

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 5th February, 2009

The House met at 2.30 p.m

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table of the House:-

On behalf of the Constituencies Development Board and in exercising the authority conferred to it, pursuant to Section 7(1) of the CDF Amendment Act 2007, I wish to table the name and curriculum vitae of Mrs. Agnes Odhiambo for appointment as the new CDF Board Chief Executive Officer.

*(By the Minister of State for
Planning, National Development
and Vision 2030 (Mr. Oparanya))*

QUESTIONS BY PRIVATE NOTICE

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 the 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?

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The ex-serviceman, Senior Private Moses Kiyier was charged under Section 68 of the Armed Forces Act for an offence of stealing 220 litres of diesel worth Kshs14,806.00. During the trial, the ex-serviceman admitted that he had actually stolen and sold ten litres of diesel. Consequently, he was dismissed.

(b) The appeal procedure available for Ex-Private Kiyier is by filing a suit at the High Court of Kenya for independent hearing of this case for determination. The Ministry headquarters has not yet received any appeal from the ex-serviceman. If we did, the direct request by the ex-serviceman will not be admissible by the Ministry of Defence. This is because it is a right only available to serving

personnel under Section 226 of the Armed Forces Act. Therefore, the question of delay does not arise.

(c) The circumstances of his dismissal and the seriousness of the offence committed do not warrant his consideration for clemency. Further, reinstating this ex-serviceman will not be in the interest of good order and discipline of our armed forces.

I would like to inform my brother, hon. Shakeel, that the Military Disciplinary Law is rigid for offence of this nature. It would, therefore, not be lawful to reinstate the ex-serviceman.

Mr. Shakeel: Thank you, Mr. Deputy Speaker, Sir. I want to thank the Assistant Minister for a very comprehensive answer. I think there is nothing more to say. The Military Disciplinary Law has stated everything. I have nothing more to say.

Thank you very much for your reply.

IMPOSITION OF OIL PRICE CONTROLS/REGULATIONS

Dr. Eseli: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Energy the following Question by Private Notice.

(a) Given that international oil prices have fallen from US\$140 to US\$40 over the past three months, why have the local fuel prices remained high despite the Minister's promise to institute price controls?

(b) What urgent measures is the Ministry taking to ensure that farmers access reasonably priced fuel for land preparation to avoid another food shortfall next year?

(c) When will the Minister effect the controls/regulations?

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

(a) It is true that the international crude oil prices have fallen from US\$140 to US\$40 per barrel for the last six months and not three months as indicated by the hon. Member for Kimilili. The price of murban at the loading port as set by the Abu Dhabi National Oil Company has fallen from US\$137.37 per barrel in July 2008 to US\$42.10 per barrel in December 2008. Murban crude oil is the name of crude oil we use in this country. The average pump prices also within the same period in Nairobi have fallen from Kshs110 per litre for super petrol and Kshs105.00 litre for diesel to the current average level of Kshs75.00 per litre for super petrol and Kshs70 per litre for diesel, respectively.

While the price of crude oil has decreased by 69.3 per cent, the prices of both super petrol and diesel have decreased by 43.8 per cent and 41.2 per cent, respectively. Over the same period, the average exchange rate has deteriorated by 18.2 per cent from Kshs66.00 per Dollar to Kshs78.00 per Dollar. I use the Dollar because we buy crude oil in Dollars. Therefore, while the oil marketing companies have reduced the posted pump prices, the deterioration of the exchange rate has reduced the magnitude of the decrease compared to the decrease in the price of crude oil.

(b) The role of the Ministry is to ensure a fair play ground for all the petroleum products traders. This involves ensuring security of supply of petroleum products at competitive prices. The Ministry of Energy will, therefore, endeavour to ensure availability of petroleum products to meet the farmers' demands. However, I wish to advise farmers to form co-operative societies so that they can access or directly procure cheap petroleum products.

(c) The Retail Pump Price of Petroleum Products Regulation was published by the Energy Regulatory Commission (ERC) in the Kenya Gazette on 14th November, 2008 for the mandatory 14 days. At the expiry of the period on 24th December, 2008, a total of 31 submissions have been received from oil companies, retail station dealers and individuals. The submissions have been

consolidated and are undergoing in-house review with the aim of convening a stakeholders' workshop in mid-February. The target for ERC is to present the recommendations to us by the end of February for gazetting and implementation. However, given that oil prices have substantially fallen, I do not intend to introduce price controls at the moment.

Dr. Eseli: Thank you, Mr. Deputy Speaker, Sir. I thank the Assistant Minister for the answer. I would like some clarifications from it. In part "a" of your Question, you tend to suggest that the prices of crude oil have reduced by about 69.3 per cent. However, on a quick calculation, there is a reduction of over 70 per cent on the prices of crude oil. You have also advised farmers to form cooperative societies to access or procure cheap petroleum products. What period of time will farmers require to form co-operative societies, so that they can access cheaper fuel so that we do not have a famine next year? In any case, is the Government working at cross-purposes? Since the Ministry of Agriculture is busy trying to get cheaper fertilizers, I would urge the Ministry of Energy to reduce fuel prices, so that we reduce the cost of food production in the country.

With regard to part "c" of the Question, what is the role of the ECR since we are told that they are the ones who advise on fuel controls?

Eng. M.M. Mahamud: Mr. Deputy Speaker, Sir, I have taken time to analyze the prices of crude oil and fuel prices in Kenya. However, it is important to take into account the fact that in July 2008, crude oil prices were at US\$137.335. At that time, the US Dollar was at an exchange rate of Kshs60.00. One barrel of oil is 159 litres. Therefore, the price of crude oil per litre was Kshs57.03, at that time. In the same reasoning, in December, 2008, the price of crude oil was Kshs42.1 per barrel. The exchange rate was Kshs71.8 in December. If you use that conversion, you will see that the price of crude oil will be Kshs20.65 per litre.

Mr. Deputy Speaker, Sir, the pump price of petrol in December was Kshs110. Out of this, Kshs30 was tax. So, effectively, the price is Kshs80. The current price is Kshs75. If you deduct the Kshs30 tax from this, you will remain with Kshs85. So, the price of petrol per litre without tax is Kshs35. If you look at the bottom price of crude oil per litre, which was Kshs65 and Kshs20 in December, 2008, you will find that it is Kshs36. The bottom price for the same period for refined oil and the pump price was Kshs35. This is the same. So, if you look at it, you will see that the price of fuel has come down substantially.

With regard to the issue of farmers, I said the Ministry's role is to create a fair playing ground for everybody. We will not be able to have specific fuel prices for farmers in this country because fuel is imported and marketed by oil marketers. But I have said if we have to think of co-operative societies, if they are a large group, they can order for large volumes of fuels and get discounts from the oil suppliers. If farmers form co-operative societies they will benefit from large volumes.

The NEC is the major advisory board to the Government of Kenya in terms of economic development. It can advise the Government in respect of fuel price controls. From what we are seeing today, there are no indications to introduce price controls. However, should the situation change, ERC will still maintain these prices and we will be able to revert to the issue of price controls where it is appropriate.

Mr. Chanzu: Mr. Deputy Speaker, Sir, what the Assistant Minister, together with his Minister, Mr. Murungi, and the other Assistant Minister, bring to us here every time is all cosmetic. You remember that I called you on Tuesday and told you that I could not travel from Vihiga to come here, because there was no fuel. What are they doing to ensure that we have enough fuel in this country at affordable prices?

Eng. M.M. Mahamud: Mr. Deputy Speaker, Sir, I agree with the hon. Member that there have been a shortage of fuel at various pump stations in the last two days. However, as of today, I think the shortage is being created by the oil companies themselves. There is enough oil in Mombasa. There is enough fuel in our various depots within this city and other places. We have asked the

companies to make sure that there is enough fuel for our people. However, we cannot force them to collect fuel. The Minister explained yesterday that there was a slight delay due to the reasons he emulated. I want to assure hon. Members that the issue of adequate supply of fuel in the country is being addressed by the Ministry. We are monitoring the situation every morning. This morning we sent a team to assess what is available within the system. I have also explained the issue of affordability. I said that when we are considering the price of crude oil verses pump prices, we should also take into account what I mentioned. I have mentioned that the price of crude oil is about Kshs36. If you add a tax of Kshs30, you get about Kshs70. After all, we get fuel through tenders. When people are tendering, they compete. They only get tender for price and a small premium. So, I do not think that the prices are unreasonable.

Mr. Lekuton: Mr. Deputy Speaker, Sir, the issue of fuel in this country is very critical. We know very well that when the world oil prices come down, this country sees a very small decrease in pump prices. We know that the oil companies in this country are cartels. The job of this Ministry is to protect the citizens of this country. I think they are failing in that duty. Has the Ministry punished any oil company which has created an artificial shortage?

Eng. M.M. Mahamud: Mr. Deputy Speaker, Sir, we have not. We are asking the industry to regulate itself. In fact, this morning we had a meeting with the oil marketers. We are trying to find out who is creating the shortage of fuel in this country. Should they be found, then they will be dealt with accordingly within the industry.

Dr. Eseli: Mr. Deputy Speaker, Sir, could the Assistant Minister inform this House what are the reasons for the wide price differentials between fuel prices in Nairobi and upcountry and yet, using the pipeline, it is supposed to reduce the differentials? The fact that we are assured of enough fuel in the depots in Kisumu, Eldoret and Nakuru, how come the fuel is not reaching the users? Is it because the fuel system is filled with fuel from Triton which it has been unable to offload because it bought it at a very high price and now it is unable to sell it at a low price because the losses would be astronomical? That fuel is filling up the storage capacity of Kenya Pipeline Corporation, so that they do not have any other fuel to give to Kenyans. Is that the reason we are having the shortage of fuel in this country?

Eng. M.M. Mahamud: Mr. Deputy Speaker, Sir, with regard to the first question as to why fuel is less expensive in certain petrol stations upcountry, this is controlled by the market forces. Yesterday, Shell reduced the price by Kshs4. This is controlled by the market forces. Kenyans are free to buy fuel from the stations that are selling cheaper. Anybody who out-prices his fuel will be thrown out of the market.

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to take that direction in answering the Question while his Ministry is on record, two months ago, telling Kenyans that the price of fuel was going to be controlled and the grog oil marketers were going to be brought to book, so that Kenyans can afford fuel, paraffin and the other petroleum products? They promised Kenyans that by the first week of January, fuel would be affordable. What is stopping the Assistant Minister from doing this? Is he part of the cartels or what is wrong?

Eng. M.M. Mahamud: Mr. Deputy Speaker, Sir, I think when I answered the first Question, the hon. Member was not in the House. I said that the price of oil has reduced substantially. I have shown arithmetically that the price has reduced substantially. I have said that we are not going to introduce price controls. The question was asked why the National Economic Council told the Ministry not to introduce price controls. We are actually gathering information from the various stakeholders. There will be a meeting soon between ERC and the stakeholders. Should there be a reason to introduce price controls, then we will do so.

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to deliberately misunderstand my question and start giving the wrong answer? I asked about price

differentials between towns and not between petrol stations. Why is there wide price differentials between towns? Price differentials are not justified by neither the cost of transport nor anything else.

Eng. M.M. Mahamud: Mr. Deputy Speaker, Sir, I would like to request the hon. Member to ask that as a substantive Question. The Question I am answering here deals with prices of crude oil and pump prices in the country and not a drop in the price of fuel in the country. I will answer that Question in due course.

GUIDELINES ON CREATION OF NEW DISTRICTS

Mr. Mbau: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) What are the guidelines to be followed by leaders and Provincial Administration who are desirous of establishing new administrative units?

(b) Could the Minister give details of the new districts he plans to gazette in the next 12 months and clarify the constituencies he will make districts?

(c) Could the Minister assure the House that none of the existing districts shall cede any of its administrative units or undergo sub-divisions without due consultations with the leadership of the district?

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

(a) The following are the necessary guidelines to be followed by leaders and the Provincial Administration in creating new administrative units:-

(i) Community interest - the proposed districts should not be used to cause ethnic, tribal or community disharmony.

(ii) Constituency boundaries - the proposed district administrative boundaries should take into account the constituency boundaries, both existing and proposed, so that no constituency should stride across more than one district.

(iii) District headquarters - proposed district headquarters should preferably be centrally located and be accessible to service customers and should have basic infrastructure and land for potential development.

Recommendations should be based on the following criteria weights:- Population density, geographical and physical features, security, infrastructure, social and cultural affinities.

(b) Creation of new districts is initiated by the public through the Provincial Administration who verify and forward recommendations and resolutions endorsed by the local leaders. In this case, the Minister does not hold control of those areas to be established as districts or constituencies.

(c) In view of the answers above, it is not for the Minister to direct on the determination of the administration units. The mandate is with the local leaders.

Mr. Mbau: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for that attempt. Sometime in 2005, leaders of Murang'a and Maragua districts which have since been renamed as Murang'a North and Murang'a South--- Six Members of Parliament then under the guidance of the then Minister of State for Provincial Administration and Internal Security plus all [Mr. Mbau] the councillors, made recommendations for the creation of a district because of high population. Since then, we, as leaders, have not received any communication as to what became of that recommendation. Between then and now, Murang'a South District has been formed. My constituency, which encompasses two divisions, has already been added two wards from Thika District making the population even much higher and it, has not been made a district. What does he want me to do, so that my constituency can be gazetted as a district?

Mr. Lesrima: Mr. Deputy Speaker, Sir, you realise that is a completely new Question. May I say that this is the second time the hon. Member has brought this Question to the House. Every time the Question is general but he concludes with an additional Question for which I do not have the details.

Mr. Olago: Mr. Deputy Speaker, Sir, the hon. Assistant Minister is certainly a Member of this House. I expected that the answer would have reference to the proposed Interim Boundaries Review Commission. The situation of boundaries in wards, constituencies, districts and divisions is so confused that dividing them again will bring more confusion. In the circumstances, could the Assistant Minister give the House an assurance that pending the formation of the Interim Independent Review Commission for Boundaries, the boundaries as they exist now will not be interfered with?

Mr. Lesrima: Mr. Deputy Speaker, Sir, I have answered this question before. I am not very clear as to whether that Interim Independent Review Commission for Boundaries will be put in place sooner than required by the people. It would be a good idea to relate the creation of these new districts with the creation of new constituencies. It will be good to work in tandem. Currently, the pressure from the people is that they have an idea of where they are going in terms of new constituencies. They have organised districts along the anticipated constituencies to come. I agree with the hon. Member that we should work along those lines. I do not think we should stop requests from the public for additional districts.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, the Assistant Minister is not being very sincere in answering this Question for the simple reason that districts in this country are created based on political expediency. This year, when Mbooni Constituency was given a district, there was a political fight. The President again split the same constituency into two districts; Mbooni North and Mbooni South - and I thank the President for that - yet there are big districts like Kitui, which have three constituencies, Mutito, Kitui Central and Kitui West. What is the Assistant Minister doing to ensure that every constituency becomes a district and not the ones which are being favoured by the political class?

Mr. Lesrima: Mr. Deputy Speaker, Sir, I would encourage the hon. Member to mobilise the leaders within that district to bring forward the recommendations of the people. We hold sub-DDCs and the final DDC which makes recommendations in terms of boundaries, number of divisions and locations and so on. I do not think there has been any attempt to refuse additional districts from where the hon. Member comes from. If he brings a memoranda from his district, he will be considered.

Mr. Chachu: Mr. Deputy Speaker, Sir, I want the Assistant Minister to tell this House the mechanisms that the Ministry uses to gauge the performance of these new districts that they have established to ensure that they serve the purpose for which they are created.

Mr. Deputy Speaker: The question that you are asking is very different from the original Question. Should the Assistant Minister wish to do so, he is at liberty to answer that.

Mr. Lesrima: Mr. Deputy Speaker, Sir, I think the hon. Member has made a point. There are a number of young districts created from the original mother districts and they face a lot of challenges. I think it is too early to come back and review the withdrawal of the districts we have already created. I believe that is where we are going.

Mr. Mbau: Mr. Deputy Speaker, Sir, the Assistant Minister has confirmed that I have asked this Question for a second time. The first time it was answered by a different Minister. I think it is high time that things were done as per procedure so that every Member of Parliament does not have to queue in the Minister's office pleading to be given a certain favour. Since Murang'a South District now warrants, per its population creation of an extra district and the leaders have been meeting over the period I have mentioned, could the Assistant Minister confirm to me that this will happen in the nearest future without my needing to ask this Question again? In any case, let the Assistant Minister know that the DDC in Murang'a South District has already done recommendations and we are only waiting for

the creation of new districts---

Mr. Deputy Speaker: Order, Mr. Mbau! It is Question Time.

Mr. Muriithi: On a point of order, Mr. Deputy Speaker, Sir. I want to appeal to you to let me make a point because all the questions and comments are from the other side of the House. Could I have a chance?

Mr. Deputy Speaker: Order! Order! Hon. Member, you are out of order. It is a privilege to catch the Speaker's eye. It is not a right.

Mr. Assistant Minister, could you, please, respond to Mr. Mbau's question?

Mr. Lesrima: Mr. Deputy Speaker, Sir, Murang'a South District constitutes three constituencies: Kandara, Maragwa and Kigumo. I would just like to appeal that the leaders of this district meet together to agree jointly on the new districts and where the boundaries will pass through. The Office of the President will not change boundaries without consulting the local people. The hon. Member is free to come to the Ministry so that we can find out why there is difficulty in co-ordinating a DDC meeting to take place so that he can send us a joint proposal.

CENTRALIZED EARLY WARNING
SYSTEMS ON CALAMITIES

Mr. Lekuton: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Is there a centralised system in place to warn the public to evacuate from buildings in case of earth tremors, fire or other calamities?

(b) Which central agency is responsible for raising the alarm if there is a need to take precautionary measures to evacuate building or transportation systems?

(c) What other steps is the Minister taking to ensure that buildings are well placed to handle such emergency situations?

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

(a) There is no centralised system in place to warn the public to evacuate from buildings in case of earth tremors or fire. But in case of heavy rains capable of causing floods, the Kenya Meteorological Department gives prior warning to the public. We also have the National Disaster Operation Centre which monitors, co-ordinates, mobilises and responds to disaster incidents in the country.

(b) The National Disaster Operation Centre established in 1998 and manned on 24 hour basis is responsible for raising the alarm if there is need to take precautionary measures to evacuate from buildings or transportation systems.

(c) The Ministry of Public Works, the Ministry of Housing and the Ministry of Local Government provide the technical and architectural support to ensure that commercial buildings are well placed to handle such emergency situations. In addition, the Ministry of State for Special Programmes and my Ministry are in the process of approving the National Disaster Response Plan (NDRP).

Mr. Lekuton: Mr. Deputy Speaker, Sir, we all know what happened to our country in the last two weeks. People's lives and properties are too precious to be lost, because of negligence. The Ministry has failed in many fronts. Have they even sensitised the people of this country when fires and earthquakes hit? I am even ashamed being in this Parliament. Looking at all the doors, I do not see a fire exit door here. So, God be holly. If something happens here, where do we go? So, my question to the Assistant Minister is this: Now that we have had these fires, what is the Ministry doing to make sure that every Kenyan knows where to go in case of a fire breakout in any Government building or

private enterprises or anywhere else, so that there can be no stampede?

Mr. Lesrima: Mr. Deputy Speaker, Sir, the function of evacuating people from buildings is not an entirely Government function, given that there are also private sector premises. As I said, it is also the responsibility of private sector players to also have their own disaster response plans. Government Ministries should also have their plans. We, indeed, have a role, as Ministries, to play the various roles that I have mentioned, for people to observe the requirements of construction of buildings to allow for fire safety, *et cetera*. So, our role is basically that of co-ordinating emergencies and supporting relief supply services thereafter. I agree with the hon. Member that we also have the role of educating the public.

Mr. Mureithi: Mr. Deputy Speaker, Sir, I would like to inform the Assistant Minister that I was a victim of a disaster in 1998, in the Co-operative Bank. It took five hours for the Israeli Army rescuers to reach the scene. They came with medical supplies and sniffer dogs. They were able to resuscitate the victims. By the time they came, a lot of lives had been lost. Would the Government not emulate the preparedness of the rescue team that came all the way from Israel, five hours after the incident had taken place, who came and did the job that the Kenya Government was supposed to do? Is he in order to tell us that, that was primarily the role of private sector players, and yet we have had so many disasters, which led to loss of lives?

Mr. Lesrima: Mr. Deputy Speaker, Sir, it is, indeed, true that we had that disaster affecting the hon. Member. However, it is also true to say that with the setting up of the National Disaster Operation Centre (NDOC), we have been able to train our people to effectively respond when disasters of similar nature occur. Indeed, in the recent incidents of Nakumatt Down Town and Molo, rescuers from the NDOC arrived at the scenes within 20 minutes to co-ordinate all the agencies that are supposed to assist in the rescue operation. Those agencies include the Ministry of State for Defence, the Police Force, the Ministry of Health, the Red Cross Society, among others. So, we are trying to strengthen and fund the NDOC with a view to giving it proper capacity to be able to respond effectively.

Mr. Lekuton: Mr. Deputy Speaker, Sir, the Ministry is trying to remove blame from itself when we know that the buck stops with the Government. There is no question about it. The Assistant Minister is trying to give the excuse that the private sector is also responsible for disaster response. The Government should never license big buildings which do not have ready fire equipment in place. I have seen very few buildings which have fire equipment in Nairobi. Can the Government guarantee the people of Kenya today that it will take very seriously the issue of fire in buildings, be they Government buildings or private buildings?

Mr. Lesrima: Mr. Deputy Speaker, Sir, maybe, there was a misunderstanding. I mentioned the words "private sector", because the impression given in the original Question was that the Government should rush to private premises. I said we all work together. The NDOC is carrying out an inventory of those facilities and the expected problems. I also want to say that the NDOC and the Ministry of State for Provincial Administration and Internal Security will set disaster committees under the District Commissioners (DCs) and Provincial Commissioners (PCs). We have that centre in Nairobi.

The last point I want to make, with regard to this subject, is that we have the NDRP, which brings together all the stakeholders, comprising of the private sector and Government Ministries, so that we are in compliance with international operational procedures in incidents of calamities. I wish to appeal to Members of Parliament to give us support, because we do require financial resources to operationalise the NDRP.

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

Mr. Midiwo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Labour 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 the Minister's 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 beg to reply.

(a) In October, 2008, the Libya Arab Africa Investments Company (Kenya) Limited invoked the redundancy clause provided for in the legal statutes and undertook to declare 159 employees redundant on account of a bloated workforce.

(b) There are no urgent steps that the Minister can take since the union and the management already entered into a voluntary agreement on redundancy on 4th May, 2008.

Mr. Midiwo: Mr. Deputy Speaker, Sir, I do not want to thank the Assistant Minister because, just last week, he came here and told this august House that the Managing Director of LAICO had disappeared. He now comes here to justify that 172 Kenyans are jobless because it was necessary.

On 9th April, 2008, the Minister for Finance told the House as follows:-

"Even as the Central Bank moves to dispose of the hotel, the Central Bank is sensitive to the fact that the hotel employs more than 400 Kenyans. The CBK will endeavour to sell the hotel as a going concern, so that the livelihood of many Kenyans working at the hotel, and their dependants, is not jeopardised. It will be irresponsible for the Central Bank to sell the hotel in a manner that does not take into account the welfare of many Kenyans working at the hotel."

Where is that welfare, Mr. Assistant Minister? Out of 400 employees, the Government has let 172 fired. Let me inform the House that those employees are also being replaced with foreigners. All the workers at the Hilton Hotel are *Wazungu*. At Hotel Intercontinental, all the workers are *Wazungu*. Now, this badly disposed of hotel is replacing Kenyans with foreigners. Where is the interest of Kenyans? Why did the Minister for Finance lie to the people of Kenya?

Mr. Ojaamong: But, Mr. Deputy Speaker, Sir, it was not the Minister for Labour who lied. I think that is what the then Minister for Finance said. But the Questioner is just asking whether the welfare of the employees was taken care of. In our Employment Act, when you declare people redundant, you give them a notice and enter into an agreement with their union and the Ministry of Labour. That was done.

Mr. Deputy Speaker, Sir, I want to inform the House that the employees were well paid. They are very comfortable. They are not complaining. It is just the Questioner who is complaining. But they are very comfortable.

Mr. Chepkitony: Mr. Deputy Speaker, Sir, I would like to ask the Assistant Minister to tell this House what criteria was used to lay off the 172 employees.

Mr. Ojaamong: Mr. Deputy Speaker, Sir, as I said, 159 employees were laid off. Various things were taken into consideration. One of them is that those who are professionals were retained. Those who had stayed in the hotel for some time were retained. Those who had stayed for a short time were declared redundant. But I want to emphasize that the hotel is just starting. The people who were laid off are also free to apply for jobs when the business picks up and they will be considered.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Midiwo, ask the last question on this issue!

Mr. Midiwo: Thank you, Mr. Deputy Speaker, Sir. Last week, the Assistant Minister told us that his officers had camped at LAICO Regency Hotel for two days, and the Managing Director (MD) had disappeared. I wonder what could have happened now that the Assistant Minister is coming to justify the sacking of Kenyans to the extent that he is telling Kenyans that the hotel had the right to do so.

Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House that he is going to ensure that the employees who have not been remunerated will be paid according to the Employment Act? That is because it is not true that they have all been paid.

Mr. Ojaamong: Mr. Deputy Speaker, Sir, I think I have all the facts in my hand. The employees were all well paid, after the management of the hotel, together with the Central Bank of Kenya (CBK) and Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA), which represents the employees, entered into a voluntary agreement. I have a copy here. Those people have something in their bank accounts. I am sure they smiled when they saw the payment. They were well paid!

ORAL ANSWERS TO QUESTIONS

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

Mr. Namwamba: Mr. Deputy Speaker, Sir, I have consulted with the Minister over this Question and we have reached a consensus that it be set aside because it is time barred. I put this Question before the House last July. I have agreed with the Minister---

Mr. Deputy Speaker: Order! Order! Order, hon. Namwamba! The tradition is that you ask your Question and then let the Assistant Minister seek the indulgence of the Chair to answer it another time. Ask your Question! Your responsibility is to ask Question No.169---

Mr. Namwamba: Thank you, Mr. Deputy Speaker, Sir. In line with the traditions of the House, I beg to ask Question No. 169 on the Order Paper.

Question No.169

BANNING OF *BODA BODA* OPERATORS FROM USING PUBLIC ROADS

Mr. Namwamba asked the Minister for Transport:-

(a) whether he could confirm that the Government, through the Police Department, plans to ban *Boda Boda* operators using bicycles, motorcycles and *Tuktuks* from accessing or using public roads across the country;

(b) whether he could provide the justification for that measure and explain the plans he has to provide alternative means of livelihood for thousands of Kenyan youth in the trade; and,

(c) what alternative measures the Government is proposing for the many Kenyans who rely on that mode of public transport.

Mr. Deputy Speaker: Mr. Assistant Minister, is it true that you have agreed with the Questioner that you will answer the Question at another day?

The Assistant Minister for Transport (Mr. Mwau): Thank you, Mr. Deputy Speaker, Sir. We have consulted and found out that there is another better way of dealing with the Question, other than answering it. It requires a policy mechanism to be put in place. He has agreed to participate so that---

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

Mr. Deputy Speaker: Order! Order! It is Question Time, Mr. Olago!

Order, Mr. Assistant Minister! The Question is now the property of the House and, indeed, if you are going to answer it at another appropriate time, you only seek an extension or, rather, a deferment of the Question to another date!

The Assistant Minister for Transport (Mr. Mwau): Fine, Mr. Deputy Speaker, Sir. Could I then answer the Question?

Mr. Deputy Speaker: Proceed and answer it!

The Assistant Minister for Transport (Mr. Mwau): All right, Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Government has no plans to ban *Boda Boda* operators using bicycles, motorcycles and "Tuktuks" from accessing or using public roads across the country.

(b) In view of the fact that there is no plan to ban *Boda Boda* operators from accessing or using our public roads across the country, the justification for the assumed action does not arise.

(c) The Government has not proposed any alternative mode of transport targeting the replacement of *Boda Boda* operators.

Thank you, Mr. Deputy Speaker, Sir.

(Mr. Ruto stood up in his place)

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

Mr. Deputy Speaker: Hon. Ruto, are you on a point of order?

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

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

Mr. Ruto: Mr. Deputy Speaker, Sir, the Assistant Minister has purported to answer the Question. But he had also made it clear that there was another conspiracy between him and hon. Namwamba.

Mr. Deputy Speaker, Sir, could we be told what that conspiracy was?

Mr. Deputy Speaker: Order, Mr. Ruto! You are out of order! The Chair has already ruled and the matter is now at a different stage!

Proceed, hon. Namwamba!

Mr. Namwamba: Mr. Deputy Speaker, Sir, I thank the Assistant Minister and, of course, there was no conspiracy at all. But I would like him to indicate, now that he has confirmed that there is no intention to ban that mode of transport, whether there are any plans to streamline that very important transport sector and log it properly into the transport mainstream of this country.

Mr. Mwau: Mr. Deputy Speaker, Sir, the *Boda Boda* form of transport - that is the use of motorcycles - is a new concept in our society. So, the Ministry is trying to create a proper infrastructure of testing those people and creating a framework on how the passengers and also the riders will be protected. The Ministry is also considering proposing to the Ministry of Roads to create a lane where that system of transport could be used.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Olago: Mr. Deputy Speaker, Sir, while all those consultations are going on between the Ministry of Transport and the Ministry of Roads, the police need to be involved. In Kisumu Town, 80 per cent of public transport involves *Tuk Tuks* and *Boda Bodas*. The police have consistently been harassing those people. Could the Assistant Minister confirm that, while the consultations are going on, the police will be instructed not to harass those Kenyans?

Mr. Mwau: Unfortunately, Mr. Deputy Speaker, Sir, once the Ministry of Transport issues a

driving licence, it becomes a *factious official*. The Ministry of State for Provincial Administration and Internal Security, which is in control of the Police Force, takes over.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Namwamba, ask your last question on this issue.

Mr. Namwamba: Mr. Deputy Speaker, Sir, I just want the Assistant Minister to give an assurance. That is because by the time I asked this Question, speculation was rife across the country that the Ministry intended to emasculate that particular sub-sector of transport. I would like the Assistant Minister to give an assurance that, indeed, they are in the process of developing a comprehensive policy framework that will regulate that sector and protect the players in that industry. That is because a huge portion of our young people---

Mr. Deputy Speaker: Order, Mr. Namwamba! You have stated your point. In any case, the Assistant Minister has answered both questions in his statement!

Mr. Namwamba: Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Proceed, Mr. Assistant Minister! You have already answered those questions. But you can proceed and repeat the answers!

Mr. Mwau: Thank you, Mr. Deputy Speaker, Sir. The assurance is granted!

Question No.409

TARMACKING OF WAJIR-MANDERA ROAD

Mr. Affey asked the Minister for Roads what plans the Ministry has to tarmac the Wajir-Mandera Road, which is in a poor state, in order to spur development and assist the free movement of goods and people in North Eastern Province.

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

The Ministry has already awarded the contract to a consultant to carry out the final design of the road. The design is expected to be completed by June, 2009, after which funds for upgrading it to bitumen standard will be sought. Meanwhile, the Ministry, in this Financial Year, 2008/2009, has allocated Kshs34 million for routine maintenance of the road to ensure that it remains in a motorable condition. The design work for this road was given to Gibb East Africa for a total sum of Kshs166.5 million.

Mr. Affey: Mr. Deputy Speaker, Sir, that is Road B9 and it is the one that connects Modogashe-Habaswein-Wajir-Mandera. In fact, this road accounts for 70 per cent of the road network between the North Eastern Province and the rest of Kenya. The Assistant Minister has said that they have awarded the contract to a particular contractor to do the design work. When was that contractor awarded the design work? Is he satisfied that the time this contractor has taken to do this design work is justified?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, the work was not given to a contractor but to design engineers, and it is due to be completed by June 2009. It was given last year and until they bring the report, we will not be in a position to say whether it is acceptable or whether there are issues; the period within which they were to complete the work is not yet over.

Mr. J.M. Kamau: Mr. Deputy Speaker, Sir, why are designs taking so long? He has said that the designs were started last year, but does not say in which month and that they will be ready by June. I think there is a problem here, because the Assistant Minister keeps telling us stories. I have a similar story in Kandara where a road was supposed to be done last year in September, but to date there is not a single contractor on the road. So, could he be serious on this matter?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, it is true that some of the works that are normally

given out take much longer than is ordinarily expected. It is also important to note that for many years, the construction industry in this country came to a near standstill; but over the last four or five years we have seen the Ministry getting sufficient money. Therefore, giving out enough contracts. For example, in the last financial year's Budget, we got about Kshs65 billion. In other years, we had only Kshs19 billion, which meant that the capacity of our local contractors and the engineers was greatly diminished. But we hope, as we move on, we will be able to build up their capacity to enable them complete works on time.

Mrs. Noor: Mr. Deputy Speaker, Sir, 45 years after Independence, the communities of northern Kenya are still facing transport and communication challenges. It is unfortunate that we always get the same answer, that there is something that is being prepared, designs are being done or money is not available. Those are the usual answers that we get! Could the Assistant Minister give us an assurance, and the monitoring system that is in place to monitor the work? Will proper designs come out of that process? That will show us that they are serious to open up the region.

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I think the commitment of the Ministry is not in question. Some of the major road projects that are currently going on in the North Eastern Province include Isiolo-Merile Road, that has been under consideration for many years; it is now under construction. The remaining section is being designed; we hope to get started. I am sure that the the Government recognises the connection between the poor roads, the economy of that place and insecurity. We believe that construction of roads in that area will open up the place and reduce insecurity.

Mr. Affey: Mr. Deputy Speaker, Sir, I think I should seek the indulgence of the Chair, because the Assistant Minister is not giving the House the facts as they are. Gibb East Africa was given that assignment three years ago, but the Assistant Minister has claimed that was done one year ago. Could he table the agreement between the Government of Kenya and that particular fellow, who was given that job? The House can agree with me that Kshs166.5 million over a period of three years is not acceptable. Could the Assistant Minister confirm that now it is not one year but three years? If he has anything to say against it, could he table the records?

Mr. Deputy Speaker: Mr. Assistant Minister, you have to take responsibility for the facts. Was that contract given one year ago or three years ago?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, it was given in the last financial year. We are in the 2008/2009 Financial Year. It was given in the previous financial year and it is due for completion this year.

Mr. Deputy Speaker: Not before that?

Mr. Kinyanjui: No, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Affey, if you still feel that the Assistant Minister's facts are not true, you can table yours on the Floor of the House and the Chair will make an appropriate ruling on it.

Mr. Affey: That is okay, Mr. Deputy Speaker, Sir.

Question No.271

FATE OF STALLED LBDA
HEADQUARTERS PROJECT

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

- (a) what the fate of the stalled Lake Basin Development Authority (LBDA) Headquarters project in Kisumu is;
- (b) how much money has been spent on the project so far; and

(c) what he is doing to either complete the project or wind it up.

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

(a) It is the wish of the LBDA and, therefore, my Ministry, that the stalled project be completed to serve the purpose for which it was intended. We have requested the Ministry of Public Works to list this project under "stalled projects", so that it is revived and completed under the National Reconstruction Programme (NRP).

(b) The total amount of money spent on the project before it stalled was Kshs190,148,670.

(c) The Ministry is sourcing funds to complete the LBDA Headquarters Complex, and has also requested the Ministry of Public Works to list it under the "stalled projects" that should be revived and completed under the NRP.

Mr. Chanzu: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for the honesty with which he has answered the Question. But one of the ways in which Government services and economic development are to reach our people is through the regional development authorities. I would like the Assistant Minister to tell this House the steps he is taking to fast track the completion of that project.

Mr. ole Metito: Mr. Deputy Speaker, Sir, it is true that one of the ways to actually undertake development projects, especially in this region, is through these regional development authorities which are in the country. The problem they are facing is lack of finances, because they totally depend on money from the Treasury. If they are not allocated money from the Treasury, they have very little to do. If you look at this project, the negotiated contract sum in 1990 was Kshs396,650,283. So far, the Ministry through the Lake Basin Development Authority has only paid Kshs34 million and the total cost has actually gone to Kshs124 million. All these was coming from the Treasury.

So, the problem is the source of funding, which is purely the Treasury. But we have instructed these regional development authorities that they should go beyond and try to source from well-wishers and other donors. So, all of them have now developed strategic proposals and they are trying to out-source. But the little we get from the Treasury, we will always endeavour to try to complete this project, which is very important.

Mr. Shakeel: Mr. Deputy Speaker, Sir, I rise as a Member of Parliament for Kisumu Town East. Is this project really viable? For the last 20 years, it has stalled and we have been watching it rot. Whichever project the Lake Basin Development Authority has embarked on has been a total failure. Not too long ago, they tried to put together the rice mill but they could not run it. This Authority is corrupt and inefficient. I think that this project should be handed over to the private sector so that we can get jobs and accommodation that is very much required in Kisumu. Could the Assistant Minister do something about it?

Mr. ole Metito: Mr. Deputy Speaker, Sir, I totally agree with the hon. Member that this is a very important project not only for Kisumu Town, but also the region. The objectives of this project when it was initiated were very good. One of them was to put the staff of the regional development authority in one building as opposed to renting offices all over. That would have brought down the recurrent expenditure. It was also supposed to take Kisumu as a regional conference centre, being strategic in the region and the East African Community. Again, Kisumu was going to benefit from conference tourism and that would have projected growth.

I do agree that the total sum of the project is very huge. The idea by the hon. Member that we should look beyond the public coffers and go to the private sector to out-source for the completion of this project is good and it would help a lot.

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

Mr. Olago: Mr. Deputy Speaker, Sir, this is in my constituency and I wish to ask a question!

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

Mr. Chanzu!

Mr. Chanzu: Mr. Deputy Speaker, Sir, the Assistant Minister has given an assurance that he is going to look at ways of reviving the project. But there are also some other costs that they may still be incurring on the project. I would like him to confirm to this House that there are no other expenses that are being incurred on this project as far as payment for design and so on is concerned.

Mr. ole Metito: Mr. Deputy Speaker, Sir, the only other payments that are pending--- I want to assure the hon. Member that we are not incurring any more costs other than the cost in the Treasury as part of the pending bill. We hope the Government will offset this pending bill to the tune of Kshs124 million, that is owed to the contractor for the job that had been done before the contract was stopped in 1993.

Mr. Deputy Speaker: Hon. Olago, it is not a right for you to catch the Speaker's eye. Nonetheless, being a first-timer, I will give you a chance to ask your question.

Mr. Olago: Mr. Deputy Speaker, Sir, I am grateful for the Chair's sensitivity. It is not fair to say that this project is not viable and that it can only succeed if we have sponsors and well-wishers. I think the trend in the world and the concept now is that when a project like this one fails, it is for the Government to go out and get those from the private sector who are willing to partner. The concept is called Build, Operate and Transfer (BOT). What efforts have been taken to ensure that this project partners with the Lake Victoria Basin Commission, that are willing to BOT on it?

Mr. Deputy Speaker: Is the BOT on the building of the headquarters itself or the entire Lake Basin Development Authority?

Mr. Olago: Mr. Deputy Speaker, Sir, I wish to say that the headquarters of the Lake Basin Development Authority is the one that is sited in my constituency. The mandate of the Lake Basin Development Authority is very wide. It covers the whole of Nyanza Province, Western Province and part of Southern Rift. The BOT that I am talking about relates to the completion of the stalled headquarters only.

Mr. Deputy Speaker: How would a private investor build, operate and then transfer?

Mr. Olago: Mr. Deputy Speaker, Sir, the headquarters, as planned, is a very wide and big building. It was meant to cater for other persons and organizations which can use the building.

Mr. Deputy Speaker: Proceed, hon. Assistant Minister!

Mr. ole Metito: Mr. Deputy Speaker, Sir, for the record, I have not said that this project is not viable. It is a very important project that actually needs to be completed at all costs.

Mr. Deputy Speaker, Sir, the current estimates as per the Provincial Works Officer to complete that building, stand at Kshs1 billion. I would also agree with the hon. Member that there is a lot to be gained even if the BOT system is used. This is a 12-storey building with so many other facilities inside. The Lake Basin Development Authority can actually get back that money if the BOT system is used. So, it is a good proposal and I promise the hon. Member, that we are going to explore it.

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

Question No.609

NON-COMPLETION OF MWIYOGO
WATER PROJECT

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

(a) why Mwiyo Water Project has not been completed despite having been funded in the year 2006; and,

(b) when the project will be completed.

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

(a) The implementation of Mwiyo Water Project, which is funded under the Kenya Government and Japan grants, commenced in April 2007. It has faced numerous challenges which include disputes between the Kenya Wildlife Services and National Environment Management Authority, over environmental audit impact assessment issues, re-design and re-routing of pipelines that have been unprofessionally laid by the community and the adverse weather conditions among others. This is what delayed the project.

(b) Mwiyo Water Project is also 98 per cent complete. The remaining works will be completed by the end of this month of February.

Mr. Warugongo: Mr. Deputy Speaker, Sir, while I appreciate the answer given by the Minister, I would seek clarification as to when actually the water will get to people's houses in Mwiyo Location.

Mrs. Ngilu: Mr. Deputy Speaker, Sir, as I said, the project is 98 per cent complete. It will be completed by the end of this month. However, I want the hon. Member to know that this project was designed to cover 180 kilometres. The resources that we put out for this project was Kshs64,190,000, which only covered 33 kilometres. We do hope that we can utilise the remaining amount of money to cover the whole project this Financial Year, 2009/2010.

Eng. Rege: Mr. Deputy Speaker, Sir, could the Minister explain to the House how 32 kilometres is 98 per cent of the entire project? It is a very small percentage of the 100 kilometres that is supposed to be covered.

Mrs. Ngilu: Mr. Deputy Speaker, Sir, that is a very good question. I agree with the hon. Member. I had also asked the same question. I was told that it is because of the terrain of the 33 kilometres that had been covered, that we spent so much money. I have not visited this project personally and so I would like to believe that what the engineers told me is what the actual position is.

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

Mr. Warugongo: Mr. Deputy Speaker, Sir, 180 kilometres is the same distance from here to Nyeri. In fact, from here to Nyeri is 161 kilometres. The water project cannot be that it was to cover the distance from here to Nyeri. We know that the length is about 40 kilometres from the intake to Mwiyo Location. I think there is something wrong with her calculations. Again, when the Minister says that the cost of the project is Kshs150 million and the amount spent is about Kshs62 million, we have Kshs87 million which has not been spent. That cannot make the two percent that she says---

Mr. Deputy Speaker, Sir, could the Minister tell us when the people of Mwiyo will drink this water, considering that they have been on relief food for the last 40 years? As I talk now, half of the livestock population in that areas is already gone, including cattle and sheep. They are all dead---

Mr. Deputy Speaker: Order, Mr. Warugongo! Ask your supplementary questions! Have you asked your supplementary question or you just made a statement?

Mr. Warugongo: Mr. Deputy Speaker, Sir, when are we going to receive the cheque which will make this water get into people's homes?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, as I said, Kshs62,190,000 has already been spent. This has been spent on 33 kilometres. To cover the remaining part, we need more money. I have said here that I have not personally visited this project. This project started way back before the hon. Member was born.

Mr. Chanzu: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to keep on telling us that she has not personally visited the project when we know that the Government pays engineers and officers in the field to provide this kind of information?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, I agree entirely with the hon. Member but sometimes, it

is good to see, so that you can speak with more authority than what you just get from the engineers. That is what I was telling the hon. Member.

Mr. Deputy Speaker, Sir, this project was started way back in 1984 by the community. They have faced numerous challenges. That is why the Ministry of Water and Irrigation came in to ensure that we finish the project for the community. We are going to do so. We have put in quite a lot of money as you can see and Kshs62 million is not little money. We are going to give the balance to ensure that this project is finished.

Mr. Deputy Speaker: Next Question, Mr. Jeremiah Kioni!

Question No.346

REVIVAL OF KENYA NATIONAL
TRADING CORPORATION

Mr. Deputy Speaker: Mr. Kioni not here? The Question is dropped!

(Question dropped)

Question No.586

PROVISION OF PIPED WATER
TO MATILIKU TOWN

Mr. Kiilu asked the Minister for Water and Irrigation whether she could explain what plans she has to provide piped water to Matiliku Town (Nzau District Headquarters), and indicate the budgetary provisions for the same in the 2008/2009 financial year.

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

My Ministry is implementing short-term measures aimed at improving piped water supply to Matiliku Town. These measures include construction of sub-surface dam across Kikuu River and drilling of two boreholes, pumping system, rising mains and distribution network. The long-term measures involve construction of a 25-kilometre pipeline from Nol-Turesh Pipeline to Matiliku Town. My Ministry is currently evaluating bids from consulting firms to undertake detailed design study for these works.

Mr. Deputy Speaker, Sir, the budgetary provisions in the current 2008/2009 financial year for Nzau District is Kshs7 million.

Mr. Kiilu: Mr. Deputy Speaker, Sir, I would like to thank the Minister for that answer. However, I would like to inform her that Matiliku Town is the headquarters of Nzau District. In this town, we have two vital institutions; the district headquarters and the district hospital. Both these institutions lack this important resource. The Minister has indicated that she has allocated some Kshs7 million for Nzau District. Could she indicate how much money has been allocated for these short-term measures?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, for this emergency period between now and end of March, we have allocated close to Kshs600 million. In fact, to be precise, Kshs678 million. That money will be spread within all the Arid and Semi-Arid Lands (ASAL) during this season. That is where we are going to find some money to allocate to this district.

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

Mr. Kiilu: Mr. Deputy Speaker, Sir, could the Minister indicate when she is going to start

implementing these short-term measures to supply water to Matiliku Town?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, we have sent out the tenders and I think between now and Monday, we are going to open them and see who wins. We would then be able to begin the work.

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

Mr. Deputy Speaker: Order, hon. Member! What did you say you are on?

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

Mr. Deputy Speaker: No! No! Point of information? You want to inform the Minister? She has already answered the question.

Eng. Rege: Mr. Deputy Speaker, Sir, please, may I inform the Minister on what is going on in the rural areas.

Mr. Deputy Speaker: Order, Eng. Rege! You are out of order!

Next Question!

Question No.173

PROVISION OF GK VEHICLES
TO WAMBA DISTRICT

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

- (a) whether he could confirm that Wamba District Officer, Wamba Officer Commanding Station (OCS) and Archers Post Officer Commanding Police Division (OCPD) in Uasu Division do not have GK vehicles; and,
- (b) when he will provide officers with vehicles, considering that they operate in cattle rustling-prone areas.

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

(a) The District Officer (DO) for Wamba and the Officer Commanding Wamba Police Station have vehicles that are currently undergoing repair. Archers Police Post in Uasu Division has no vehicle attached to it. However, Wamba Police Station is currently effectively served by OCPD Samburu.

(b) The District Officer for Uasu Division and Archers Police Post will be considered for allocation of vehicle alongside others when additional vehicles are purchased during the current financial year 2008/2009

Mr. Letimalo: Mr. Deputy Speaker, Sir, I thank the Assistant Minister for attempting to answer the Question. However, I wish to set the record straight. The vehicle for the DO for Wamba was involved in an accident and it was written off. So, definitely, one would expect that vehicle to be in a junk yard and not in a garage. The OCS's Wamba Range Rover has been lying at the police station since August, 2008. In fact, I was in the constituency on 25th January, 2009 and the vehicle is still lying there. It is not in the garage. How does the Government expect these officers to operate effectively without transport?

Mr. Lesrima: Mr. Deputy Speaker, Sir, it is true that the vehicle for the DO is in the garage and it requires Kshs300,000 for the repairs which we are providing. The vehicle for the OCS was involved in an accident just a week after it was delivered some time back in 2004 or 2005. The engine is still in good condition and we intend to get a body for that vehicle. However, as I said in my answer, we will consider Mr. Letimalo's district when the vehicles arrive because it is a high priority area in terms of incidences of insecurity.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. This is a very serious matter and the Assistant Minister is taking it to be ordinary business. Wamba is 150 kilometres away from Maralal

and 100 kilometres away from Isiolo. It is a bandit-prone zone. We have heard of cattle rustling in the area, but the Assistant Minister is here carelessly admitting that there is no vehicle for the DO and the OCS, Wamba. There is simply no vehicle in Wamba. What is he really telling us. He has exposed people to a very serious risk. The Assistant Minister has to treat this as a matter of urgency. He needs to provide the vehicles tomorrow. If not, these Ministers should be censured. They are careless! They should have used the money they used to go to watch television in New York to buy a vehicle.

Mr. Lesrima: Mr. Deputy Speaker, Sir, this district is served by the OCPD. So, it is not the entire area that does not have a vehicle. The District Commissioner (DC) has a vehicle and so has the OCPD who is serving the two districts.

So, it is not that his area is completely without a vehicle. I know you are putting up a very strong case to help me because I also come from there. I have promised that when we consider the allocation of the vehicles we are purchasing this year, we will consider this case.

Mr. Abdirahman: Mr. Deputy Speaker, Sir, the shortage of vehicles for our police is a nationwide problem. The responses that we get from the Ministers in this House are merely to give us information which may not be useful to us. Could the Assistant Minister tell us how many vehicles he intends to buy this financial year and what his distribution plan is?

Mr. Lesrima: Mr. Deputy Speaker, Sir, in this current financial year, we intend to buy 134 vehicles; that is, assorted Land Rovers and cars, for the Provincial Administration. Already, 32 have arrived. We have ordered 117 vehicles for the police and 62 of them have arrived. We have also ordered 96 vehicles for the Administration Police (AP) and 12 have arrived as per the current financial year. So, the total number of vehicles we have ordered is 346 and in accordance with the Budget approved by you this year. That does not solve the problem because we require very many vehicles for this Ministry. This is the "third" financial year and we will continue to budget in the coming year to increase the number.

Mr. Lekuton: Mr. Deputy Speaker, Sir, I represent the smallest tribe in this country and the world. They are called the El Molo. They are only 12 kilometres from Loyiungalani Town. A few weeks ago, the El Molo were attacked by thugs. These are over 400 people, but all their donkeys were taken. They could hear bullets from where they were. Could the Assistant Minister assure us that the small tribes, the ones which are poor, will be provided a vehicle especially at Loyiungalani police station so that these people do not have to be finished?

Mr. Lesrima: Mr. speaker, Sir, we are yet to sit to discuss the distribution mode of these vehicles, but we will, probably, start with the small tribes, the districts without vehicles and then go to high security risk areas.

Mr. Litole: Mr. Deputy Speaker, Sir, I want to thank the Government for creating this new district. The creation of new districts was to enhance provision of services. However, the Government is frustrating the officers. For example, in the district where I come from, it is only the DC who has a vehicle. The OCPD has to rely on the vehicle from Sigor or Pokot. For those who do not know, we are somewhere between Turkana, Samburu and Kitale. Why should the Government frustrate these officers? In my district, we have one vehicle, a caravan and it cannot be used for an operation at all. I want the Assistant Minister to assure us that Central Pokot will also get five vehicles.

Mr. Lesrima: Mr. Deputy Speaker, Sir, I wish to assure the former DC that we will take care of his district. I am sure he knows why the Government is not providing vehicles. It is basically budgetary, but we are making an effort.

Mr. Bahari: Mr. Deputy Speaker, Sir, the basic duty of any Government is to protect the lives and property of its people. All over northern Kenya where there is cattle rustling and persistent insecurity, you cannot get vehicles to serve the people. When I had a problem between my constituency and Samburu East, there was no vehicle in Isiolo and Wamba. I had to talk to the officers at the provincial level for a vehicle to be found to serve the people, unlike what the Assistant Minister has told the House. Could he tell us what plans he has? In the Ninth Parliament, we voted a lot of money for the purchase of vehicles. What specific plans does this Ministry have to ensure that the lives

and property of the people living in northern Kenya are protected?

Mr. Lesrima: Mr. Deputy Speaker, Sir, that was a recommendation that we had in Wamba because it covers Marsabit Highway and borders the hon. Member's constituency. In addition to providing vehicles, we need to meet, as leaders, to decide on how we can create peace in that particular region.

Mr. Letimalo: Mr. Deputy Speaker, Sir, the Government's failure to provide transport to both administrative and security personnel in Samburu East District, in my view, is an indication that the Government is less concerned about security of the people and their property. Could the Assistant Minister consider getting, at least, two vehicles from the Ministry's headquarters; one for Wamba Division and the other for Waso Division, while they are waiting for the procurement of new vehicles.

(Loud consultations)

Mr. Lesrima: Mr. Deputy Speaker, Sir, there are loud consultations. I did not hear the hon. Member.

Mr. Letimalo: Mr. Deputy Speaker, Sir, I am requesting the Assistant Minister to get, if possible, two vehicles from the Ministry's Headquarters - one for Wamba Division and the other for Waso Division, as we await the procurement of new vehicles. That is because they do not have any vehicle.

Mr. Lesrima: Mr. Deputy Speaker, Sir, I hate making promises that I cannot fulfil, just to play to the gallery. But I will investigate and, if there are vehicles at the Ministry's Headquarters--- I am your neighbour and I do understand your problems.

Thank you.

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

Question No.602

NON-PAYMENT OF DUES TO
DISTRICT OFFICERS IN RIFT VALLEY

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

(a) whether he could explain why the District Officers (DOs) on special duties assigned by the Government in Rift Valley from February to July, 2008 to assist in peace building process at Kshs3,500 per day were not paid their dues for the months of April, May and July, 2008; and,

(b) what he is doing to ensure that those officers are paid.

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

(a) The DOs who were on special duties assigned by the Government in Rift Valley from February to June, 2008 to assist in peace building process were paid their per diem for the months of February and March, 2008. There has been a delay of payments for the months of April, May and June due lack of funds.

(b) My Ministry is in the process of looking for money to pay the officers their dues during the 2008/2009 revised estimates.

Mr. Wamalwa: Mr. Deputy Speaker, Sir, those officers played a very important role last year in the peace keeping mission in the Rift Valley, and also in the resettlement of Internally Displaced Persons (IDPs). Could the Assistant Minister tell us how much the Government is unable to pay those officers since last year, and when they will be paid?

Mr. Lesrima: Mr. Deputy Speaker, Sir, there were 48 DOs. They were deployed as special officers to Rift Valley Province. The balance that has not been paid is Kshs12,555,000. As I said earlier on, we have factored that figure in the revised estimates and as soon as they are approved, we will pay them.

Mr. Abdirahman: Mr. Deputy Speaker, Sir, sending special DOs to one particular incident like the one that occurred in the Rift Valley Province is not enough. They needed to get officers who are well equipped in terms of knowing issues that relate to conflict resolution and building up of such mechanisms. What long term plans does the Government have in terms of preparing its officers to combat such issues, instead of running around when incidences occur?

Mr. Lesrima: Mr. Deputy Speaker, Sir, we propose to support peace committees in every district. We have 30 districts that are already covered. But in that particular incident, you will realise that, that was the epicentre of conflict. The officers who were serving at that time of post-election violence were not able to deal with the problem. So, we had to transfer other officers temporarily from other parts of Kenya. It was not because of lack of capacity or ability of the officers present at the epicentre area.

Mr. Deputy Speaker: Hon. Wamalwa! Last supplementary Question.

Mr. Wamalwa: Mr. Deputy Speaker, Sir, could the Assistant Minister, instead of saying that he is looking for funds, assure those officers that they will actually be paid? That is because they, indeed, played an important role.

Mr. Lesrima: Mr. Deputy Speaker, Sir, I am giving my assurance to the hon. Member and, indeed, I am grateful to him for bringing this matter to my attention. That is because those officers work under me.

Mr. Deputy Speaker: Hon. Members, Question No.517 is by hon. John Pesa. But he has sent his apologies. Consequently, the Chair rules that this Question appears on the Order Paper on Tuesday next week in the afternoon.

Question No.517

DISBURSEMENT OF LATF MONEY
TO PROJECTS IN MIGORI

(Question deferred)

The Question by Mr. Nyamai is also deferred to Thursday next week.

Question No.431

IRREGULAR ACQUISITION OF
YATTA RANCHING SOCIETY LAND

(Question deferred)

PERSONAL STATEMENT

CLARIFICATION ON REMARKS
TOUCHING ON THE FIRST LADY

Mr. Deputy Speaker: Hon. Ababu Namwamba, you have a personal statement to make. Proceed!

Mr. Namwamba: Mr. Deputy Speaker, Sir, I wish to make the following personal statement

to this honourable House.

Yesterday, Wednesday, the 4th day of February, 2009, during the debate on the alleged irregular maize transactions, I tabled documents in this House that included details of directorship in companies, confirmed by the Minister for Agriculture to this House, as having purchased maize from the National Cereals and Produce Board (NCPB) in the last year. Among the companies listed is one company associated with the First Lady, Her Excellency Lucy Kibaki. Because of the conduct of some hon. Members in the House at the time that information was tabled, my real intent of furnishing this House with the said information was lost. That has, subsequently, led to a misrepresentation of facts that makes a clarification imperative.

Mr. Deputy Speaker, Sir, I wish to make it absolutely clear, without a shade of equivocation, that my action and the information proffered to this House was not at all intended to cast any aspersions on the character of the person of Her Excellency Lucy Kibaki, whom I hold with respect, deserving of her venerated position as First Lady of the Republic of Kenya. My real motive was to ensure full disclosure in this matter, and to sting us back to the sense of justice encapsulated in the guiding principles of this House. I strongly believe that it is manifestly unfair and dishonest for some hon. Members to furnish information selectively in a manner obviously designed to unmask and shame the hoipoloi while holding up the veil to shield the privilege.

As hon. Members of this House, it behoves us to demonstrate by example that all are equal before the law. More so, on this Floor where the law is conceived, midwived and born. As an attorney of law, I am acutely aware that there is absolutely nothing illegal in the First Lady holding shares in Gingalili (1968) Limited or, indeed, engaging in any commercial enterprise. Further, in the absence of any evidence to the contrary, there is nothing to suggest, even remotely, that there has been any impropriety, irregularity or illegality in the activities of Gingalili (1968) Limited. The evidence in my possession simply indicates that, like all the other companies furnished to this House by the Minister for Agriculture, Gingalili procured maize from NCPB properly and legally within the confines of Sections 4 and 14 of the NCPB Act.

The impression created that I have linked the First Lady to the maize scam is, therefore, manifestly untrue, misleading, erroneous and a gross misrepresentation of facts. In any case, other than the sensational speculation and rumour-mongering, there is no evidence to show that there has been any scam. It is particularly significant to note that records from both the National Cereals and Produce Board (NCPB) and the Ministry of Agriculture show that Gingalili 1968 Limited, was allocated no more than 500 bags of maize, and one would have to considerably stretch imagination to impute any impropriety in the transaction. I do, accordingly, take this earliest opportunity to correct this unfortunate misrepresentation of facts and intent. Any pain and embarrassment occasioned to Mama Lucy and the First Family is regrettable.

Let me conclude by recalling the world of Sir Winston Churchill, that celebrated war-time British Premier, who is on record as having warned that a lie will always get half-way around the world before the truth has time to put on its pants. It is time for this honourable House to deploy the truth to catch up with the lies, rumours and speculation that have encumbered efforts to distinguish myths from facts in this alleged maize issue. Let us wage the war against corruption resolutely, but also with honesty and honour, driven by high affinity for facts.

Mr. Deputy Speaker, Sir, as my contribution to that, I undertake to this House that at the appropriate moment, I will furnish it with the second instalment of my dossier in this matter, which is a collection of letters and notes by the high and mighty, some of who sit in this House and make noise behind me, at the appropriate time.

Mr. Deputy Speaker: Order! You are making a Personal Statement under Standing Order No.69 and under those circumstances, you cannot go outside the confines of it. I think you have tried to do that. Nonetheless, that matter will rest there.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Vice-President, under Standing Order No.69, I have no intention of allowing a debate on this matter. The hon. Member has given a Personal Statement, in which he has, essentially tried to clear the issue of the First Lady.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): My point of order is on the latter part.

Mr. Deputy Speaker: No! The latter part of his Personal Statement is irrelevant, and is not in line with the import of the Personal Statement that he was delivering.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): On a point of order, Mr. Deputy Speaker, Sir. It is just simply that the Chair undertook to make a pronouncement on whether the documents that were laid on the Table by an hon. Member were valid.

Mr. Deputy Speaker: Indeed, the Chair is going to make a pronouncement, or a ruling, on the authenticity of those documents. The substance of what was essentially to be a Personal Statement on that matter has been covered, but the hon. Member went beyond what he shared with the Chair. The dignity and decorum of the House dictates that we do have honesty in such matters. It was supposed to be purely a personal matter and he should not have gone beyond that. There are provisions in the Standing Orders to address other issues that one intends to raise. The Standing Orders are legitimate and can be used at the appropriate moment. A Personal Statement is a Personal Statement; please, always confine to whatever you share with the Chair.

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Deputy Speaker, Sir. I rise in respect of documents which are normally tabled in the House. I remember that in the first Parliament I came to, before you tabled any documents before the House you had to avail them to the Chair to determine their authenticity, because whatever ruling you make after the damage is done may not be appropriate. Do you not think that, that was a good practice, Mr. Deputy Speaker Sir.

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

Mr. Deputy Speaker: Order! The Chair is responding to a point of order that was raised by a Member of Parliament, and the House is going to be one that observes decorum and dignity befitting its stature in this country.

Yes, indeed, hon. Members, I recognise that and I know that it is in the precedents and the traditions of the House. The Chair has time and again, in the past, said that under such circumstances, always the Chair must be given documents in advance. It is after it is acquainted with their content that it will allow an hon. Member to make a Personal Statement or lay documents on the Table.

The content of the Personal Statement was shared with the Chair by Mr. Namwamba, but he did not confine himself to that content; for that, the Chair has shown its displeasure. In future the Chair is not going to take kindly to that behaviour.

Regarding the laying of the documents, they are disallowed because you have to share them with the Chair in advance. If you remember, there are cases where hon. Members were very passionate, including on the Reports done by Parliamentary Committees. The tradition is that at least, two hours before the House commences business, the Chair must be shown the full content of a report and it has to approve the laying on the Table of the same. The same applies to any other documents that you intend to you lay on the Table to assert a point or a position.

*(Mr. Ruto and Mr. K. Kilonzo
stood up in their places)*

Mr. Ruto and Mr. K. Kilonzo, if you stand again when the Chair is on its feet, you will face the wrath of the Chair; I will have the pleasure to do something.

Mr. Orengo, I do appreciate that. It has been the tradition. I was in the seventh Parliament and I did see the same.

(Mr. Samoei stood up in his place)

Mr. Samoei, I hope you are not opening up a debate on the same!

The Minister for Agriculture (Mr. Samoei): On a point of order Mr. Deputy Speaker, Sir. It is not a debate. The point the House is trying to make is that many documents have been laid on the Table of the House. Many documents, including e-mails and letters that were laid on the Table yesterday---

Mr. Deputy Speaker: Order! The Chair has already given an undertaking to the House that it is going to give a ruling on the documents that were laid on the Table of the House, and give a direction for the future.

The Minister for Agriculture (Mr. Samoei): Mr. Deputy Speaker, Sir, I am not challenging the Chair on that matter. I am saying that what Mr. Orengo was saying is that it is the tradition of this House that no paper can be laid on the Table of the House without the Chair having the prior knowledge of the content of it, because by the time you make a ruling, as we expect you to do, careers of people, including that of the First Lady, will already be hanging in the balance, courtesy of those documents that were laid on the Table here. Are you telling us, as a House, that no documents, which are not authentic or have no basis, will be laid on the Table of the House, so that we can maintain the decorum, dignity and respect that the House deserves and command respect from the people of Kenya? That undertaking from the Chair will do this House a lot of good.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I want to make an observation. After Mr. Namwamba spoke, you allowed three Cabinet Ministers to speak. You should have been fair to both sides of the House.

Mr. Deputy Speaker: Order, Mr. Ethuro! You are not a Cabinet Minister and you have been given a chance to speak!

Mr. Ethuro: Yes, after the third Cabinet Minister!

Mr. Deputy Speaker: Order! You cannot determine, or dictate, the order in which you are going to catch the eye of the Chair.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I am much obliged as I realise the Deputy Speaker's eye can see properly.

(Laughter)

Mr. Deputy Speaker, Sir, I concede because that is a small point and I do not want to lose the bigger point. It is true that hon. Orengo came to this Parliament for the first time in 1974. That was either the Sixth or Seventh Parliament. Since then, a lot of developments have taken place in this House and we would like to welcome him back to a reality check.

The reality check is this: In the last Parliament and in the Eighth Parliament where I was present, we were able to produce and table documents. Then it was up to the Chair to determine their authenticity after their production and not before. I do not see why we are in a hurry. You made a ruling yesterday. Let us be patient and wait for your communication to the exact position of those documents; whether they are authentic or not. Some of us have points of order on other matters of insecurity that need to be determined before this maize scam rears its ugly head again.

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

Mr. Deputy Speaker: Order! The Chair's ruling is that there are no more points of order on this issue.

Hon. Okemo, could you seek your Ministerial Statement?

Mr. Okemo: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement---

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. I thought I was the first one to seek a

Ministerial Statement.

Mr. Deputy Speaker: Order! Indeed, yes. I am much obliged. Proceed, Dr. Nuh!

POINTS OF ORDER

STATUS OF GOVERNMENT DISASTER PREPAREDNESS

Dr. Nuh: Thank you, Mr. Deputy Speaker, Sir. I just want to say that you have been going through terrible moments, maybe since yesterday and your ability to recall might be a problem.

In the face of the disasters that seem to befall this country last year and this year, I seek a Ministerial Statement from the Minister of State for Special Programmes. This is also in line within us here, that confine this House to a position where some of the Members are trying to doubt where the exit halls to this Parliament Buildings are.

The Minister should, in the Statement, clarify the Government's preparedness to handle disasters in this country and also the criteria used to classify events or incidents as disasters in this country.

Mr. Deputy Speaker, Sir, I wish the Statement also covers a brief on the Government's intervention on disasters in the years 2008 and 2009 and whether there are contingency measures in place for handling these disasters. It should also include the annual budgetary allocation on disasters and the monies received from the Government for the last two years to cover these disasters. It should also include money received from donors and the general public. How much of the money has so far been used and what balance as reserve do we have? Not grain reserves, but money reserves for disasters.

Mr. Deputy Speaker, Sir, in the Statement, I wish the Minister also covers the presence or denies of a policy document on disaster that maybe, went up to the Cabinet level or indeed, as the Minister opined yesterday, whether we are only left to the mercy of the kind Kenyans who are active in response to disaster management even before the Government responds.

Thank you.

CRISIS IN SUGAR-CANE FARMING

Mr. Okemo: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Agriculture. The issue of sugar-cane has been a teething problem for farmers and I would like the Minister in his Statement, to deal with three aspects of cane farming in this country.

One, the Sugar Act provides for the weighing of cane at the farm-gate of the farmer. That is the law as of today. The practice is different. Sugar-cane is transported from the farm to the miller. There is a lot of spillage and all that loss is being borne by the farmer. What does the Minister intend to do to rectify that situation so that the loss does not go to the farmer but goes to the miller or transporter?

Mr. Deputy Speaker, Sir, secondly, I would like the Minister for Agriculture to clarify the issue of the 30 per cent imposition of penalties for burnt cane. This is a penalty that has been unilaterally determined by the millers and imposed on the farmer. We would like to know the rationale for that; whether it is legal and why it is the farmer who should bear the cost of cane which is burnt. It is not in all cases that cane is burnt by the farmer himself because the penalty is meant to deter farmers from burning their own cane. However, we know that from many cane fires, these fires come from other sources.

Thirdly, I would like the Minister to give a clear direction to this House on the issue of Busia Sugar Factory which is an issue that we have talked about for very long. Mumias Sugar Company has

given a lot of promises which they have reneged on and as I stand today, the farmer is beginning to wonder whether it is really necessary to continue growing cane under the circumstances. Therefore, I would like to request the Minister to give a clear direction as to whether Mumias Sugar Company is going to build Busia Sugar Factory. If not, is there an alternative and should the farmers stop growing cane and instead grow other crops altogether?

Thank you.

Mr. Deputy Speaker: Order! Is the Minister of State for Special Programmes here? Indeed, it was an oversight but you have to give an indication on when you will issue the two Ministerial Statements.

The Minister of State for Special Programmes (Dr. Shaban): Mr. Deputy Speaker, Sir, we will issue the Statement on Wednesday afternoon next week.

Mr. Deputy Speaker: Hon. Minister for Agriculture, Mr. Samoei!

The Minister for Agriculture (Mr. Samoei): Mr. Deputy Speaker, Sir, indeed, I have had occasion to discuss part of these issues with the hon. Member and the hon. Members from that region, but I undertake that I will issue this Statement on Thursday next week if it is acceptable to the Member.

Mr. Deputy Speaker: Hon. S. Abdalla, you had a Ministerial Statement you wanted to seek!

AMPUTATION OF MWANAHAMISI
KOMBO'S ARM AT CGH

Ms. S. Abdalla: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Medical Service with regard to a newspaper report in the *Nairobi Star* dated 27th January, 2009 regarding the amputation of a woman's arm due to a botched treatment at Coast General Hospital.

The Minister should state whether the lady, Mwanahamisi Kombo, aged 23 years, was admitted in hospital, what was she diagnosed with, what was the reason that led to the amputation and which doctors and nurses attended to her.

Thank you.

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. The hon. Member is asking for a Ministerial Statement purely based on a newspaper report. Is that in order because I believe that we do not rely on newspaper reports?

Mr. Deputy Speaker: Hon. S. Abdalla, the practice of the House is that you cannot use newspaper reports as the basis for either seeking a Ministerial Statement or any argument in the House.

Ms. S. Abdalla: Mr. Deputy Speaker, Sir, I confirmed from the hospital and I spoke to the patient.

(Laughter)

Mr. Deputy Speaker: Given the gravity of the matter since it is a health matter, where is the hon. Minister for Medical Services? It seems he is not around. The hon. Leader of Government Business! Leader of Government Business, when will you give the Ministerial Statement on the plight of the hon. Member?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, we undertake to bring the matter to the attention of the Minister for Medical Services. We request the hon. Member to bear with us until next Thursday.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir, on Wednesday, 28th of January, I sought a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the state of security for high ranking Government Officials, including Ministers on the Rumuruti-Maralal Road. A Statement that was promised to be delivered yesterday, the Minister said he would deliver it today. In addition to that, arising from Question No.063 related to this, the Minister promised that he would lay on the Table, the list of vehicles that would be distributed including the one for the OCPD, Turkana Central, this afternoon.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, my Assistant Minister, Ministry of State for Provincial Administration and Internal Security made that promise. We had agreed that he would come to the House and issue the Statement today. Unfortunately, in the light of the burial arrangements for the late Amb. Pamela Mboya, he could not make it. I give an undertaking that I will ensure that, that Statement will be issued on Tuesday. Even if he is not here, I will be here to issue that Statement.

Mr. Deputy Speaker: Mr. Minister, there are two issues here. One is regarding the state of security on that road in which the Assistant Minister, Ministry of State for Provincial Administration and Internal Security promised to bring a Ministerial Statement. The other issue is on the vehicles and the Chair clearly remembers the undertaking on that too. He gave the undertaking for both of them on Tuesday. Mr. Minister, the business of the House must be taken very seriously by the Government side. Could you give a commitment?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): I have personally given that undertaking for both issues.

Mr. Ruto: Mr. Deputy Speaker, Sir, I rise to ask that you to give us guidance because there is an apparent onslaught on the independence of this House. There is an apparent onslaught and attempt to censure what is discussed in the House. I take exceptional note of what Mr. Orenge and some Members of Parliament had proposed to ask the House to censure MPs---

Mr. Deputy Speaker: Order, Mr. Ruto! You are a senior Member of this House. You are grossly out of order.

EFFECT OF GLOBAL FINANCIAL
CRISIS ON THE KENYAN ECONOMY

Mr. Bahari: Mr. Deputy Speaker, Sir, on Wednesday, 28th January, 2009, I sought a Ministerial Statement from the Minister for Finance regarding the effect of global financial crisis on the Kenyan economy and the Minister gave an undertaking to issue a Statement today. I would be glad to have that Statement.

Mr. Deputy Speaker: Hon. Minister for Finance, are you ready with the Ministerial Statement?

I am made to understand by the Clerks that the Minister for Finance is out of the country.
Proceed, Leader of Government Business.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, that being the case, I recall that the matter of the financial meltdown internationally was actually, discussed on the Floor of this House. That being the case, I think it would be important for the Minister for Finance to give an update because even those countries that were originally free like the People's Republic of China, are actually now beginning to feel the same effects. Clearly, our tourism sector, amongst others, is also beginning to feel the effect. So, may I suggest that we bring the matter to the attention of the hon. Minister for Finance and then he can determine when he can issue the Statement? I am unable to say whether this should be on Thursday or the week before.

Mr. Deputy Speaker: Hon. Leader of Government Business, I am made to understand that the Minister actually gave an undertaking to have this Ministerial Statement available on Tuesday next

week.

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

Mr. Deputy Speaker: Under such circumstances, if you are seeking a Ministerial Statement, the Chair does not remember you having approached it before. What is your point of order?

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, this is a request. We feel, as Members of Parliament, that there are things we want to discuss but not in front of a camera. We would like to ask for a *Kamukunji* for us to agree with the Chair and also the Government side on issues which are very sensitive. We do not want to debate them here. These are purely on rulings which are being made in the House.

Mr. Deputy Speaker: The request for *Kamukunji* comes from the House and you do not need the permission of the Chair to have a *Kamukunji*. You can consult; you have the Whips and the Leader of Government Business here. Indeed, the Chair would be glad to facilitate any time you want to have a *Kamukunji* and to allow you to use the Old Chambers.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, this is purely for the Back Bench. The Whips are both from the Government Side. So, they will not agree to the request. We are requesting the Chair to call for a *Kamukunji*. We have extended---

Mr. Deputy Speaker: Order! Order! Mr. C. Kilonzo, you, indeed, said that the matter is so sensitive that it should be discussed in camera. You have not even taken the trouble to approach the Chair and discuss this matter to get the facilitation of the Chair. You are doing it right now in front of all the cameras. The Chair's office is open for all Members of Parliament.

(Mrs. Noor stood up in her place)

Mrs. Noor, I do not remember you approaching me for a Ministerial Statement. Did you?

Mrs. Noor: Yes, I did.

Mr. Deputy Speaker: Then proceed. It escaped my memory.

CONSTRUCTION OF LAMU-THIKA RAILWAY LINE

Mrs. Noor: Mr. Deputy Speaker, Sir, I requested for a Ministerial Statement on Wednesday last week and the Minister gave an undertaking that I would get a response today. So, I am requesting for the response from the Ministry of Transport.

Mr. Deputy Speaker: Yes, the Chair, indeed, does remember. Mr. Assistant Minister, you gave an undertaking.

MINISTERIAL STATEMENT

CONSTRUCTION OF LAMU-THIKA RAILWAY LINE

The Assistant Minister for Transport (Mr. Mwau): Thank you, Mr. Deputy Speaker, Sir. I stand here to give a Ministerial Statement in response to Mrs. Noor's request as follows:

In 1968 the East African Railways and Harbours desired and intended that a railway line from Lamu through Ijara, Garissa, Mwingi and all the way to Thika be constructed. These plans were shelved in 1978 after the collapse of the East African Community. Currently, the Government, through the Ministry of Transport, is exploring the possibilities of constructing a deep water port at the Port of Lamu and a railway line that will start from Lamu to Garissa and Isiolo. At Isiolo, there will be an interchange and one line will pass through Moyale to proceed to Addis Ababa. The other line will proceed northwards through Lokichogio and ultimately, to Juba in Sudan. We will have another line

which will join the current railway line that proceeds to Nanyuki and Nairobi.

Mrs. Noor: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for the response. It is, indeed, a good response and it is really what was in the plan. Unfortunately, you can see how long it has taken from 1968 when the Government of this country developed a plan and ensured that it would be constructed and will have a railway line from Lamu passing through Ijara, through Garissa up to Moyale and then to Ethiopia. Unfortunately, from that time to today, in every given development plan of this country, we have these things coming up and going out of the plan. Could the Assistant Minister assure us exactly when we will have the railway line constructed?

The Assistant Minister for Transport (Mr. Mwau): Mr. Deputy Speaker, Sir, the circumstances that led to the dropping of the railway line in the 1968 plan, firstly, was the collapse of the East African Community. Secondly, when the Government of the Republic of Kenya viewed the programme again, it found that there was insecurity in that area. This insecurity persists today. So, the issue would be that---

Mr. Abdirahman: On a point of order, Mr. Deputy Speaker, Sir. It is unfortunate that the Assistant Minister is not in touch with the realities. Is he in order to say that the transport infrastructure in that part of the country cannot be developed because of insecurity, when we know that the security situation in that area is now quite stable? Is he in touch with the realities on the ground?

The Assistant Minister for Transport (Mr. Mwau): Mr. Deputy Speaker, Sir, it seems that the hon. Member was not in the House when Questions touching on insecurity in that region were answered. Manning a railway line is not a simple process. Let us not just be emotional. Let us look at policies which can be sustained. That way, we shall be able to put in place, infrastructure which will be able to work. Looking at the railway line from Nairobi to Nanyuki, you can see that it has been withering. That is a heavy cost. So, let the Government be able to---

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. It is very clear that the Assistant Minister is not aware of the realities on the ground. Apparently, Mr. Mwau used to be a police officer. Since the time he was last in the province, things have changed. Things are completely different from the way they were when he was an officer there. So, I think he is trying to imagine what happened there in 1978 and 1979. We are now in 2009.

Having said, I want to have a serious clarification on this matter. He should be aware - if he is not, probably, we can make him aware - that the Ministry of Transport was in consultation with a Kuwait firm, which was supposed to do Project Roller. Is he aware that, because of Government's red tape, this project is likely to collapse?

The Assistant Minister for Transport (Mr. Mwau): Mr. Deputy Speaker, Sir, I do not want to say that the remarks made by the hon. Member are under the influence of *miraa*, but I would think that it is important for me---

(Laughter)

Mr. Deputy Speaker, Sir, I apologise!

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to insult an hon. Member by saying that he is under the influence of *miraa*?

Mr. Deputy Speaker: Order! Order!

Mr. Assistant Minister, you are grossly in violation of the Standing Orders of the House, as well as the dignity and decorum of the House. You cannot impute improper motives on a fellow Member of Parliament. So, can you withdraw and apologise?

The Assistant Minister for Transport (Mr. Mwau): Mr. Deputy Speaker, Sir, as I apologise, I would want to state categorically all that happened--- I said I was only wondering, because he was referring to some---

Mr. Deputy Speaker: Order! Order, Mr. Assistant Minister! You should apologise and

withdraw unconditionally!

Hon. Members, for God's sake, let us not reduce the Business of this House into some kind of a comedy. Indeed, Mr. Mwau, take your business and the dignity of the House seriously. Could you apologise and withdraw and then proceed to give the clarification?

The Assistant Minister for Transport (Mr. Mwau): Mr. Deputy Speaker, Sir, aaa---

(Laughter)

An hon. Member: Let him finish!

The Assistant Minister for Transport (Mr. Mwau): Apologise, I know.

Mr. Deputy Speaker: Mr. Assistant Minister, go ahead to apologise and withdraw!

The Assistant Minister for Transport (Mr. Mwau): Thank you, Mr. Deputy Speaker, Sir. To the hon. Member, I withdraw the *miraa* issue, whether---

Mr. Deputy Speaker: Order! Order!

Mr. Assistant Minister for Transport, the Chair has given you sufficient leeway to restore, in your own conduct here, the dignity of the House. Under the circumstances, the Chair orders you to be out of the House for the remainder of the day.

(Mr. Mwau withdrew from the Chamber)

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

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

Mr. Deputy Speaker: Order! Order, hon. Members! No more points of order are going to be entertained by the Chair. The Chair is going to give a Communication to the House and then we will proceed to the next Order of the day.

CONSIDERED RULING

TABLED DOCUMENTS RELATING TO MAIZE ALLOCATION TO MILLERS NOT AUTHENTIC

Mr. Deputy Speaker: Hon. Members, you will recall that yesterday, after Question Time, Dr. Khalwale stood on a point of order on the alleged purchase of maize from the National Cereals and Produce Board (NCPB) by some prominent Kenyans. The hon. Member tabled several documents to substantiate his claim that the Minister for Agriculture had a hand in the maize scandal. You will also recall that thereafter, Mr. Ababu Namwamba stood on a point of order and tabled some documents implicating some prominent Kenyans.

Hon. Members, documents tabled in this House must be genuine and authentic. After the Chair perused the said documents, it was found out that all the documents tabled by Mr. Namwamba were not genuine and, therefore, should be expunged from the records of the House. Indeed, this is the Chair's ruling: Irrelevant and not genuine. To be expunged from the records of the House.

As regards the documents tabled by Dr. Khalwale, only those that are on the official letterhead of the NCPB are acceptable. All other documents, including the e-mails, are not genuine and shall be expunged from the records of the House.

Hon. Members, that is the ruling of the Chair on the documents. The matter is, therefore, closed.

Next Order!

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

Mr. Deputy Speaker: Next Order!

BILL*Second Reading*THE CONSTITUTION OF KENYA
(AMENDMENT) BILL

*(The Minister for Justice,
National Cohesion and Constitutional
Affairs (Ms. Karua) on 3.2.2009)*

*(Resumption of Debate interrupted
on 4.2.2009)*

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

Mr. Deputy Speaker: Does your point relate to Order No.7?

Dr. Khalwale: Mr. Deputy Speaker, Sir, I do not wish to challenge or contradict your ruling, but if you remember, the documents which I tabled yesterday had more letterheads than just the NCPB letterhead--

Mr. Deputy Speaker: Order! Order, Dr. Khalwale! You are, indeed, out of order. The Chair has given a ruling on that matter. That ruling is final. Should you wish to seek clarification from the Chair, you can always do so, but under the circumstances, the ruling of the Chair is final. Unfortunately, there is no appellate under the Standing Orders and the Constitution on the rules of the House.

Dr. Khalwale: On a point of clarification, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Order!

Hon. Members, this matter is closed! We are now on Order No.7. Any more frivolous points of order, on anything other than Order No.7 and other Business of the House, is going to be handled resolutely by the Chair in accordance with its mandate, and the authority of the Chair itself, conferred by yourselves under the Constitution and under the Standing Orders.

Let us proceed!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to make my contribution to this Constitution of Kenya (Amendment) Bill.

Mr. Deputy Speaker: Order! Order, Mr. Githae! You are not the last person who was contributing on this Bill. It was Mr. Ababu Namwamba, who has 27 more minutes to speak on the Bill.

Mr. Namwamba: Thank you, Mr. Deputy Speaker, Sir. I had started my contribution to this Motion that is seeking to amend the Constitution.

(Loud consultations)

Mr. Deputy Speaker, Sir, there is such a cacophony in the House!

Mr. Deputy Speaker: Order, hon. Members! Order! Hon. Members! Consult in low tones!

Mr. Namwamba: Thank you, Mr. Deputy Speaker, Sir. I have listened to the previous contributions on this Motion and the impression that has been created is that the passing or failure to pass this Bill will hinge on the sovereignty of the Republic of Kenya.

Mr. Deputy Speaker, Sir, it has even been argued here that sovereignty is like virginity and, once it is lost, it cannot be recovered. It has been argued that Kenya lost its sovereignty ages ago.

Mr. Deputy Speaker, Sir, let me start by asserting that it is, indeed, misleading for anyone to

take the position that this country is not a sovereign Republic. We are a sovereign State and anything we do must reflect that honour of the sovereignty of this Republic.

Mr. Deputy Speaker, Sir, there are certain issues that are surrounding this debate, and that are of grave concern. One looks around this House and wonders whether there is sufficient political will for the passage of this Bill. This is not the first Bill that this House has been seized of, and that seeks to make a fundamental adjustment to our Constitution. But, unlike previous occasions when the House has been full to the brim; when we have had the pleasure of the President and the Prime Minister attending debate of this nature, we do not see similar political will.

Mr. Deputy Speaker, Sir, concern must be raised---

(Loud consultations)

Mr. Deputy Speaker, Sir, the consultations in the Chamber---

Mr. Deputy Speaker: Order, hon. Members! Please, consult in low tones!

Proceed, hon. Namwamba!

Mr. Namwamba: Mr. Deputy Speaker, Sir, I was expressing my concern as to whether there exists sufficient political will to push through this critical piece of legislation. Questions have to be raised as to what could be the reason why this particular Statute is meeting such casual attention from this House.

But, Mr. Deputy Speaker, Sir, be that as it may, there are certain issues around this Bill that have to be critically considered before this whole process takes off. I have looked at Section 3(A)(2) of the Constitution of Kenya (Amendment) Bill, 2009, which provides that, for the avoidance of doubt, the provisions of the Statute shall not be deemed to be inconsistent with this Constitution. My concern is whether we can use this particular section to literally suspend the effect of Section 77(4) of the Constitution that refers to retrospective application of the law.

Mr. Deputy Speaker, Sir, for the record, Section 77(4) provides, and I quote:-

"No person shall be held to be guilty of a criminal offence on account of an act or omission that did not, at the time it took place, constitute such offence, and no penalty shall be imposed for criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed."

Mr. Deputy Speaker, Sir, it is arguable whether we can use the proposed Section 3(A)(2) to suspend the effect of Section 77(4) of the Constitution without making an attempt to make an adjustment to that section. I raise this issue particularly, knowing that even courts in this country have had occasion to make a consideration of the implication of this law and also paying regard to Section 3 of the Constitution that is emphatic: That this Constitution is the supreme law of the land and any other law that contravenes any section of the Constitution must cede supremacy to the Constitution. Indeed, the courts of this country have had occasion to rule on that matter in 1970 in the case of *Okunda vs Republic*, where the court ruled that the Constitution supersedes all domestic and international law.

Therefore, Mr. Deputy Speaker, Sir, my number one concern is the possibility of a constitutional suit that may challenge the veracity or the effectiveness of Section 3(A)(2) in so far as it seeks to suspend the effect of Section 77(4) of the Constitution.

Mr. Deputy Speaker, Sir, there are also concerns that have been raised in many quarters on the manner in which we intend to handle the conduct of the tribunal. A question has been raised regarding the manner in which that tribunal is going to handle the high and mighty that hold public office, and as to whether we should allow them to continue enjoying the privilege and authority of office while under investigation.

Mr. Deputy Speaker, Sir, these are issues which we cannot hide away from. They are issues which we must settle before both pieces of legislation go through. I am raising these issues at this point

because I know that the moment we enact these constitutional amendments to literally import the statute creating the tribunal into the Constitution, then it will almost be a *fait accompli* in so far as the passage of the tribunal law is concerned. So, personally, I would be extremely reluctant to support anything in that direction before these issues are sorted out.

The second issue, Mr. Deputy Speaker, Sir, is the talk about the Hague. An impression has been created that there are some people that should, as well, start booking their air tickets to Schiphol International Airport in Amsterdam.

Mr. Deputy Speaker, Sir, an impression has been created that if this tribunal law does not pass, then some of our political rivals could be "fixed" for eternity. Therefore, there are those who will come to this Floor to debate this law with the determination to ensure that this law does not pass; with the determination that, that tribunal will not be set up because their political rivals will be headed to the Hague.

Mr. Deputy Speaker, Sir, I just wanted to share a caution. Understanding the procedures of the International Criminal Court (ICC); understanding the processes of how the Hague conducts its affairs--- I want to caution this House that it is not a given; it is not guaranteed that if we do not act domestically, one Moreno-Ocampo, who is the Chief Prosecutor of the ICC, will be on the next flight to Nairobi. It may not be so! It is actually highly probable that our failure to act now; our failure to institute a domestic process to handle this matter, might actually suspend *ad infinitum* our ability and resolve to face, head on, the question of impunity.

(Applause)

So, if you are seated there and imagining that somebody is on their way to the Hague merely by shooting down this Statute, I think it is unfortunate. It is particularly unfortunate when, as hon. Members in this House, we allow any political differences we may have to interfere with this supremely critical process. So, I want to urge this House that we look at this process as being, perhaps, the best opportunity we have ever had to face the demon of impunity head on, and put in place a process, which, though not perfect, because no human endeavour can attain the mark of perfection--- But this provides us with the best opportunity to deal with this matter.

Mr. Temporary Deputy Speaker, Sir, I want to plead with the party leaders in this House--- I want to plead with the principals, His Excellency the Vice-President and the Right Honourable Prime Minister that in like manner as they have rallied this House in the past, they stand up and act in the best interests of Kenya. In like manner as they have rallied this House, and put in place measures that have saved this country from the brink, may they rise to the challenge and lead this House to pass this legislation.

(Applause)

That is not to say that we must not take time to do some little tweaking here and there that will ensure that this legislation meets the highest standard of constitutionality and legitimacy, so that we forestal any possibility of any legal challenge to these Statutes after their passage. Let us divorce political differences from this process; let us ensure that as we pass these laws, we also give the people of Kenya the confidence that we are not casting a net for the little fishes and deliberately setting in motion a process that will shield the high and mighty. Let us put in place a process that has the full capacity to handle impunity with finality, and in a manner that we can look back at, as the Tenth Parliament, with pride. Therefore, I want to urge this House to pass this Bill. At the same time I want to say that should this House shoot it down, as my nostril can smell in the air the determination to sabotage it, should that happen, I have a sinking feeling that this might just be the end, at least, for the moment, of a great opportunity to finally stand up to the demon of impunity.

(Applause)

So, my passionate plea to hon. Members is that when the time comes for us to vote on this Bill, may we fill this Chamber in like manner as we did in February last year when we created the Coalition Government. It is disappointing that many beneficiaries of the action we took in February last year, the action that created the Coalition Government, are missing in action today, at a time when we are seeking a framework to actualise one of their chief commitments under that National Accord. So, I must ask: Shall we have His Excellency the President in this House as we vote on this Bill? Shall we have the Right Honourable Prime Minister as we pass this Bill? Shall we have the Front Bench, the almost 100 plus hon. Members, in the House as we take a vote on this Bill? Because as the Back Bench, I believe that we have real commitment to take this process forward.

(Applause)

May the Minister for Justice, National Cohesion and Constitutional Affairs give full support by rallying both the Front Bench and the Back Bench for the passage of this Bill.

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

*(Messrs. Githae and Wetangula
stood up in their places)*

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. Just before you took the Chair, Mr. Deputy Speaker had given me a chance, but he realised that Mr. Namwamba still had time.

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

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): It is true, Mr. Temporary Deputy Speaker, Sir.

The Minister for Foreign Affairs (Mr. Wetangula): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to support this Bill.

This Bill is a product of a bipartisan approach. It has been processed and synthesised through several *Kamukunjis*. This Bill has been enriched by the Departmental Committee on Administration of Justice and Legal Affairs. It has been looked at by the Mediation Team, working together with the Departmental Committee on Administration of Justice and Legal Affairs. I thought that we were going to carry the spirit that I saw in the *Kamukunji* twice to the Floor of the House, fill the Chamber to the brim, and pass the Bill in record time, and in the same manner that we passed the National Accord to create the Coalition Government. Indeed, this Bill precedes an even more important Bill that is Order No. 9 on the Order Paper today, that has to address the issues covered under Agenda Item No.4 of the Kofi Annan process that deals with, among other things, the question of reckless disregard for the law in this country, impunity and, above all, exercising indiscretion that are challenging the very foundation of the stability of our country.

If you recall the history of elections in this country, in 1992, 1997 and 2002 we had electoral violence, but in 2007 we had the mother of all incidents of electoral violence. Those of us with eyes have a duty to use them to see. Those with ears have a duty to use them to hear. It will be most shocking to hear the what I am hearing, that there are some elements in us, who seem to be changing their mind about taking this process forward. It is dangerous for the country, and the fire next time may be more ferocious than the fire we are dealing with.

It is time that we all confronted the facts. It is time that this House, as Mr. Namwamba put it, stood up to restore the dignity of the people of this country. The facts are known to everybody, and if anybody is operating on the false belief that by shooting down the Bill we will achieve anything, I want

to caution that we will not. There is no time limit on crime; so, those who are culpable will be caught up within any event.

We agreed that, as a Parliament, we want to utilise local capacity, blended with some international content, to resolve these issues. Indeed, the local content is much higher than the international content in this process. So, the question of our sovereignty being impugned does not arise.

I want to urge that the reason we were recalled from the long recess that is customary, was to come and pass this Bill. This Bill has not been sprung as a surprise to anybody. We all knew about it. I want to urge that all of us, from our principals, to fill this House at the time of voting and pass the Bill. Of course, I have heard arguments on the sides, that the Bill in Order No.9 should be realigned and should come first. I want to urge that you cannot deal with the Bill in Order No.9 unless you pass the Bill in Order No.7. This is because the foundation of the Bill in Order No.9 lie in the passage of the Bill in Order No.7. That being the understanding and case, we then must pass the Bill before the candle reaches mid-term in the life of the Tenth Parliament, where each one of us will embark on a political discourse at the expense of all other things. The time is now to pass the Bill and deal with the issues at hand. Mr. Temporary Deputy Speaker, Sir, I am a firm believer that those who disrespect the law must be dealt with within the law. Those who disregard the law must feel the full weight of the law. That is the only way we can have a country to bequeath to our future children. If we end up failing to rise to the occasion and give this country a tribunal, we are faced with the Hague option. You may take the men and women, that we hear their names are in the envelope, to the Hague. Well and good! They could be ten, 15, 20 or 30; those that Justice Waki called they bear the greatest responsibility. But by dealing with those that bear the greatest responsibility to these issues, you have not dealt with the person in the village whose brother or son was hacked to death or wife and daughter were raped and he knows by who.

As lawyers, we know that if you are dealing with, say, 5,000 to 10,000 suspects, in an average homicide case, you have an average of ten witnesses. Even the court at the Hague cannot reasonably be expected to handle this. That is why we have said that, as a country and nation, we have a duty to sort out what we created. We defecated in our house and, therefore, must clean it. In cleaning it, I want to urge all leaders to stop wearing ethnic blinkers in this matter. This thinking of "our man or woman" when we are faced with a calamity that can consume the very foundations of our country, is myopic, parochial and unhelpful to this country. If that envelope is opened, I want all of us to take responsibility. If it is me, the Member for Sirisia, or you, we must submit ourselves to the will of the law, if we want to build a country for tomorrow.

Mr. Temporary Deputy Speaker, Sir, impunity has wrecked this country. It has laid foundations that can consume this country. We have seen how our own children in school wake up and set on fire the dormitory in which they sleep, because a headteacher has been transferred. We have seen our own children wake up and set a school bus on fire, because one of them has been punished for a wrong doing. These confrontations that we have built in this country started from the Floor of this House. When you sit behind here and listen to how we even address and confront each other in the glare of the public, the people of Kenya know that this is the barometer of the leadership of the country. They know that the heartbeat of Kenya is here, when they watch us behaving like we have thrown caution to the wind. They watch us competing to make unhelpful statements on the Floor of the House, that do not in any way, enhance the dignity of our country.

I want to urge that, as leaders, we also bear the greatest responsibility to hold our country together. This country will not be held together by those who constantly think that they are ethnic leaders; that they have run to their ethnic blocs to be defended even when they are guilty of wrong doing. That is why it is critically important that the men and women we are looking forward to, to man this process of healing, will be people who can rise to the occasion and save our country.

Mr. Temporary Deputy Speaker, Sir, of course, we do know that healing of a nation is not founded on punishment. That is a fact. But justice also will be sacrificed at the alter that will destroy

our nation, if members of the public, particularly the weak and meek, can sit back there and know that when you are so-and-so, or the son of so-and-so or related or associated to so-and-so, you can get away with anything. That is how countries get destroyed. The high and mighty and meek and low are equal before the Lord.

When a law is broken, it does not matter whether he who has broken it is *mlala hoi, ako nyayo tupu* or is in a Mercedes or flying in a helicopter. They will all come down and face the alter of justice as equals. That is what the Bible teaches us; that on the day of judgement, the rich, poor, master and slaves will all face their Maker as equals. Lazarus and the rich man will face their Maker as equals. It is only that way that we can build a country. Sometimes it is very painful, as we talk about impunity, when you hear that a person has walked into this country pretending to be an investor, and has walked away with Kshs10 billion, and we are watching, hungry and our roads are dilapidated.

Mr. Temporary Deputy Speaker, Sir, this impunity we are fighting is a lesson for everybody beyond the violence that befell this country after elections. It must teach a lesson that if you are an engineer and you have a duty to build a road and vote for money here, you must build that road. It must teach us that when you have a responsibility, you also have a duty to carry out that responsibility. The right to speak and the duty to hear particularly we, leaders, masquerading as masters of everything. We are constantly telling everybody what to do but never listening to them on what we should do. That is how we have destroyed our country. We are constantly preaching water and drinking whisky. That is how we have destroyed our country. Taking the moral high ground when we know we are standing on a rotten ground, that is what has destroyed our country.

Mr. Temporary Deputy Speaker, Sir, we have neighbours to learn from, for example Somalia. I constantly say that when a country degenerates to a level where its nationals identify themselves as members of clans and tribes and not as nationals of the country, you are headed to the rocks.

Mr. Temporary Deputy Speaker, Sir, I want to plead and urge that our colleagues, who seem to be changing their mind or have mixed feelings or even hesitate to see the need to pass this Bill, should change their minds. This is an opportunity and if we lost it, we will not have an opportunity to recover. It is an opportunity for all of us; the young, the old, women and men, who have been given the privilege of leadership to lead from the front. Let us confront the nightmare of impunity and hold a dagger and strangle it once and for all for the future of this country.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I want to lend my solid support to this Constitution of Kenya (Amendment) Bill and urge that at the time of voting, this being a constitutional Bill, all of us should turn up and support the same way we supported it in the two *kamukunjis* we had to discuss it.

Thank you.

The Assistant Minister for Nairobi Metropolitan Development (Ms. Ongoro): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this a Bill that I think is very important to this nation at such a time like this.

Mr. Temporary Deputy Speaker, Sir, this is a time we are trying to heal as a nation. It is a time that we are struggling to move forward.

Mr. Temporary Deputy Speaker, Sir, I want to state that I have very high regard for the international justice system. However, I want to also state that, I feel that, as a nation, we are not a failed state. We are not a failed nation and it is not true that we should start thinking of an international solution to a problem that I truly believe is local.

Mr. Temporary Deputy Speaker, Sir, I feel that the events that led to the January, 2008, violence were local problems. I believe that as a nation, we have what it takes. We have a rich history behind us that would give us a very good platform in dealing with this problem that I feel is truly local. In my opinion, a local problem requires local solutions. While The Hague could be an option, at this stage, I do not think we should be considering it. It is my opinion that we should all support this Bill. This Bill will give us a platform and an opportunity to set up the tribunal that will give us an opportunity we have not had since Independence.

Mr. Temporary Deputy Speaker, Sir, what happens, for example, in case we fail in this House and this process is taken to another level - The Hague? What happens after the process is through? The Hague might not have the ability to deal with other aspects, for example, the emotional aspects. It will only deal with the criminal aspects by prosecuting those presented before it. After that, what happens to the local mwananchi whose houses was burnt, lost their children, the women who were raped and those who are still bleeding and crying? Is it not proper that we should give them an opportunity to follow these proceedings and hear for themselves how anybody in implicated would come up to defend themselves? Is it not proper that we give them this very rare opportunity to get to the root cause of every problem that seemed to have affected all of us so much? I believe that we must exhaust all local remedies before we think of anything else. This is the platform that we must give ourselves in this House as leaders and legislators.

Mr. Temporary Deputy Speaker, Sir, if we fail to do this, what statement are we making to the public? What statement are we making to those who elected us to lead them? We must restore the confidence of citizens in the leadership that sits in this House. We must make a statement that all our governing systems have not failed. We must make a statement that, as leaders, we are able to rise to the occasion and take critical decisions that will secure this nation and future generation. We should tell them that we are able to have a leadership that can solve our own problems.

Mr. Temporary Deputy Speaker, Sir, I have also looked at the issue of using this as an opportunity of restoring national cohesion which is so threatened at this time. If we lose this opportunity and let another system handle this problem, we will have lost a very critical opportunity to re-unite the citizens of this nation. This House and Members have in the past one year erected several pillars. I am counting on my colleagues to erect yet another pillar of national cohesion. If we do this and we allow our people to be tried locally, through the setting up of a local tribunal, we will be telling all the citizens that as brothers, we have what it takes to address our problems, to speak honestly and truthfully to one another to allow ourselves to heal but most importantly, to allow ourselves to move on.

Mr. Temporary Deputy Speaker, Sir, I am not convinced that if this process was taken somewhere else, all wananchi, the youth, and that woman in the village who lost all her sons will have the ability or capacity to follow proceedings taking place thousands of miles away from this country. By giving them this opportunity, we are allowing a national healing process within our borders. This is critical because we do not want to pretend to dress a festering wound by giving it more bandages. We want to expose everything. We want to allow the wound to bleed and heal naturally. We want future generations to know exactly what took place, what we did as a nation and how we arrived at the healing place.

I have also asked myself: What will happen after if we allow this process to take place elsewhere and we sit back feeling very happy that two or three or 30 or 100 people were taken somewhere in The Hague and prosecuted and punished? What happens after the process? What happens after we allow them to go to The Hague to face trial? Is The Hague in a position to deal with the national systems or emotional bleeding of this nation? Is it in a position to heal this nation and its people? I am convinced that if we allow this process to take place somewhere else, we will have missed the point which is not just prosecution. The point is not just looking good. The point is to allow everybody who was affected or might be affected in future to truly heal so that this country does not experience what it did.

Mr. Temporary Deputy Speaker, Sir, lastly, I am really concerned about the time element. When you speak to people out there, you see the anger that is still lingering and the questions that are still unanswered. I am very concerned that if something is not done before the 2012 General Election, we shall have done ourselves a lot of injustice. This is critical because I am not sure that we will be in control of the calendar that is contained elsewhere. I am not sure that if we do not deal with this process locally, we will be able to finalise this process and allow ourselves time to heal before the year 2012. Therefore, with all these considerations, I feel that this House must rise to the occasion and

support this Bill so that we give ourselves and the people of this nation a platform to truly heal and move on by sorting out these matters once and for all before 2012.

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

The Assistant Minister for Education (Prof. Olweny): Thank you, Mr. Temporary Deputy Speaker, Sir. I want to make a few comments about this Bill. It seeks to establish a Special Tribunal in this country. I support that. This tribunal will deal with impunity which we have had in this country for several years since the colonial times. The way colonialists dealt with our people, it was all about impunity. During Kenyatta's reign, if you remember what happened in Kisumu in 1969, that was all impunity. For all those acts of impunity, nothing has been done about it. Kenyans have suffered enough. If you look at what happened during Mboya's murder, the wananchi who were mourning also suffered. If you look at the time when J.M. Kariuki was murdered, all that happened to wananchi was not different from what we saw in the 1990s. It has been the same all along. We have had a problem with the people in authority and police brutality. It has been part of our culture and practice.

Through this tribunal that we are going to establish, we will bring the people who committed the most recent crimes against Kenya forward. We will bring forward all those who have acted with impunity against Kenyans. Today, Kenyans do not believe that we are serious with this Bill. They do not believe that we will come up with a tribunal that will help solve their problems. Why? It is because of the way issues have been handled in this country. When Tom Mboya was murdered, there was a suspect who was taken to court, but today, no Kenyan believes that, that person was hanged. He was supposed to be hanged. There was the issue of J.M. Kariuki. Was anybody brought to book as his murderer? There was the issue of Dr. Robert Ouko. We believe that so many witnesses died mysterious deaths. All these things make Kenyans not to trust even the Parliament of Kenya. We have had commissions of inquiry and Parliamentary Select Committees investigating and inquiring into issues. When reports from Parliamentary Committees come to the Floor of this House, they are thrown away by Parliament itself. How do we expect Kenyans to trust their own leaders? That is why there is apprehension amongst Kenyans when it comes to this matter. There is no reason why Kenyans should be taken to another country to be tried for crimes committed here in Kenya. That is my believe.

My believe is that the tribunal

should be locally established. Kenyans must not be taken anywhere. If we have our citizens being taken to Netherlands to be tried, it will be very expensive for Kenyans who may wish to go and testify. I do not think The Hague will meet all the expenses for ferrying Kenyans to Netherlands to testify. How shall we take the witnesses there? It is a very expensive exercise. However, if someone was to judge me, I would like to be tried in Ahero in the local court so that my mother can also come and listen to the people who have accused me. You must give your own people a chance to come and listen to people who are accusing you of committing crime.

Mr. Temporary Deputy Speaker, Sir, Kenya has not failed. It only happened that we had problems. You cannot compare Kenya to Rwanda, Somalia and, sometimes back, Uganda. We have not failed. I hear that there is pressure of time and the Mover, probably, should be called upon to reply.

I beg to support.

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Temporary Deputy Speaker, Sir, I will be very brief because I have very little to say.

First, I want to say that I have listened to hon. Members for the last three days as they contributed. I have also taken time to speak to my constituents and Kenyans and understand what they really want out of this whole process. Kenyans just want one thing: Justice! They are demanding justice. The women who are still in the IDP camps today are demanding justice. The people who were affected and brought down to zero after all they had stocked for many years was wiped out want justice. So, as we do whatever we do here, we must think about which of the two groups can promise us justice.

Mr. Temporary Deputy Speaker, Sir, Kenyans are looking at the history of all the commissions

and tribunals that have been established. There is not one that they can point out and say: "There lies an example. There lies a success story that we can lean on. There lies hope out of a particular commission and tribunal." Having listened to my people--- That is because I have been calling--- I have received short text messages and listened to local FM stations. Kenyans are saying that they have very little faith in a local driven process. I know that we are caught in-between a rock and a hard place. That is because if we were to go to the Hague, we are talking about the sovereignty of our own country. But remember, if this process does not bear fruit, that will be the beginning of the end of Kenya. In the year 2012, we will witness a situation that is worse than what we saw last year. Therefore, we have to make very hard decisions. Must we have it here and then, if it does not work, we have a big problem to deal with, or do we go to a process where we are sure there will be justice, independence and Kenyans can surely see justice being discharged? Do we want to do it here and start pointing fingers at who is where and which community he or she comes from? That is why things are not going right. Do we start to say that some of us are settling political scores using the local process?

Yes, I have looked at the Bill. I admit that it is a good Bill and they are trying to protect that. But we are dealing with perceptions. It is for that reason that I painfully oppose this Bill, not because I totally disagree with the Bill as it is, but it is because people have no confidence with a tribunal that runs locally. I know that the people who put together this Bill tried to seal all those loopholes by bringing foreigners to come and bring some level of independence. But it is not working on Kenyans because history cannot give us confidence.

I, therefore, would like to say that, maybe, we need to sit back and re-look at the whole process again and really think what is best for Kenya at this point in time. If those people in IDP camps and those whose lives were destroyed by the violence that took place in 2007 - and those who suffered in 1992 - do not see justice, they will not stand again and watch their property and lives being destroyed by other people. It is time to end impunity, no matter how costly it will be. We need to think about what the future has in store for us. We have spent too much already on tribunals and commissions. I have no worry about the cost. I have worries about the unity of Kenya; and Kenya standing together as a nation.

Thank you, Mr. Temporary Deputy Speaker.

Mr. Chepkitony: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to also air my views regarding this very important Bill.

This is a Bill to create a tribunal that will try those who participated in the post-election violence. To me, Kenyans know what happened, why it happened and what they want. We all know what we want. We know what happened. We have been talking about ending impunity, which is true. People have been acting without the law taking its course. There has been injustice. There has been lack of rule of law. So, we need to ensure that there is rule of law and justice given to every Kenyan. If that is done, I do not think that the impunity we are talking about will exist.

Mr. Temporary Deputy Speaker, Sir, whatever happened after the elections--- When the Chairman of the Electoral Commission of Kenya ECK announced that he did not know who had won the Presidential elections and yet, he announced the results, that was impunity. That was acting without following the law. He did not know exactly what happened. To me and, according to my constituents and the people I meet, they have no confidence in our systems, leave alone the tribunal that we are trying to establish. Let us try elsewhere this time. Let us allow the Hague to participate this time. We have set up commissions for whatever problem we have had in the past, be it corruption or post-election clashes, but, this time round, let us give a chance to somewhere else. We have been saying that we cannot allow others to come and solve our problems. But we have shown that we cannot handle our issues. That is because those in authority still exercise impunity.

The "shoot to kill" order by the police is a kind of impunity. We cannot solve our problems by shooting to kill. It is not allowed. Nobody is allowed to kill. So, I do not want to take much time. I only want to say that I do not support this Bill. I want us to go elsewhere this time. Let us try the ICC. We have recognised the ICC in our laws. So, let us allow them to try the people who caused the

post-election violence.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Mwadeghu: Bw. Naibu Spika wa Muda, naomba kutoa maoni yangu kuhusu Mswada huu. Jambo la kwanza, naomba tujiulize, kama Wakenya, ni nini tunataka? Tunataka maridhiano ama ni nini? Kama ni maridhiano, tutayapata vipi? Je, tumewauliza wananchi ni nini wanachopendelea, ama tumejitwika wajibu wa kuamua kwamba hili ndilo linalofaa katika nchi hii? Jambo la pili, mambo mangapi ambayo hivi sasa yamekita mizizi nchini humu, na hamna lolote mnalofanya? Mawaziri wenyewe pia hawana imani na mahakama yetu. Je, mtawaelezaji Wakenya kuwa mkianza mahakama hayo hapa nchini watu watakuwa na imani nayo? Nimesikia mengi yakizungumzwa. Jana Waziri alinena kwamba tukiunda mahakama hayo sisi wenyewe tutayabana hapa, na tutaweza kuyaendesha vile tutakavyotaka. Je, wananchi watakuwa na imani gani na hayo mahakama?

Jambo la tatu, naomba tufikirie kidogo tu mambo ambayo yalitokea baada ya uchaguzi mkuu liopita. Baada ya watu kupigana na kuraruana ni nini kimefanyika? Kuna watu ambao wameshikwa? Kuna watu ambao mpaka sasa hawajahukumiwa? Kwani hakuna sheria ya kuwahukumu hao watu? Kama sheria ipo, mbona hawajahukumiwa? Mbona wamewachiliwa hivi hivi. Watu bado wana uchungu. Sasa mnasema kwamba tuwachane na hayo mambo, na tuanzishe mahakama ambayo yatakuwa na wageni na Wakenya. Je, hao wageni wakiwa hapa, hamwezi kuwatia mfukoni? Hii imekuwa ni tabia ya Wakenya; hata kukitokea kashfa gani, iwe ni ya mahindi ama mafuta, watu wanaachiliwa kwenda zao. Je, nauliza, imani ya watu wa Kenya itaregeshwa namna gani? Hamwezi kuirekebisha. Ni lazima hao watu waende Hague. Wacha waende wahukumiwe huko. Kama tumepatikana na makosa, tunaogopa nini? Kama unajihisi kwamba haujahusika na lolote baya, wasiwasi wako ni wa nini? Kama unajua huna lolote ambalo umemkosea mtu, shida yako ni nini?

Bw. Naibu Spika wa Muda, kama Wakenya tukubali kwamba kuna mambo mengi ambayo yametendeka. Tukiangalia Mkoa wa Pwani, watu hawana haki ya mashamba yao. Watu wetu wa Pwani wanapendelea kwamba hao watu wapelekwe huko huko kujibu mashtaka yao. Hapa nchini hakuna haki. Haki iliisha. Tumekutana hapa na tukajadiliana mambo mengi ambayo yanaweza kujenga nchi na kuleta maridhiano. Lakini ni hatua gani ambayo Serikali imechukua kufanya watu waridhiane? Juzi tumepitisha sheria kuhusu haki, ukweli maridhiano na tume. Hivyo inamaanisha kwamba hata watu wakiridhiana, bado kuna kipengele kinachosema kwamba kama mtu hataki kumsamehe mwenzake, huyo mwenzake atapelekwa mahakamani. Mbona hatukufuata mfano wa Afrika Kusini, kwamba watu waridhiane tu. Sisi tuna sheria inayowataka kuridhiana, lakini kama mtu hajaridhika basi sheria inamkubalia kwenda mahakamani.

Bw. Naibu Spika wa Muda, naomba wenzangu, ambao wananisikiliza kwamba tuutupilie mbali Mswada huu ili watu waende Hague wakaungame dhambi zao huko.

Kwa hayo machache, naomba kuupinga Mswada huu.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Would I be in order to ask you to ask the Mover to reply, since hon. Members seem to be saying the same things. We know there are people who want the Hague and others want a local tribunal. The point has been made. Am I in order to ask you to ask the Mover to reply?

Mr. Muthama: Bw. Naibu Spika wa Muda, asante na nitachukua muda mfupi sana, usiozidi dakika mbili. Nasimama kuupinga Mswada huu kwa ushahidi nilio nao mikononi mwangu.

Katika mwaka 1992, baada ya uchaguzi mkuu, Wakenya waliuawa. Baadaye kuliundwa kamati ambayo ilikuwa chini ya uwenyekiti wa Bw. Kiliku. Mpaka leo hakuna ambaye anajua kilichoandikwa na kiko wapi. Mwaka 1997, vile vile Wakenya walipiga kura ili kuwachagua Wabunge na Rais. Mwishowe, baada ya Wakenya kuuawa, tume ya Jaji Akiwumi iliundwa. Hakuna chochote kilichofanyika. Ripoti ya tume hiyo iliwekwa na bado "inalala". Mwaka 2002, baada ya uchaguzi, Wakenya waliuawa. Hakuna mtu hata mmoja aliyepolekwa mahakamani. Juzi, katika 2007, kiwango cha mauaji kilizidi kutoka asilimia kumi hadi themanini, na hakuna mtu mpaka leo amepolekwa mahali popote. Ni dhahiri kwamba sisi kama taifa tumeshindwa na tumekoma kabisa kujifanyia mambo yetu. Kwa hivyo, ilibidi tuite wageni kutoka nje ilihali tuna wasomi wa Sheria. Tuliwaita wageni kutoka nje

ili tuweze kukubaliana. Bw, Kofi Annan, Bw. Kriegler na wageni wengine walikuja humu nchini. Ilionekana kwamba sisi hatuwezi kuwa na uamuzi wa maswala yetu.

Bw. Naibu Spika wa Muda, tumeona na ni dhahiri kwamba katika koti zetu--- Kuna wakati mmoja watu walipelekwa kortini, sitasema majina yao, na wakafanya njama ya kuleta watu wao kutoka nyumbani wakajaa katika korti mpaka Jaji akashindwa kufikia mlango wa kupitia. Hivi leo, ni dhahiri kwamba uamuzi wa Wakenya, mahali popote walipo, hawataki kusumbuliwa na kusikia kwamba Jaji atakayeshughulikia kesi za uuaji ni Mkamba ama Mkikuyu, kwa sababu tumeshindwa kung'oa, kukanyaga na kuchoma mizizi ya ukabila katika nchi hii. Ni vyema tugeuze mbinu zetu kidogo ili kuwaonyesha wale ambao huuwa wengine kwamba ndege zitakuja, watawekwa ndani na kupelekwa kule, na kuiacha nchi hii ikiwa na amani.

Kwa hayo ninapinga na kusema kwamba hapa hatuna uwezo wa kuwafanyia hao watu mashtaka. Naomba kupinga.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Member, you can proceed but just take one minute. You can see the mood of the House, according to Mr. Midiwo.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Mr. Temporary Deputy Speaker, Sir, I assure you that it is going to be one minute if not less.

In the last few days, we have realised that one of our major problems facing this country is graft. Corruption in this country can only be fought from this House. But whenever it rears its ugly head, we go into our party, tribe and clan enclaves to defend one of our own. What reason do we have to believe that if we form this Special Tribunal, we will not go back to our enclaves to defend our own again? We do not have any reason. Mr. Temporary Deputy Speaker, Sir, it is for this reason that until we start fighting graft in this House, we do not have the moral standing to be able to have a very transparent and clear process to try those who were behind the clashes in this country.

To conclude, let me say this: Let us not be vague in this House; let us go to the Hague.

Thank you.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, as per hon. Midiwo's point of order and given the mood in the House, I will now put the Question that the Mover be called upon to reply.

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

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Thank you, Mr. Temporary Deputy Speaker, Sir. I will begin by thanking hon. Members for their contribution, those who supported and those who opposed. One very sad aspect of this debate is that it has been clouded by a Bill that is yet to be tabled before this House. The debate has been about the Special Tribunal Bill and not about this Constitution of Kenya (Amendment) Bill. I have heard hon. Members talk about their constituents. This is the Assembly of the national leaders of this country. Leaders are supposed to inform themselves so that in turn, they can inform their constituents.

There can be no reason why as the National Assembly, we would fail to inform ourselves sufficiently in order to inform our constituents. The Bill before the House simply asks to expand the space in our Constitution to allow for a Bill for the Special Tribunal to be tabled before the House. If, indeed, the proposed Bill for the Special Tribunal is as deficient as some of the Members feel, then that Bill when tabled, is the property of this House. It is up to Members to propose ways and means of strengthening that Bill. It, therefore, cannot be correct or proper to state that because a Bill is yet to come this week, the Constitution of Kenya (Amendment) Bill should not be allowed. It is up to Members of the House to wait for the other Bill to be tabled and then they strengthen it.

Mr. Temporary Deputy Speaker, Sir, there have been many Bills we have tabled in the course of the reforms brought about by the National Accord, notably among them the Truth, Justice and Reconciliation Bill and also the National Integration and Cohesion Bill. Both Bills were strengthened

tremendously by this House, including changing of the names of one of the Bills. Why can Members not be courageous enough to wait and mould the Special Tribunal Bill in the manner they feel it will serve Kenyans?

I have heard Members talk about the expense the Tribunal will cost the taxpayers. It is true that we are facing hard times. Our people need food. They also need other services but justice is never cheap; not in terms of time and money. If we do not uphold the rule of law, then our ability to feed ourselves will continue to be undermined. One of the reasons we do not have food is because some of the people engaged in farming activities were displaced. The second reason is rain. Failing to act claiming that we need the money for food would be an act of irresponsibility.

Mr. Temporary Deputy Speaker, Sir, I am saddened to notice that quite a number of Members think that the tribunal proposed is a commission of inquiry. It is being likened to the Goldenberg and other tribunals that are fashioned after a commission of inquiry. What is thought to be brought about is an actual special court. It is a criminal court and a court of law and not a tribunal. It is because Kenyans, through the Waki Commission, admitted that our institutions have failed to respond to the election-related violence, not just of 2007 but even previous incidents of violence like 1997 and 1992.

Our investigators, prosecutors and courts have on the whole not responded adequately and also the Executive has not shown sufficient will over the years, not just this time, to respond to election-related violence. We are therefore, as a Government and following the recommendations of the Waki Commission, seeking to expand space in our Constitution so that we are able to set up a Special Tribunal; a tribunal in the sense of a criminal court with three distinct departments. These are investigatory, prosecutorial and a court to determine those matters. So, we are setting up a special system outside our normal system. Those who are saying they have no faith in our justice system, this will not be our normal justice system. It is a special system where a prosecutor will be hired from the international pool. It is where a special registrar and investigator will be hired and where the tribunal and the special magistrate will be manned by people selected through a different process.

Mr. Temporary Deputy Speaker, Sir, those who say that they have no faith even in the commissions of inquiry, the Kriegler Commission and Waki Commission were commissions of inquiry under the Commissions of Inquiries Act. But because they were brought about under Agenda Item 4 by the Grand Coalition, we have seen their recommendations being implemented. That is why there was the dissolution of the Electoral Commission of Kenya (ECK) and that is why we have advertised to hire an interim independent body. That is how, come today, we seek leave of Parliament to expand space. We bring a special parallel system that will enable us to deal with the dogging question of the post-election violence and election-related violence.

It is okay to say, let them go to the Hague. The International Criminal Court (ICC) does not require this Parliament nor does it require the Waki Commission to mandate it to investigate international crimes committed anywhere in the world. It is not time barred. It has no statutes of limitation. That is why those who sent the Jews to the gas chambers are still being hunted all over the world and being tried more than half a century after the event. It can also happen to those who committed international crimes in Kenya.

Mr. Temporary Deputy Speaker, Sir, but time is of essence to our nationhood. If we are going to wait for the next five to ten years to deal with the matters that have occurred in this country, can we hope then to have another election when we have unfinished business? What is being sought and proposed thereafter is not only to have a Special Tribunal with international standards and also having international and local personnel to deal with the crimes against humanity and international crimes, but also a special magistrates court to deal with crimes that do not amount to international crimes. It means that the person who murdered, looted or raped will be tried here in Kenya under international standards with the appeal system going to an international panel. It means that we shall be able to speedily bring a closure to the matters that occurred during the elections. This will ensure that we are able to move forward. As we build up a new electoral system and do a new voters register, let us clear the backlog of the criminal cases that occurred during the election so that we can have a deterrent to

electoral violence before we go to the next elections.

(Loud consultations)

Mr. Temporary Deputy Speaker, Sir, if you could ask my colleagues to consult in low tones, then we can be able to proceed.

It is necessary to bring criminal offences committed during the elections to a closure. I hear hon. Members say that the situation is so bad that we have no faith in ourselves or in any systems, so let us do nothing about it. To say that we go to The Hague, it means only those responsible for international crimes will be tried, if at all. It means the person who raped, murdered or destroyed the property of another will walk scotfree. Is that what we want? Is that the message we are selling to the thousands who are languishing, their lives having been destroyed? Whoever committed violence on another Kenyan, whether an official of Government or an ordinary citizen, are we saying that we do not want a closure to this matter? Are we saying we no longer want the rule of law? I am saddened that we are not taking enough time to deeply appreciate and understand this process.

Mr. Temporary Deputy Speaker, Sir, I have heard colleagues complain about witness protection. I want to give this scenario: If we do not allow the formation of this tribunal, even those witnesses who may go to testify in The Hague will have no protection other than what is there today. We have a Witness Protection Act administered by the Attorney-General and the police yet witnesses who testified before the Waki Commission are now being hounded and not accorded sufficient protection. That is why the tribunal that will be formed will have its own witness protection away from the normal witness protection under the Attorney-General and the police.

If we do not have witness protection for witnesses in Kenya, which witnesses do we then intend to take to The Hague to assist in the prosecution of the people we are saying should go to the Hague? What if they went to the Hague and there were no witnesses? I hope that as the National Assembly, we shall know that we are walking into a dead end where we are actually giving a license to people to commit electoral violence year after year. We are digging trenches which will trap all of us and bring us to misery.

Mr. Temporary Deputy Speaker, Sir, even if Parliament gives leave to form this tribunal, if we do not observe international standards in the formation of the tribunal and its conduct, the international court will still have jurisdiction. Any perceived deficiency in the tribunal law is cured by the fact that the entire statute will be applicable to the tribunal process.

It is up to hon. Members, if they feel there are sections they want to leave and put in the tribunal law. I, am therefore, urging that we be bold enough. This will be painful, of course.

It will touch some of us or touch our loved ones, but it is an initiation we have to go through to make a nation out of the divided society that we now are. We must deter those of us who may want to hire goons to hound people in the next general election, or to sort out people they do not like. We must stop misleading our population into violence.

Mr. Temporary Deputy Speaker, I also want to say that if we do not enact this law, and I want to adopt the words of Mr. Onyonka - that our survival, as a nation, really depends on how we deal with the constitutional amendment before the court and, subsequently, with the Special Tribunal Bill. If we do not move forward with courage to ensure that we bring an end to impunity, then, as the Tenth Parliament, we shall have destroyed our nation. We shall have failed to offer leadership to our people. Yes, we can listen to our people, but we can also offer leadership after deeply enquiring into the matters before us, discussing them thoroughly and understanding them.

About ten days ago or less, this very Parliament adopted the Waki Report. We were, therefore, adopting recommendations to set up the Special Tribunal and amend the Constitution in order to do so. Does it mean that we adopted the Waki Report, without much inquiry? Now Parliament appears to be back-tracking. I would urge hon. Members to take responsibility and let us move on.

Mr. Temporary Deputy Speaker, Sir, hon. Members have said that the law will act retroactively. Under international law, all the crimes we are talking about - international crimes - have existed because they are about human rights. Human rights are God-given. All those crimes have existed, whether they are written in our statutes or not, you know very well that you have no right to take away the life of another person.

You know very well that it is wrong to burn somebody's property. You know very well that it is wrong to rape. Even if in our statute books it is not called an international crime, you know that before man and God, you are committing a crime. There is nothing retroactive here. All these are crimes that we know even deep in our hearts existed.

Mr. Temporary Deputy Speaker, Sir, finally, I heard an hon. Member say that it is my responsibility, as the Minister for Justice, National Cohesion and Constitutional Affairs, to whip. With respect, for Bills that have been crafted, not only by the mediation team of the Coalition Government, but also by Parliament itself, in an informal *Kamukunji*, it is the responsibility of every hon. Member.

(Applause)

It is my duty, while moving debate, to be as clear as I can, but I refuse to carry the guilt of any hon. Member who does not want to take responsibility. I will urge hon. Members: If you truly, deep in your heart, think this law is wrong, have the courage of your conviction. Stand here and vote against it. Do not disappear. You are paid not to disappear. You are paid to be in this House. If you believe in it, vote for it and be counted. We have misled the public to think there is something wrong with this Bill.

Mr. Temporary Deputy Speaker, Sir, I want to say to Parliament and to Kenya that I would not agree, even as a Minister of Government, to table a Bill that is designed to hide offenders, or one which is designed to subvert the course of justice. I am standing here with the courage of my conviction. History will judge each one of us. I am here to table a Bill that will help this country move forward. Let us rise and do our duty.

I want to agree with those who have said that both Principals - His Excellency the President and the Right Hon. Prime Minister, who are our bosses as the Executive - must be here to join us in determining the way forward.

Mr. Temporary Deputy Speaker, Sir, with those many words, I am convinced completely that this is the right way forward.

I beg to move.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, before I put the Question, I would like to remind you that this is a Bill seeking to amend the Constitution, and that as per Standing Order No.61, we are required to have three-quarters of the 222 Members of Parliament present here to be able to proceed. Therefore, I order that the Division Bell be rung, so that we can determine whether we are going to have the requisite number before we proceed.

(The Division Bell was rung)

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Members! As you can see, we have no numbers. So, I am going to adjourn this now to next Tuesday, when we will proceed for the vote, which will be our second division on Tuesday. I hope we will be able to proceed with that.

ADJOURNMENT

Hon. Members, the time now is 6.35 p.m and we interrupt the business of the House until next Tuesday, 10th February, 2009, at 2.30 p.m.

The House rose at 6.35 p.m.