It is also going to be a Special Tribunal that sets up systems that are

really discriminatory. I was just giving an example. For example, the people charged with higher crimes, when they are under investigations, nobody is allowed to know who is being investigated. In my understanding, this is insulating particular individuals who are holding big positions in this Government. We have to say the truth. It not proper! The people of Kenya are looking at us today as we are talking and asking themselves: "Is a Minister who is under investigations going to continue holding the flag?"

Mr. Temporary Deputy Speaker, Sir, from the reading on the establishment of this Special Tribunal, I see there is no clear provision for people who are mentioned and are under investigations to relinquish their positions. I have argued and continue to argue that top public officials including the Criminal Investigations Officers (CIOs) and the police are called to be charged, under this Special Tribunal and, you are not told who is under investigations--- So this person is going into investigation without the---

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): On a point of order, Mr. Temporary Deputy Speaker, Sir. It is not possible for anybody listening to the debate to understand that it is only a constitutional amendment before the House. The reason the rules of the House forbid anticipation of debate is that people are not able to follow when a matter has not been tabled. If you look at the Bill, it is merely asking for a setting up of a Special Tribunal. Any argument about the structure of that Special Tribunal can only be debated when the Bill has been tabled before the House. Is it in order for my friend and Secretary-General of NARC(K) to anticipate debate?

(Applause)

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Mungatana, you do not have two options! You have to stick to the debate. You cannot anticipate debate and that has already been made clear to you!

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, all I am saying is that there is a Special Tribunal which is being set up. What is this Special Tribunal? This Bill has been published. It is in the minds of Kenyans. It is in the minds of Members of Parliament. We cannot talk about a house that we have never seen! Are we setting it up or not? That is the question.

Mr. Temporary Deputy Speaker, Sir, I am saying this House is structurally bad. This House is terrible. This House is making provisions that are negative. That is what I am saying. I am not out of order.

Mr. Temporary Deputy Speaker, Sir, I do not think my chairperson is really in order to say that I am out of order.

(Laughter)

The Temporary Deputy Speaker (Prof. Kaloki): Order! Mr. Mungatana, stick to the Bill that you are holding and its content.

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, in fact, I am holding this Bill.

Mr. Temporary Deputy Speaker, Sir, these acts of genocide, gross violations of human rights, crimes against humanity and any other crimes are specified in the statute, whichever that statute is, it is that statute that you are saying I should not mention - the Special Tribunal statute. These crimes have affected many people in Kenya.

If this Parliament should take the first step to make the mistake of entrenching this thing into

the Constitution, on a very simple majority in the next session, we are going to entrench a house or a Special Tribunal that is structurally unsound. Kenyans are watching! They do not want to see people who want to insulate themselves from being punished. They want to see massive resignations. They want to see people in public office who failed to take action when these things were hot getting out of those offices. I thank the President and the Prime Minister for the work they have done. However, they have not been bold enough to clean the Cabinet and other public offices. There are public officers who ought not to be holding those positions.

In the proposed Special Tribunal, they are saying that investigations should take place and nobody should know who is being investigated. That is wrong. I am urging this House that at the very minimal, let us deny the forum to entrench this. We do not need this kind of law right now. At the very minimal, we should deny this House the quorum. Otherwise, those who come to the House should vote against this Constitution of Kenya (Amendment) Bill.

Mr. Temporary Deputy Speaker, Sir, we have had too many constitutional amendments in this country. Every student of constitutional law knows that. We all know that we have mutilated this Constitution continually. It is now time for us to make a new Constitution. The thrust in this country right now should be towards making a new Constitution and not towards further mutilation of this Constitution.

I disagree that right now we need to spend billions of shillings to set up this tribunal. I want to agree with anyone who will tell me that we need to spend money on setting up structures that will ensure agricultural and food sustainability.

I urge my fellow legislators to agree with me that it is an exercise in futility to put it in this Constitution that we are going to set up a tribunal and yet in the end, there will be no conviction or nothing will happen in this country. We have many examples. The Goldenberg Inquiry is a good example. People were taken to court and yet nothing happened to them, especially the mighty and the powerful. Why should we go through such an exercise? I have a very clear conscience in stating in this House today that this is a plan done very carefully to protect some selected few. Kenyans are watching! They are watching how each one of us is going to vote or deny the quorum to vote. We should not pass this kind of Constitution. I speak from my heart and I am talking to all hon. Members that time has come for us to be honest. The history of this country is full of impunity. There is no promise here that if we pass this legislation any different--

(Loud consultations)

Mr. Temporary Deputy Speaker, Sir, I need your protection. There is too much laughing behind me.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Members!

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, the point I am trying to make in this matter is very simple. In the past, a lot of money has been spent. In this Parliament and in the previous one, many questions have been asked as to how much money was spent during the Goldenberg Inquiry. It has been asked how much money was paid to those special prosecutors. This has been very embarrassing to the Government. Let the Government not repeat the same mistake. They are going to spend billions of shillings and yet the real crooks will not be arrested. They will walk free. This House should stand up strongly and declare that it will not be used to justify the spending of more money.

With regard to the experts who will come over, the special prosecutor is somebody from abroad and so are the people who will man the registry. This is a house we want to build with foreign materials. We are going to import these materials from some other countries. It is a very expensive house we are going to build. There is no point of building that house. We should not use this

Parliament to pass this kind of legislation. It is a futile legislation and I urge hon. Members to reject it in totality. We should not give the necessary quorum to pass this legislation. I know that the people of Garsen do not want money to be spend on this thing. They want money to be spend on the food they require now. I know that the people in Coast Province, Nairobi and elsewhere require money to be spend where it is needed and not to feed other foreign lawyers. We need to agree in this House that we shall not pass this legislation.

Mr. Temporary Deputy Speaker, Sir, I beg to oppose.

The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, let me begin by asking hon. Members to look at the Bill itself so that my points can be clear. What is it that we are asking this august House to do?

We are saying that the Constitution be amended by creating a section which reads as follows: "Parliament may - (the word is "may" and so I accept the point of view of those who may differ) - by a statute of Parliament, and notwithstanding any other provision of this Constitution, establish a Special Tribunal with exclusive jurisdiction in accordance with the statute to investigate, prosecute and determine cases against persons responsible for:

- (a) genocide, gross violations of human rights, crimes against humanity; and,
- (b) such other crimes as may be specified in the statutes committed in Kenya in connection with the December 2007 General Election."

It is my view that His Excellency the President should be here moving this Bill and the Rt. Hon. Prime Minister should be here seconding it. This is because the only dispute is that all hon. Members in this Chamber were elected in 2007 and the offences I have described do not pertain to particular constituencies. The offences that we seek to enable the Special Tribunal to do are limited to the December, 2007 General Election - a dispute that arose between the President and the Prime Minister and which led us to be here. I, therefore, say, and, of course, you can contradict me, this is about the Grand Coalition. That brings me to the second point. I am sure the country is watching and listening.

We are demonstrating the same selfishness. I use that word knowing that you might rule that it is unparliamentary, but we are demonstrating the same selfishness that politicians in Kenya, since Independence have been identified with. Why do I say that? We came here after the National Accord was signed on 28th February, 2008. We caused a constitutional amendment to create offices for the Prime Minister and two deputies. At that point, nobody talked about money, with all due respect to Garsen and Mbooni. Nobody talked about money. The President, the Prime Minister and his two deputies are right now enjoying the perks of those offices. However, as I speak with humility, Internally Displaced Persons (IDPs) are still with us.

Mr. Temporary Deputy Speaker, Sir, today, in one of the dailies, there is a photograph of a tent belonging to a Kenyan in an IDP camp. We are told that he is missing.

You can see the flap of that tent. He is missing because when the tanker rolled, he thought he could go there, perhaps, collect a little super petrol, sell it and make some money. However, the President and Prime Minister, who benefitted from the National Accord by bringing peace in this country are themselves failing in leadership. They have failed to lead this House and the country in passing this law that will enable the citizens of this country, including those whose homes were burnt, children who are unable to go to school and women who were raped--- We are not saying that any particular individual has committed genocide or gross violation of human rights. But we are setting up a Special Tribunal to investigate in Kenyan soil.

My very good learned friend is raising a point. He is saying: "Why should we spend so much money?" But has it occurred to the country that the law we are going to propose in front of you protects the victims of the offences that occurred in January to March last year? The victims of

genocide, gross violations of human rights and crimes against humanity! The perpetrators may have enough money to buy first class air tickets to the Hague.

The perpetrators have a right to go and eat in Savoy in London and take the train to the Hague in the morning, to stand for trial. What about the IDP citizen who is in camp? What opportunity will he have to give evidence? What opportunity will he have to be protected and to have a sense that he belongs to this country?

My dear hon. Members, you have been asked to deny quorum to this very important Bill. I would prefer that you give us quorum, but refuse to pass the law. I would prefer that you come here and hear us out, and we tell you these things. The law that we are creating goes beyond any law that this country has created so far. I will go further and say this: As a matter of fact, Kenya is already a signatory to the ICC Charter. Kenya was honoured by the rest of the world barely two weeks ago, by being given a lady as a judge. She is Right Honourable Justice Alouch. She is now a Member of the ICC. We are now saying - because it is going to happen - secret envelope or otherwise: "No! No! Let us bury our head in the sand. Let our fellow Kenyans go to the Hague!" You are asking Justice Alouch to be waiting for Kenyans to try them. That is only done, as Right hon. Chairman of the Department Committee on Administration of Justice and Legal Affairs has said, when a State is unwilling, unable or incapable of prosecuting its own citizens. The answer for that again--- Do not bash me for using unparliamentary language because it is not. That means a State has failed.

Ask yourself my good friends: "If this State has failed, what are you doing sitting in this Chamber?" If it has failed, why did you get a payslip at the end of last month? If it has failed, why is His Excellency the President, the Vice-President and the Prime Minister running around with sirens clearing traffic even before I clear it? If it has failed, why is the Chief Justice earning a salary? If it has failed, why is that gallery of media sitting there taking notes of what we are saying? Kenya has not failed. What has failed is the leadership of Kenya. My challenge is to all of us, and I say so without fear: "This is a Bill which His Excellency the President and the Prime Minister should come and sit here, sweat with us and listen to us while we tell them: "Create the atmosphere and organs for enabling the Kenyan victims of the violence of last year to go to a Kenyan tribunal, speak the language they understand, give evidence and say: "Mutula did "A", "B", "C" and "D" to me.

There are fears that we are putting too many international people in it. But the reverse side of this is this: Like the Chinese say: "Whenever you see the description of the word "danger", it also means opportunity."

The fact that we have put in foreigners here is to reassure you, whoever you are because I do not know you. As a Senior Counsel, I will never condemn a Kenyan before he is heard.

Mr. Temporary Deputy Speaker, Sir, I want to reassure you that you will be tried by an independent tribunal. Again, I want to challenge the media itself. I support the freedom of the media but they are failing us. Frequency Modulation (FM) stations are full of debate bashing us that if we establish this it will never see the light of day since there will be manipulation. In fact, there is a phrase going on which is called "Do not be vague; go for Hague". As you know, a Hague is normally a whisky sought from Scotland. The danger is there and again the challenge is to the leadership of the Grand Coalition.

Mr. Temporary Deputy Speaker, Sir, if we fail to pass the entrenchment of this tribunal, we will be paying homage to those mandarins of impunity that have penetrated the system of Kenya from beginning to the end that will enable Members to even react to me and say: "Mutula, the state has failed." Now, our opportunity is here. I am looking at *manyangas*; young people who have been blessed by getting elected by Kenyans to this hon. House. Young people in Kenya are watching because it is them who were influenced to take pangas, create roadblocks, burn houses and commit some of these offences.

The fact of the matter is that it is them we are talking to. If we say we cannot set up this here,

we are saying that a lot of them will, in fact, be arrested, investigated and taken to the Hague. They do not know what Hague means unless it is "Do not be vague; go for Hague" which is a weak case.

An hon. Member: *Watapanda ndege!*

The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo): *Watapanda ndege lakini itanunuliwa na nani?* This is an extremely serious problem and I want to ask that as politicians and leaders, we show leadership to the country. We should rise to the occasion. We understand that our citizens are living in camps for the Internally Displaced Persons (IDPs). We should entrench the creation of this. We should bite the bullet and say, we are young. Hon. Imanyara is my junior in law but a very able man. He is a very young man politically and everything else. He has a great future and all of them here including the Chair of the Legal Committee.

This is the time to go and lobby Members of Parliament and Kenyans. Bring everybody here. This gallery ought to be full watching us amending the Constitution so that we tell Kenyans: "Never again will you touch me because of casting my ballot." That is my next point. Never again will you torch a church. Never again are we going to remove a child from the back of a mother and throw it into a burning church because if you do, the Kenyan law will drop on you like a tonne of bricks or shall we say, like a tonne of potatoes which come from the areas where the violence was?

Mr. Temporary Deputy Speaker, Sir, this is because if we allow the Hague to be the one to do so--- I want to remind you, if you allow me to do so because I should not--- Kenya has been famous as an island of peace which is respected for one thing and one thing only, which is regular elections. We have never had problems or military coups or power by force. It is true we have rigged elections but our opportunity has now come to say: "Not again". We want to say to the young Kenyans, "whenever you cast a ballot, the procedure for challenging the outcome of that election lies elsewhere and not on my body."

Mr. Temporary Deputy Speaker, Sir, let me remind the country that photograph of December 2007, which was on television, of a young man in Naivasha being extracted from a moving *matatu* and chopped to death. How will that person who died go to the Hague? I have been told about air tickets but is that the spirit? Is he going to the Hague? Who will be able to speak for him? Who will speak by him and who will stand by him? Therefore, I want as a country, to respect our sovereignty by acknowledging that we are signatories to the International Criminal Court (ICC) Charter.

As signatories, we have also been privileged to contribute a judge there. Let the citizens of other failed states go to the Hague. "Do not be vague, go for the Hague." In Kenya, we will say, you can be vague because we will do it in Kenya.

Mr. Temporary Deputy Speaker, Sir, the absence of light is darkness. This amendment to this Constitution is an attempt by this country to produce light. Between December 2007 and March 2008, there was darkness in Kenya. Blood was flowing on the streets. Even the churches were silent. They did not even know how to pray any more because people were killing each other. Some of them have said that they were encouraging their congregations to participate in the demonstrations.

We have an opportunity to create light for Kenya. We have the privilege in the entire world to have produced the most powerful man in the face of the earth. President Obama carries the genes of this wonderful country. His election by the American people is a confirmation that we have sufficient human talent and resources to man the tribunal that we are establishing.

Mr. Temporary Deputy Speaker, Sir, in so far as we have regular elections, it is guaranteed that there will always be disputes arising from elections. The purpose of this amendment is to say that we will not have manipulation of elections and even if it occurs, that will be settled through organs that respect law and order, are modern and interesting.

I want to address the issue of the cost. Mr. Mungatana, a man I hold with a lot of respect notwithstanding the fact that he is like me, the Secretary-General of a political party, but my party is bigger and better organised--- The fact of the matter---

The Assistant Minister for Medical Services (Mr. Mungatana): On a point of order, Mr. Deputy Speaker, Sir. Is Mr. M. Kilonzo in order to suggest that his party is better organised when, in fact, we know in their purported general meeting, they only held elections for a few people and the rest were to be chosen at the pleasure of the party leader? Is that better organisation?

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Mungatana! Mr. M. Kilonzo, do not respond to that. Could you, please, proceed.

The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, with your very kind permission, I beg to differ. Mr. Mungatana would not be an Assistant Minister, if my party did not agree to join President Kibaki in a coalition Government. That is how we brought stability to this country. We went into that coalition because we are strong, well organised and good.

Mr. Deputy Speaker: Proceed, Mr. M. Kilonzo!

The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, we are trying to bring light in a situation where we faced darkness. I want to very humbly persuade this Parliament that in addition to setting up the tribunal, under Clause 3(a)(a) and (b), we are also, for the first time, in fact, expressly creating the offences of genocide. This is a very vital point because it will escape the attention of the rest of the country that the offence of genocide, gross violation of human rights---

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

The Temporary Deputy Speaker (Prof. Kaloki): Order, Dr. Eseli! Mr. M. Kilonzo, would you proceed and conclude your remarks?

The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo): Thank you, Mr. Temporary Deputy Speaker, Sir. What am I saying? A careful examination of our penal code and all our existing laws show clearly that these offences of genocide, gross violations of human rights and crimes against humanity have only been brought to Kenya through the ICC Treaty. This time, forget about the tribunal because you can amend it. I want to reassure my fellow Secretary-General that he can amend that statute and create whatever tribunal he wants. You can eliminate the special jurisdiction. You can belittle it, you can even remove the foreigners. You have that right as Parliament.

However, you do not have a right, as Parliament, to deny Kenyans the right to a law establishing offences against genocide or against gross violations of human rights or crimes against humanity. If you deny Kenyans that right, you are telling them to go international, to seek protection. However, they do not have the capacity. They do not have the wealth we have. They do not have the salaries we earn, so that they can hire the sort of lawyers who understand these offences. We are giving an opportunity to the country to know that whoever you are, whether you are a child or a woman, if you are violated, that offence exists in the Constitution, and that a tribunal can be set up to investigate and punish the perpetrator.

If the House refuses to pass this law, that is the consequence. We will be entrenching darkness. We will not be entrenching light. We will not be establishing the concept of best international practice in elections.

Therefore, I beg to support and seek to persuade hon. Members to support this Bill
Thank you.

Mr. Jirongo: Mr. Temporary Deputy Speaker, Sir, on the outset, I would like to take this opportunity to clearly state that I am one of the few people who are against the proposed amendment to the Constitution, for the following reasons: One, I have spoken about this Report for a very long time. I have said that this country, the way it is, does not have the capacity to handle the Waki Report, particularly this section of the Report.

This country, for a long time, has come up with proposals, knowing very well that we have a security system that has failed us. When Kenyans were being massacred, President Kibaki was the

Commander-in-Chief of the Armed Forces of the Republic of Kenya. He had all the security forces under his command, but Kenyans were murdered, while he watched. When Kenyans were being shot by the police, one of the principal partners of the Grand Coalition Government was by then not in the Government.

Mr. Temporary Deputy Speaker, Sir, my view was that when the two got together, they realised that this country does not have a functional security system. I thought the first thing they would do was to ensure that there was a serious reform in our security network, so that what occurred during the post-election violence does not occur again in this country. But what happened? When all of them were sworn in office--- That is why I agree with Mr. M. Kilonzo to a certain extent, they forgot that Mr. Kibaki's supporters were massacred, and that Mr. Raila's supporters were shot. None of them thought of changing the security system in this country.

What has changed to date? Is there something that has changed? Those who perpetrated violence are in the Government. There is rampant corruption in this country today. One wonders why corruption is happening at such a high rate. In my view, the perpetrators of post-election violence, who are in the Government, are busy building war chest to do two things:

Firstly, to make sure that they defeat any tribunal that will be set up in this country. Secondly, to make sure that they are ready to take over power, again, by paying young people.

Mr. Temporary Deputy Speaker, Sir, why would we, as a House, if we are sincere with ourselves, believe that anything has changed in this country, and that this is not another Goldenberg scandal? Why would we believe that we are not just going to waste public funds to pretend that we are setting up a tribunal when, genuinely, we know that there is nothing we are doing? We are clear even in our documents that those who were involved will not be touched, and that their identity will be kept secret, so that they can continue looting and building further war chest, to pay youth to kill Kenyans whenever you try to bring him to justice.

I strongly believe that the Waki Report is correct, apart from this section which says that we should have the tribunal in our country. Our interest is not in the proposals of the magistrates courts and the other issues. Our interest is in the leaders. Who are these people who caused pain to this country? Suppose the investigations point, God forbid, at His Excellency the President, do you want to tell me that this country has the capacity to try him? Suppose the investigation points at the Prime Minister, do you want to convince the Republic of Kenya that we have the capacity to try him?

Mr. Temporary Deputy Speaker, Sir, I strongly believe that this is another Goldenberg scandal. We can all see it. We can see the hurry they have in looting the country from morning to evening in preparation to subvert and defeat that tribunal!

(Applause)

It is futile for us to pretend that we do not live in this country and we do not understand what is going on in this country!

Mr. Temporary Deputy Speaker, Sir, let all of us be bailed out by our conscience. Do we correctly want to put an institution in place to continue fleecing Kenyans? If we are genuine and we want those people to be punished, we should allow them to go. That way they will not be able to mobilise their supporters. They will not be able to pay them with the money that they are looting the country today. Justice shall come to prevail!

(Applause)

Mr. Temporary Deputy Speaker, Sir, the creation of a tribunal in Kenya is possibly going to be the first of its kind. That tribunal is being set up for the small people. This country has a history of

punishing the small people when the big ones have committed the crimes!

(Applause)

We are putting up a tribunal for the young man who blocked the road. We are not putting up a tribunal for the person who paid the people who blocked the road!

(Applause)

Mr. Temporary Deputy Speaker, Sir, this country has moved to a level where those in the Government have the capacity to blackmail the Government! If I am wrong, tell me why we still have Internally Displaced Persons (IDPs) in this country? Is that not blackmail? Do you want to tell us that anything has changed?

Mr. Temporary Deputy Speaker, Sir, I would urge the Minister for Justice, National Cohesion and Constitutional Affairs to withdraw this amendment to the Constitution and let those people go to the Hague - if her conscience pricks her correctly; if she genuinely believes that those people should be punished!

Mr. Temporary Deputy Speaker, Sir, I beg to oppose.

(Applause)

Mr. Mwathi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the chance to contribute to this Motion. I want to say in no uncertain terms that I bore the brunt of what happened after the elections! That is because I had so many IDPs who were stationed at Limuru. It takes somebody who has had the trouble to look after those IDPs to know what it means!

In that connection, Mr. Temporary Deputy Speaker, Sir, I am hoping to persuade the House that we should think very carefully when we are enacting this amendment to the Constitution.

(Applause)

Mr. Temporary Deputy Speaker, Sir, if you have not had the pain or if you have not gone through what the IDPs are facing, you are not able to know the pain that those people have. We want justice for our people! We have looked at so many commissions that have been set up in this country. I want to know the results of any one of them to the extent that, now, we are able to borrow from it and say: "In this country, we are able to get justice for everybody!"

(Applause)

Mr. Temporary Deputy Speaker, Sir, I am looking at this amendment and I am wondering whether we have any protection for the witnesses who will come to testify in the tribunal. I am remembering that because, sometimes, we have the habit of forgetting history. What happened in 1990 when one of the Ministers in the Government was killed? After that, a Commission of Inquiry was established and, slowly by slowly, all the witnesses were extinguished! All of them! Today, we want to bring this statute and create the tribunal. We say in the statute that we do not have any clause that is going to protect those witnesses!

Mr. Temporary Deputy Speaker, Sir, I wish to persuade hon. Members to look at our history. Let us prove people wrong this time by ensuring that the statute that we will put in place, other than this one, is going to ensure that those people who have committed atrocities are punished, so that it

becomes an example of what not to do for those who may intend to do the same in 2012. I oppose this amendment to the Constitution.

(Applause)

I know that the Minister stood up and said that we are playing to the Gallery. I do not want to play because I do not play most of the time, but I am talking on a very serious issue. It is not common for me to talk with such finality as I have done. I have regarded what our people have been saying. They are losing faith in what we are just about to do, because the previous ones did not have a chance to see the light of the day.

(Applause)

I will be counted as one of the people, when it gets to voting, who will vote against this amendment, so that the final decision to take those people to the Hague, or wherever it will be, will arise from the recommendations of the Waki Commission, not here!

For that reason, I oppose this Bill very strongly.

Mrs. Shabesh: Mr. Temporary Deputy Speaker, Sir, I want, from the outset, to support this Bill. Why I am supporting this Motion is very simple for me. If this Government was sincere about this, this House would be full. We know the capability of this Government, being a Government of National Unity, or a Coalition, or whatever we want to call it. I am supporting it because women, I will speak about women only, are only protected by the Constitution in this country. Men politicians have never protected women. I am telling this House that the ground has shifted. I have no idea whom we think we are speaking to. But if we think Kenyans are listening to us, and to any sensible thing that we are saying, especially women, we need to know the ground has shifted. For me the Constitution is the law that protects us. For this Special Tribunal to be entrenched in the Constitution, that tells me that we are protecting it from interference, the very interference we are speaking about here. It makes sense that it must be entrenched in the Constitution. We keep on speaking about the Hague. I am privileged to sit in the Pan African Parliament (PAP) and on its Committee on International Relations. When this issue of the Waki Report came up, we were in a Session of the PAP. We invited the Prosecutor of the International Criminal Court (ICC) to our Committee to speak on the issue of Sudan, and I took time to sit down with him and asked his opinion on Kenya. His advice was very simple: Do not even for one minute, if you have any other route, want to go the route of the Hague. Why? Because we speak about the Hague as if we are speaking about Milimani Law Courts. We speak about the Hague as if we understand what its Statute's implications would be to the sovereignty of this country; we speak about it as if we know the way other countries would look at us, as a nation, and even as if we know what it would mean for the stability of this Government. What is more important for me is for the country to remain peaceful. I see no reason why, if people were genuine, you would tell me that going to the Hague can bring peace to this country, unless you want us to continue dying. I see no way in which you can be sincere about the Hague, if we want sincerity in this country.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mrs. Shabesh! It is now 6.30 p.m. and you will have 27 minutes tomorrow to continue with your contribution.

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 4th

February, 2009, at 9.00 a.m.

The House rose at 6.30 p.m.