

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 11th November, 2009

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.138

FORMULATION OF SPORTS DEVELOPMENT PLAN IN KENYA

Mr. Deputy Speaker: Is Mr. Washiali present? He is not in yet!
Next Question!

Question No.252

IMPROVEMENT OF WATER SUPPLY/RETICULATION IN KISUMU

Mr. Chanzu asked the Minister for Water and Irrigation what plans she has to improve water supply and reticulation in Kisumu City.

Mr. Deputy Speaker: Hon. Members, I have a written communication from the Ministry that the Minister and Assistant Minister are out of the country on official business. I am requested to defer this Question to a later date so that it is given the attention it deserves.

The Chair, therefore, directs that this Question be put on the Order Paper at the time when the Minister will be available. That can be communicated also in conjunction with the Ministry.

(Question deferred)

Question No.271

TRIAL OF SUSPECTED SOMALI PIRATES IN KENYA

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

(a) what informed the Government decision to allow the trial of suspected Somali pirates in Kenya;

(b) whether there are any benefits the country stands to derive from the decision; and,

(c) what the security implications of the exercise in the country are.

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

(a) As a member State to the International Maritime Organization (IMO) and the State being party to the United Nations Convention on the Law of the Sea and the Convention on the Suppression of Unlawful Acts, 1988, Kenya has been fulfilling her international obligations by co-operating with the international community and agreeing to act as a third State by receiving and prosecuting suspected pirates.

In this regard, the Kenyan Government has concluded a memorandum of understanding with the Government of the USA, the European Union-led Naval Forces and the Government of the United Kingdom (UK) as well as Northern Ireland for the transfer of suspected pirates to Kenya for prosecution.

(b) By apprehending and prosecuting those suspected of acts of piracy and armed robbery at sea, we stand to improve maritime security on ships and in port facilities. By reducing piracy off the coast of Somalia, we are empowering the local communities within Somalia to be capable of controlling their territory and seas. It also promotes flow of tourists into our country hence bringing in foreign exchange.

(c) By failing to prosecute suspects of piracy, Kenya is not in any way safe. We are equally exposed to the risks posed by piracy and armed robbery at sea. Kenya and Somalia have a common coastline. We are all neighbors in East Africa. Any threat to peace and tranquility within the East African coast has economic and security implications to both countries, hence the need for Kenya to co-operate with the rest of the international community to bring this organized crime of piracy to an end at the earliest time possible thus safeguarding her economic and security interest.

Mr. Kapondi: Mr. Deputy Speaker, Sir, while acknowledging the attempt by the Assistant Minister to answer the Question, there are critical loopholes. Kenya is not the only country that is a signatory to these bodies. Ethiopia, Djibouti and Yemen are signatories too. Why is Kenya so much excited to get pirates as far as from the Gulf of Eden for prosecution in our country, particularly in Mombasa?

Mr. Ojode: Mr. Deputy Speaker, Sir, if the hon. Member heard me correctly, I said that we had signed a memorandum of understanding. We did that because piracy jeopardizes the promotion of tourism in our country. You are aware that all the coastal towns are in a state of panic because of pirates. These people commandeer ships that get into our territorial waters.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. As I understood hon. Kapondi, the question he asked is: Why has it to be Kenya and not the other States which are also signatory to this IMO? Why Kenya?

Mr. Ojode: Mr. Deputy Speaker, Sir, I do not think I should answer for other countries. I am talking about Kenya which is a signatory. Kenya signed a memorandum of understanding together with the UK, the USA and the Northern Ireland that it will be a third party in the prosecution of these fellows when they are arrested within the coastal line.

Mr. Deputy Speaker, Sir, I cannot speak for Ethiopia or Somalia. As you are aware, we have big problems in Somalia. That is why we have some pockets of insecurity within the coastal side of the country.

Mr. Wamalwa: Mr. Deputy Speaker, Sir, piracy is an international crime that is committed in international waters, and not within Kenya's territory. Why has Kenya shouldered a burden that rightly belongs to the United Nations (UN) and the international community, in the process exposing this country to security risks, especially at the coastal towns? These are dangerous people whom I do not think we even have the capacity to handle.

Mr. Ojode: Mr. Deputy Speaker, Sir, as I said, if you go by the chronology of events, you will realise that this is a cartel. When we, as a country, signed the memorandum of understanding, we agreed that those who would be arrested would be taken to our courts. In fact, Kenya has done very well in arresting those who are perpetrating this crime.

Mr. Kapondi: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House? What Kenya has been doing is receiving the pirates who have been arrested by security forces of other countries. Kenya is simply prosecuting those pirates, but not arresting them in the high seas. Is he in order to mislead the House?

Mr. Deputy Speaker: Mr. Assistant Minister, the Question is basically asking: If the pirates are operating in international waters, and are being arrested by security forces of other nations, why do those nations not prosecute them in their own countries? Why prosecute them in Kenya?

Mr. Ojode: Mr. Deputy Speaker, Sir, I understand the concerns of our people but I want to assure them that since we have signed a memorandum of understanding to have the pirates prosecuted in Kenya, once arrested, that compels us to take them to our courts. There is no cause for alarm because we have made very good progress in carrying out that mandate. There is no cause for alarm over insecurity because the same countries are also assisting us in making sure that peace and tranquillity thrives in this region.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, could the Assistant Minister clarify what benefits, in terms of financial assistance, Kenya is getting to be able to shoulder this burden, instead of using taxpayers' money to do this work for other countries?

Mr. Ojode: Mr. Deputy Speaker, Sir, I am not aware of any financial gains emanating from this undertaking. I am, however, aware that as a result of negotiating with these countries, we are promoting our tourism sector. In any case, this country's tourism bracket has gone so high because of these undertakings.

Mr. Mbugua: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us why we are carrying a burden that is not ours at the expense of this country?

Mr. Ojode: Mr. Deputy Speaker, Sir, this is partly our burden and partly the burden of the rest of the world. As long as we leave this game to thrive, we will never expect our tourism industry to thrive in our country. So, it is partly our burden.

Mr. Chanzu: Mr. Deputy Speaker, Sir, one of the questions that the Assistant Minister has not been able to answer correctly is about the security aspect. What measures have you put in place to safeguard our security? We are exposing the country to a lot of risks. What measures are in place to assure Kenyans of security, rather than just

say that other countries are going to assist us? What security measures are in place, now that we are exposing the country to this danger?

Mr. Ojode: Mr. Deputy Speaker, Sir, that is a very valid question. As you are aware, we have porous borders with our neighbours. We have looked at various ways and means of protecting our territorial borders. Right now, we are in the process of trying to purchase one of the latest technology equipment, which will be used to do surveillance work within our territorial borders. We are also in the process of looking for a ship with the latest technology for surveillance purposes.

Mr. Mbugua: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House? He is talking of international waters. He is now telling us that we are going to buy the latest boats to man the international waters. Are we supposed to man the international waters? Could he also provide us with the memorandum of understanding they signed with whoever they signed? We do not know with whom they signed that memorandum of understanding. Could he table it?

Mr. Ojode: Mr. Deputy Speaker, Sir, I said that we are going to control our international borders. We are in the process of purchasing a boat with the latest technology for surveillance purposes. That will happen within our territorial waters. There are a number of other issues relating to security that we are embarking on, which I need not discuss here. Within months, the issue of insecurity within our borders will be a thing of the past.

Mr. Affey: Mr. Deputy Speaker, Sir, this is a very serious matter since it touches on state security and the stability of Kenya. The Government has no idea how long the Somalia situation will take to stabilise, so that we can stop prosecuting Somali pirates in this country. Do you have a road map, as Government, so that we know that we shall continue to prosecute the pirates, say, for one year or two years or three years or is it a very indefinite situation that you want the country to be committed to?

Secondly, the memorandum of understanding that the Government has signed is a critical document but Parliament has not been involved. Would I be in order to request the Assistant Minister to table it, so that we can study it and interrogate him further? I think the Government is committing the country in a manner that is not going to be beneficial to the stability of Kenya in the long run.

Mr. Ojode: Mr. Deputy Speaker, Sir, I have not seen the memorandum of understanding but it was signed between our Foreign Affairs Office and those countries. Given a chance, if it does not have any security component in it, I will have no problem availing it to hon. Members. So, I will check with the Ministry of Foreign Affairs with a view to availing it to those hon. Members who may want to go through it.

Mr. Kapondi: On a point of order, Mr. Deputy Speaker, Sir. From the explanation of the Assistant Minister, he appears to be completely inadequate in terms of information. Would I be in order to request that this Question be deferred to enable him peruse and, maybe, table in this House the memorandum of understanding that Kenya signed with those international organisations and countries?

Mr. Ojode: Mr. Deputy Speaker, Sir, on the bit of the memorandum of understanding, I will check with the Ministry of Foreign Affairs. If it does not have any security component that could jeopardise what the country is doing if that information is revealed, I will have no problem making it available. On the issue of deferring the Question, I think I have elaborately answered it.

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. It is clear that the Assistant Minister is evading a very important issue in this matter. In order for the House to be satisfied that this activity by our Government is, in fact, in favour of our national stability, would I be in order to request that we refer this matter to the relevant Departmental Committee, so that we can study it and enable him to bring more elaborate answers to the House? It would be very dangerous for us to just let it go the way it is.

Mr. Ojode: Mr. Deputy Speaker, Sir, I have no objection to that request.

Mr. Yakub: Mr. Deputy Speaker, Sir, our prison cells are full and our courts are delaying cases for so many years, why should the Assistant Minister not take the Somali pirates to the affected countries to be tried there?

Mr. Deputy Speaker: We have not been victims of piracy ourselves. Our ships have not been hijacked.

Mr. Ojode: That is true, Mr. Deputy Speaker, Sir, but---

Mr. Deputy Speaker: Why can they not be taken to the countries whose ships have been affected?

Mr. Ojode: Mr. Deputy Speaker, Sir, I did indicate to you that we are a signatory to IMO and I also indicated to you that we are a party to the United Nations Convention on the Law---

Mr. Deputy Speaker: Assistant Minister, those countries are also signatories! Could you give a better answer than that?

Mr. Ojode: Mr. Deputy Speaker, Sir, I think we are being fair. We have a Memorandum of Understanding (MOU) with some of these countries and we have to follow what we agreed on. We cannot go against an MOU which we are signatories to.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. I think a valid issue was raised about referring this matter to the relevant departmental committee. Assistant Minister has no objection to that, is it in order for him to continue answering a Question which he is not fully prepared to? He is ready to send it to the committee and then we can come back within two weeks or three weeks to debate it more substantively.

Mr. Ojode: Mr. Deputy Speaker, Sir, I said earlier that I have no objection taking the Question to the departmental committee simply because of the security component involved. This needs to be discussed in-house.

Mr. Deputy Speaker: Mr. Maina Kamau, I think this has more or less been put to a rest. Do you still have a question on the same?

Mr. Maina Kamau: Mr. Deputy Speaker, Sir, why does the country continue to enter into these international agreements without due consideration of the implications? We have got into so many international agreements when we know the Americans are not even members of the International Criminal Court (ICC). Does the Government consider implications when they enter into these agreements?

Mr. Ojode: Mr. Deputy Speaker, Sir, all those will be discussed in the departmental committee.

Mr. Deputy Speaker: You do not have to have a direction from the Chair. Standing Order No.198 (2) gives you express authority and powers to proceed on and do the needful. As a departmental committee you do not need to have a direction from the Chair. Given that the matter is of national security nature and there is an agreement between the Questioner and the Assistant Minister, the departmental committee can proceed on and bring the report to the House.

Next Question!

Question No.409

IMPROVEMENT OF CONDITIONS IN
KAMUKUNJI/CENTRAL POLICE CELLS

Mr. James Maina Kamau asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he could confirm that conditions at Nairobi's Kamukunji and Central Police Station cells are deplorable and expose suspects to the risk of contracting communicable diseases; and,

(b) what plans the Government has to improve the conditions in these cells.

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

(a) The Kamukunji and Central Police Station cells are adequately ventilated and cleaned daily with disinfectants. Therefore, their conditions do not pose any risk at all on the suspects contracting communicable diseases.

Mr. Deputy Speaker, Sir, further, suspects held in all police cells are provided with water for bathing on a daily basis to ensure maintenance of high hygienic standards at all times.

(b) Kshs195, 517 and Kshs1.7 million for the year 2004/2005 and 2005/2006 financial years respectively was spent to expand and renovate the cells at the two police stations. In addition, funds are allocated annually for repair and rehabilitation of police buildings whereby cells are given priority. However, the Government of Kenya has undertaken to modernize all police stations by putting up modern office blocks with modern holding facilities on a long term basis.

Mr. James Maina Kamau: Mr. Deputy Speaker, Sir, I thank the Assistant Minister for attempting to answer this Question. However, considering that the two stations are right in the heart of the city of Nairobi - they represent the face of Kenya - what is the Ministry doing in terms of decongesting these cells? As you enter the cells, some of them are muddy and the compounds are in a deplorable state. When tourists come to this country, when they are mugged or robbed, they are not happy. What is the Ministry doing to make sure they clean up these stations?

Mr. Ojode: Mr. Deputy Speaker, Sir, I am on record having said that we are modernizing and expanding these cells. I am also happy to note that even the crime rate is going down. In the next financial year we will have funds for modernizing and branding these stations. So, I do not think we should worry about the issue of cleanliness because the cells are very clean. In fact, I will challenge the Questioner together with the Members of Parliament representing those areas to a tour of the cells so that they see for themselves that they are very clean and habitable.

Mr. Mbugua: Mr. Deputy Speaker, Sir, Kamukunji Police Station has become a human toll station. Most of the officers in this police station have overstayed there. They have been receiving bribes openly. Kamukunji and Central police stations are the worst in

Kenya. What is the Assistant Minister doing to make sure that the officers in these stations are transferred to ensure that cleanliness is maintained?

Mr. Ojode: Mr. Deputy Speaker, Sir, cleanliness and bribery are two different things. However, if any of my police officers take a bribe, they know the consequences; the giver will be arrested, the taker will be arrested. I am saying this because people tend to put blame on police officers who receive these bribes. We said that those who have stayed in a station for more than three years are to be transferred. However, those who take bribes will not be transferred! They will be dismissed and taken to court!

Mr. Deputy Speaker, Sir, each and every police officer must have the name and force number tag pinned on his or her uniform. It forms part of the uniform. So when giving a bribe, you know very well that you are committing a crime and I will take you to court. The person who is receiving your bribe also knows he or she is making a mistake. That is a criminal act and I will take him to court. Those officers will not be transferred. They will be dismissed from the force!

Otherwise, the officers are doing their work diligently and I am proud to announce that very few officers are still engaged in receiving petty bribes. Any police officer found taking a bribe knows very well that he or she would go home any time.

Mr. Deputy Speaker: Mr. Maina Kamau, last question!

Mr. James Maina Kamau: Mr. Deputy Speaker, Sir, on the issue of mixing under-age children and adults in police cells, what is the Ministry doing?

Mr. Ojode: Mr. Deputy Speaker, Sir, the law is very clear. If you are under 18 years old you cannot be mixed with adults in cells. The law is very clear and I saw Mr. Olago Aluoch, who is a lawyer by profession, here. He knows that you cannot take an under-age to an adults' cell.

Mr. Waititu: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has just indicated that they are in the process of modernizing police stations in Nairobi. They have started it in Kayole and Dandora. However, in Dandora, they have only done the police housing but not the station. Therefore, the cells are still the old mud houses. In fact, they do not have cells for males and females. What is the Assistant Minister doing to make sure that Dandora Police Station is modernized as per his words?

Mr. Ojode: Mr. Deputy Speaker, Sir, you will agree with me that that is a different question but, if you want me to answer it, I will request my friend to file a substantive Question.

Mr. Deputy Speaker, Sir, my friend knows that the Appropriations Bill is yet to be passed by this House. I would urge my friend to constitute a committee so that we can know they want us to avail funds for the construction of cells in order for us to separate male and female suspects. That is if they share the same cells as I speak. In any case, modernization does not necessarily mean that we are going to put people in one cell. We are going to modernize both the cells for men and those for women. However, the hon. Member needs to request us for the money and we will give it once the Appropriations Bill is passed in this House.

Mr. Deputy Speaker: Next Question by Mr. Ferdinand Waititu!

Question No.276

ALLEVIATION OF TRAFFIC CONGESTION ALONG OUTER RING ROAD

Mr. Waititu asked the Minister for Roads:-

(a) whether he could confirm that there are only three bus-stops away from the main road on Outer Ring Road and that this is the main cause of the frequent traffic snarl-ups that are experienced on Outer Ring Road; and,

(b) what steps he is taking to alleviate the situation.

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

(a) I wish to confirm to the hon. Member that there are four bus-stops on each side of the road along the Outering Road, otherwise referred to as C59. Nevertheless, I want to clarify that these bus-stops are not the main cause of the frequent traffic snarl-ups along the road, but rather it is the tendency of some public service vehicle drivers to use bus-stops as parking bays for soliciting passengers. This behaviour not only crowds the bus-stops, but also leads to blocking traffic on the road.

(b) My Ministry recently re-carpeted the Outer Ring Road to improve traffic flow and reduce traffic congestion on this important road. In addition, my Ministry has awarded a contract for the construction of the Eastern Bypass. The completion of the bypass is also expected to reduce pressure on the Outer Ring Road by providing an alternative route for motorists connecting between Thika Road and Mombasa Road. For long-term purposes, there is need to upgrade the entire road, from Thika Road Junction to the Jomo Kenyatta International Airport (JKIA) Roundabout to a dual carriageway. In regard to this, my Ministry is currently sourcing for financial support to carry out the necessary detailed design.

Mr. Waititu: Mr. Deputy Speaker, Sir, I appreciate the work of the Ministry in constructing the Eastern Bypass which will ease traffic on Outer Ring Road. But right now, as the Assistant Minister has just confirmed, there are only four bus-stops from the General Service Unit (GSU) Roundabout to the JKIA Roundabout, which is a distance of about 12 kilometres. Those bus-stops are not enough because there are so many estates. About ten bus-stops should be constructed on that road. I am requesting the Ministry to increase bus-stops and since they have been promising to construct them, there must be a budget for it. Could the Assistant Minister confirm that there is a budget for those bus-stops in this financial year?

Dr. Machage: Mr. Deputy Speaker, Sir, I think the hon. Member will appreciate that I have taken real focus on this particular part of the City, especially the consideration of building a dual carriageway that will connect Thika Road and JKIA. This will reduce the congestion and traffic. I have not thought of increasing the bus-stops because I do not think they are necessary. What you need is more roads. For that matter, I have allocated Kshs4.536 billion, but I am sourcing for funds for the construction of this dual carriage road. That is the answer to your problem and not otherwise.

Mr. Chanzu: Mr. Deputy Speaker, Sir, there are traffic snarl-ups on the road not just because of the need for additional bus-stops, but also because the *matatus* do not even stop at the bus-stops. They get to the bus-stops and then park in the middle of the road. What is the Minister doing to liaise with the Ministry concerned and the traffic police to ensure that vehicles use the bus-stops as designed?

Dr. Machage: Mr. Deputy Speaker, Sir, obviously, the hon. Member knows that, that is not the prerogative of my Ministry but the Ministry of Transport. I will pass this message to the Minister concerned, as a concern by the hon. Members of this House.

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

Mr. Waititu: Mr. Deputy Speaker, Sir, the Assistant Minister has just indicated that there is some allocation for the construction of a dual carriageway on Outer Ring Road. When is he going to float the tender for its construction?

Dr. Machage: Mr. Deputy Speaker, Sir, let me be clear that I have indicated that I am sourcing and already got a financier – the Japan International Co-operation Agency (JICA) – who is ready to do this. Let us not jump that far. But this is a definite decision by the Ministry. The source is ready and so, let us talk about it when the water is under the bridge.

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

Question No.323

AFFORESTATION OF ABERDARES/MOUNT KENYA AREAS

Mr. Warugongo asked the Minister for Forestry and Wildlife:-

(a) what measures he is taking to ensure that areas around the Aberdares and Mount Kenya, which have continually been deforested are rehabilitated and more trees planted to restore the water catchment base; and,

(b) whether he could consider providing funds and tree seedlings to youths in Kieni West and Kieni East districts to enable them undertake afforestation in the region.

Mr. Deputy Speaker: Is the Minister for Forestry and Wildlife not here? As the tradition holds, when a Minister fails to appear to answer a Question, there is a sanction. Under the circumstances, the Minister will not be able to transact any business here before he gives a good explanation.

Next Question, by Mr. Mungatana!

Question No.341

TOTAL COST OF TEAMS PROJECT

Mr. Mungatana asked the Minister for Information and Communications:-

(a) to state the total cost of the recently launched East African Marine Systems (TEAMS) Project;

(b) when the project will start actual operations;

(c) what security measures are in place to ensure safety of the Fibre Optic Cables; and,

(d) what steps he is taking to ensure optimum use of the facility, considering that very few Kenyans own computers.

Mr. Deputy Speaker: Is the Minister for Information and Communications also not here? I think I am going to take the sanctions collectively. The sanction for the Minister for Forestry and Wildlife is stood over until we come back to it.

Next Question, hon. Sambu!

Question No.404

NUMBER OF CASES GIVEN PECUNIARY AWARDS BY HIGH COURT

Mr. Sambu asked the Minister for Justice, Constitutional Affairs and National Cohesion:-

(a) to state the number of cases in which the High Court of Kenya has given pecuniary awards to the litigants in the last ten years;

(b) whether he could indicate how many of these awards were against (i) the Government, (ii) State corporations, (iii) private companies and (iv) individuals; stating the total amount involved for each category; and,

(c) how many of the cases, especially against the Government, have since been settled.

Mr. Deputy Speaker: Minister for Justice, Constitutional Affairs and National Cohesion!

Let us go back to the first Question. Question No.138 by hon. Washiali!

Question No.138

FORMULATION OF SPORTS DEVELOPMENT PLAN IN KENYA

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

(Question dropped)

Hon. Warugongo, could you ask your Question again?

Question No.323

AFFORESTATION OF ABERDARES/MOUNT KENYA AREAS

Mr. Warugongo asked the Minister for Forestry and Wildlife:-

(a) what measures he is taking to ensure that areas around the Aberdares and Mount Kenya, which have continually been deforested are rehabilitated and more trees planted to restore the water catchment base; and,

(b) whether he could consider providing funds and tree seedlings to youths in Kiini West and Kiini East districts to enable them undertake afforestation in the region

Mr. Deputy Speaker: Minister for Forestry and Wildlife!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I undertake to inform the Minister---

Mr. Deputy Speaker: Order! Order! You do not have communication from the Minister. If you had it, you would have communicated it to the Chair much earlier. Do you want to answer the Question on behalf of your colleague?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, you were still going to do the second round. That is why I want to undertake to inform the Minister to reply to this Question.

Mr. Deputy Speaker: Order! You are out of order, hon. Assistant Minister! The Ministry for Forestry and Wildlife will not transact any business until such time that there is credible and convincing explanation for not being present here. This is in accordance with the new Standing Orders.

Question by hon. Mungatana!

Question No.341

TOTAL COST OF TEAMS PROJECT

Mr. Mungatana asked the Minister for Information and Communications the following Question:-

(a) to state the total cost of the recently launched East African Marine Systems (TEMAS) Project,

(b) when the project will start actual operations,

(c) what security measures are in place to ensure safety of the Fibre Optic Cables; and,

(d) what steps he is taking to ensure optimum use of the facility, considering that very few Kenyans own computers.

Mr. Deputy Speaker: Is the Minister for Information and Communications here?

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

Mr. Deputy Speaker: Order! You are not the Minister for Information and Communications, unless you want to answer the Question on behalf of the Minister, in line with the collective responsibility. Do you intend to do that?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, it has been a custom or tradition that when the Minister is not in, another Minister can undertake to the House when the Question will be replied. So, I am totally---

Mr. Deputy Speaker: Obviously, you have not acquainted yourself adequately with the new Standing Orders. That is as far as the past Standing Orders are concerned before these new Standing Orders came into force. Order, hon. Assistant Minister!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, the new Standing Orders also talk about collective responsibility!

Mr. Deputy Speaker: Indeed, yes, but a Minister must be available to answer this Question! In the absence of not being able to do that and, without information being communicated to the Chair well in advance, then there is a sanction. The Minister is not going to pass that Standing Order---

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: Order! You are out of order! The hon. Minister for Information and Communications will not transact any business pending such time that he is able to give a convincing explanation for not being available this morning to answer Question No.341.

Next Question No. 404! Mr. Sambu, can you ask the Question again?

Question No.404

NUMBER OF CASES GIVEN PECUNIARY AWARDS BY HIGH COURT

Mr. Sambu asked the Minister for Justice, Constitutional Affairs and National Cohesion:-

(a) to state the number of cases in which the High Court of Kenya has given pecuniary awards to the litigants in the last ten years,

(b) indicate how many of these awards were against (i) the Government, (ii) State corporations, (iii) private companies and (iv) individuals, stating the total amount involved for each category; and,

(c) how many of the cases, especially against the Government, have since been settled.

Mr. Deputy Speaker: Is the hon. Minister for Justice, Constitutional Affairs and National Cohesion here? It is the same thing like the earlier Questions. The hon. Minister for Justice, Constitution Affairs and National Cohesion will not transact any business on the Floor of this House, in line with our Standing Orders; until such time that he is able to give a convincing explanation for not being available this morning.

Next Order!

PERSONAL STATEMENT

MISREPORTING OF HOUSE PROCEEDINGS BY *THE PEOPLE DAILY*

The Minister of State for Defence (Mr. Haji): Mr. Deputy Speaker, Sir, by the indulgence of the House, I wish to make a Personal Statement under Standing Order No. 76. I made contributions yesterday in this august House and I was shocked to read a misrepresentation and misinformation by one of the daily newspapers. This daily newspaper is *The People*.

Mr. Deputy Speaker, Sir, in my contribution yesterday, what I said is properly reported in the HANSARD, and I quote:

“Madam Temporary Deputy Speaker, this country is ailing from drugs money; there is a lot of drugs money coming into this country. If you watch television, you will

see women in Mombasa crying and demonstrating because there are drug barons in Nairobi, Mombasa and also in the House “.

It is unfortunate that this daily newspaper reported that hon. Yusuf Haji appeared to have rubbed in the wrong way Members from the Coast Province; after he indicated that there are drug dealers from Coast Province who are currently serving as Members of Parliament.

Mr. Deputy Speaker, Sir, these are unfounded lies and it is unacceptable. I have never made allegation of this nature in my life and I have not made it. I feel if I would have taken this paper to court, there is nothing I will get, from them because they are bankrupt. They need to be told by the House that they should stop misreporting Members of Parliament waging unnecessary wars.

All Members of Parliament from the Coast Province are my personal friends, they are very honourable and upright people and there is no way they can be connected with drug trafficking. This is a paper that had imaginations in their mind, and then they should say it very clearly and not attribute it to me.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Fair enough! That is a Personal Statement under Standing Order No. 76. Unfortunately, hon. Minister, the Chair cannot give a direction to media houses on such matter because your Personal Statement is not covered under Standing Order No.215. Sanctions can only be made on misreporting on the proceedings on the Floor of the House. But you have made your point.

The Minister of State for Defence (Mr. Haji): Mr. Deputy Speaker, Sir, what is important is for me to make it clear that I have not said what the paper wrote and the House witnesses that.

Mr. Deputy Speaker: Fair enough. The Press has taken note of that and the House too.

POINT OF ORDER

COST OF PROPOSED CABINET RETREAT IN MOMBASA

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. I rise on a point of order to seek a Ministerial Statement from the Office of the President.

The understanding we have been given is that the Office of the President is organizing a trip to the Coast of all Ministers and Assistant Ministers and other Government functionaries. I wish to ask the Minister in the Office of the President to clarify the following issues:

(i) What is the total cost of this trip to the Coast?

(ii) Where is the Minister getting this money from? Is it from the budget that we passed, because we do not remember passing an allocation for bonding session and relaxation at Coast?

(iii) The utility of taking such trip against taxpayers' monies, when the same could have been achieved here in Nairobi?

(iv) What results does the Cabinet expect to get which they could not have obtained if they spent the same money here in Nairobi?

Could he also clarify whether this is why Ministers are not here this morning to answer questions that have been put before Parliament?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I undertake to give a statement tomorrow. However, a number of Ministers are not here because we are having a meeting on climate change at Inter-Continental Hotel, which is being opened, officially, by the Prime Minister. That is why you do not see quite a number of Ministers in the House.

Mr. Deputy Speaker: Fair enough, the Assistant Minister has given an undertaking. Order, hon. Members!

I take you back to the Personal Statement that was made by hon. Yusuf Haji. Apparently, it had escaped the attention of the Chair. Actually, hon. Haji was responding on what was reported about him on what he said on the Floor of the House. Then he as the full protection of the Chair under Standing Order No.215.

Standing Order No. 215 says:

“Any media institution whose representatives infringes these Standing Orders or any rules made by the Speaker for the regulation of the admittance of strangers or persistently misreports on the proceedings of the House, or neglects or refuses on request from the Clerk to correct any wrong report thereof to the satisfaction of the Speaker, may be excluded from representation in the Press Gallery for such term as the House shall direct.”

The Chair is going to study the HANSARD and the report in the papers, and then it is going to give a direction on the matter on Thursday afternoon.

Next Order! Hon. Imanyara.

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

Mr. Imanyara: I beg to move that the Constitution of Kenya (Amendment) Bill be read a Second Time.

Mr. Deputy Speaker, Sir, I stand before you with great humility and profound gratitude to move the Constitution of Kenya (Amendment) Bill, 2009. If enacted, as I plead with you, we will amend the Constitution of Kenya to create a Special Tribunal for Kenya to investigate, prosecute and determine cases against persons responsible for genocide, gross violation of human rights and crimes against humanity. The Tribunal will also investigate prior and subsequent events, circumstances and factors relating to offences arising from and connected with the December, 2007 General Election.

On 16th December, 2008, His Excellency the President and Commander-in-Chief of the Armed Forces, Mwai Kibaki together with the Rt. hon. Raila Amolo Odinga signed a historic agreement which was in the following language. It reads:-

“Agreement for the implementation of the recommendations of the Commission of Inquiry into Post Election Violence. Recalling the agreements on the principles of partnership of the Coalition Government made on 28th February, 2008, and the agreement for the establishment of a Commission of Inquiry on Post Election Violence

dated 4th March, 2008 convinced that the fundamental reforms must be instituted to create a better, more secure, more prosperous Kenya for all, desirous to establish a framework for the implementation of the recommendations of the Commission into Post Election Violence as contained in the report dated 16th October, 2008, the CIPEV Report and pursuant to the National Accord and Reconciliation Act as entrenched in the Constitution of Kenya, now the parties hereby - the parties were the President and the hon. Prime Minister - agree as follows---

Article One on the establishment of a special tribunal for Kenya says that “the parties shall prepare and submit to the National Assembly for enactment a Bill to be known as “The Statute for the Special Tribunal” to give effect to the establishment of a Special Tribunal to seek accountability against persons bearing the greatest responsibility for crimes, particularly crimes against humanity relating to the 2007 General Election in Kenya. The Bill shall provide for the matters recommended by the CIPEV Report in relation to a Special Tribunal for Kenya”.

Article Two says that “the parties shall mobilise Parliamentary support for the enactment of Freedom of Information Bill, 2008 and take such administrative measures as they may be necessary to fully operationalise the Witness Protection Act, 2008 and the International Crimes Act, 2008.

Article Three which talks about comprehensive reforms in the Kenya Police and the Administrative Police says that the parties shall initiate urgent and comprehensive reforms of the Kenya Police and the Administrative Police. Such reforms shall be undertaken by the panel of policing experts and will include, but not limited, to a review of all tactics, weapons and use of force, establishment of an independent Police Service Commission to oversee both the Kenya Police and the Administrative Police, an Independent Police Conduct Authority for both the Kenya Police and the Administration Police, creation of a modern Code of Conduct for the Kenya Police and the Administrative Police and achieving ethnic and tribal balance in the force”.

Article Four on public officers and offices says that “the parties shall ensure that any person holding public office or any public servants charged with a criminal offence related to the 2008 post election violence shall be suspended from duty until the matter is fully adjudicated upon. The parties shall ensure that any person convicted of a post election violence offence is barred from holding any public office or contesting any electoral position”.

Article Five on Conflict and Disaster Early Warning and Response System says that “the parties shall ensure that the conflicts and disaster early warning and response systems as articulated in the First Medium Term Plan, 2008/2012 and are developed and implemented as a matter of priority.

Article Six on Framework for implementation states that “the parties hereby designate a Cabinet sub-Committee of National Accord comprising of His Excellency the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, Mwai Kibaki; the Rt. hon. Raila Odinga who is the Prime Minister of the Republic of Kenya and the eight Ministers who represent the parties at the Kenya National Dialogue and Reconciliation as the bodies to oversee the day to day management and implementation of the agreements.”

Mr. Deputy Speaker, Sir, this Bill is our contribution as Members of the Tenth Parliament to the realisation of the objectives that were set out by His Excellency the

President, the Rt. hon. Prime Minister and the eight man and women team that was charged with that responsibility.

I need not to remind hon. Members that this Accord was entrenched in our national Constitution, therefore, creating a very solemn obligation on the part of the parties and on us, as Members of Parliament. The eight Ministers who represent the parties in the agreement are:-

1. Hon. Moses Wetangula;
2. Hon. Mutula Kilonzo, MP;
3. Hon. Prof. Sam Ogeri, MP;
4. Hon. Martha Karua, MP, (now replaced by Hon. Beth Mugo, MP);
5. Hon. Musalia Mudavadi, MP;
6. Hon. James Orengo, MP;
7. Hon. William Ruto, MP; and,
8. Hon. Sally Kosgei, MP.

The journey to this stage began with the unanimous decision of the then NARC Government through the then Minister for Justice and Constitutional Affairs to ratify the Rome Statute that set up the International Criminal Court in Rome. This country proudly, ratified the Rome Statute on 15th March, 2005 and, therefore, joined the international efforts to end the culture of impunity. This country recognises the exhaustive provisions in that statute to deal with impunity. In too many cases across the world, these crimes had been committed with impunity which had only encouraged others to flout the laws of humanity. The International Criminal Court was created due to that urgent need to end impunity and stop gross violation of the International Humanitarian Law.

On 17th July, 1998, the international community reached a historic milestone when 120 states adopted the Rome Statute forming the legal basis for establishing the permanent International Criminal Court. The states were mindful that millions of children, women and men have been victims of unimaginable atrocities that have deeply shocked the conscience of humanity. The states were affirming that the most serious crimes of concern to international community must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international co-operation.

Mr. Deputy Speaker, Sir, among the provisions of the Rome Statute that we ratified is Article 27 which stipulates that the statute shall apply equally to all persons without any distinctions based on official capacity. Article 29 provides that the crimes within the jurisdiction of the court shall not be subject to any statute of limitations.

The ratification was followed by the next major step of domesticating the Rome Statute when this House approved the Government's efforts of domesticating it by passing the International Crimes Bill into an Act of Parliament.

Mr. Deputy Speaker, Sir, our efforts towards the establishment of a truly democratic environment under which the rule of law and respect for human rights were dealt a near fatal blow by the events surrounding the declaration of the result of the Presidential Elections of December, 2007 General Elections. I need not repeat the tragic circumstances that saw more than 1,000 Kenyans slaughtered in an unprecedented orgy of ethnic mayhem and also left more than 500,000 of fellow Kenyans living as refugees or Internally Displaced Persons (IDPs) within our borders.

The tensions, suspicions, prejudices and fears provoked by those events, unfortunately, remain with us today. Against the above background, the international community did not disappoint. At the moment, we must pay tribute to the Secretary-General of the United Nations, Mr. Ban Ki Moon, the then President of Ghana, His Excellency John Kufuor, His Excellency the former President of Tanzania, Mr. Benjamin Mkapa, the former Secretary-General of the United Nations, Dr. Kofi Annan and Her Excellency, Madam Graca Machel.

It is through the efforts of the UN and the international community that the National Accord and Reconciliation Committee was formed after the disputed elections held in December, 2007. The Committee held its deliberations under the auspices of the panel of eminent African personalities and through them, the National Accord was born and signed into law on 28th February, 2008, and also enacted in the Constitution to ensure that its noble intentions were not manipulated or subverted.

Mr. Deputy Speaker, Sir, under the National Accord signed by President Mwai Kibaki and Prime Minister Raila Odinga, the Commission of Inquiry into the Post-Election Violence (CIPEV) was established vide gazette notice No.4473 on 22nd May, 2008. Its mandate was to investigate the facts and circumstances surrounding the violence; the conduct of state security agencies in their handling of it and to make recommendations concerning this and other matters. Under the chairmanship of Justice Phillip Waki, Judge of the Kenya Court of Appeal, the CIPEV carried out its mandate and completed its task within a reasonable time and in accordance with its provisions, made fundamental recommendations among them:-

“(a) A special tribunal to be known as Special Tribunal for Kenya be set up as a court that will sit within the territorial boundaries of the Republic of Kenya and seek accountability against persons bearing the greatest responsibility for crimes, particularly crimes against humanity relating to the 2007 General Elections in Kenya. The special tribunal shall achieve this through the investigation, prosecution and adjudication of such crimes.

(b) The special tribunal shall apply Kenyan law and also the International Crimes Bill once this is enacted, and shall have Kenyan and international judges as well as Kenyan and international staff to be appointed as provided thereunder.

(c) In order to fully give effect to establishment of the special tribunal, an agreement for its establishment shall be signed by the representatives of the parties in the agreement of National Accord and Reconciliation within 60 days of the presentation of the report of the CIPEV to the panel of eminent African personalities or the panel representatives. A statute to be known as a Statute for Special Tribunal shall be enacted into law and come into force within a further 45 days after the signing of the agreement.

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

(e) The Bill establishing a special tribunal shall ensure that the special tribunal is insulated against objections on constitutionality and to that end it shall be anchored in the Constitution.”

Mr. Deputy Speaker, Sir, the above recommendations, among others contained in the Waki Report, led to the introduction before this House of the first attempt to create a special tribunal for Kenya. The attempt failed when this House rejected it for reasons among others, are:-

(i) It did not meet constitutional safeguards on the criteria and conditions set by the Waki Report.

(ii) As drafted, it could not win the confidence of victims because of lack of credible, impartial, independent investigations and prosecution procedures

(iii) It did not guarantee standards of trials set out in the Rome Statute.

(iv) It did not have financial and political independence.

(v) Provisions on witness and victim protections were inadequate.

Mr. Deputy Speaker, Sir, despite advice in a Speaker's *Kamukunji* that we held in the Old Chambers attended by both the President and the Prime Minister, the efforts of the then Minister for Justice, National Cohesion and Constitutional Affairs, failed to yield. Subsequent events led to the resignation of the Minister from the Government and she was succeeded by Mr. M. Kilonzo, whose efforts also failed when his colleagues in the Cabinet rejected a much improved version of the original Bill.

It was at that stage that the civil society, led by the Law Society of Kenya (LSK) and supported by others including the International Commission of Jurists (ICJ), International Centre for Policy and Conflict (ICPC), FIDA Kenya and a number of us in the back-bench met, fine-tuned and improved on the earlier Bill rejected by the Cabinet and in a departure from the traditions of this august House, published it in a draft form in a website called “endimpunityinkenya.org” seeking views from Kenyans within and without. Within days, the website recorded more than 50,000 hits and close to 5,000 comments and suggestions for improvement. The result is the Bill that I am introducing to this House today.

Mr. Deputy Speaker, Sir, may I at this point remind hon. Members that what is before this House is, therefore, the product of all the above. It is not a sole effort of myself, Mr. Imanyara, but a combined effort of Kenyans determined to end the culture of impunity in our beloved Republic.

Why the Bill? In line with Recommendation No.6 of the Waki Report, the Bill proposes the following constitutional amendment. The Constitution of Kenya shall be amended by inserting the following new Section immediately after Section 3A which reads:-

“There is to be established a tribunal to be known as a Special Tribunal for Kenya which shall have exclusive jurisdiction in accordance with this Constitution;

(a) to investigate, prosecute and determine cases against persons responsible for genocide, gross violation of human rights, crimes against humanity; and,

(b) investigate prior and subsequent events, circumstances and factors relating to the crimes and to prosecute related offenses arising from and connected with crimes committed in Kenya in connection with December, 2007 elections.

Mr. Deputy Speaker, Sir, Clause 3A (vi) says that this Section shall cease to be effective upon expiry of three years from the dates of the establishment of the tribunal,

provided that Parliament may extend the life of the tribunal which may be extended in appropriate circumstances and at the request of the tribunal by the resolution of the National Assembly, supported by not less than 65 per cent of all Members of the National Assembly excluding the *ex-officio* Members.

Mr. Deputy Speaker, Sir, in line with Recommendation No.5 of the Waki Report, the Bill proposes in Clause 3A (ii) as follows:-

“Notwithstanding the provisions of this Section, the ICC established under the Rome Statute shall have concurrent jurisdiction to investigate, indict and prosecute persons bearing the greatest responsibility. The Tribunal, may, at any stage make a referral to the ICC as set out in Article 14 of the Rome Statute with reasons thereof if it deems expedience provided that no person shall be subjected to prosecution by both the ICC and the Special Tribunal at the same time.”

Mr. Deputy Speaker, Sir, in line with recommendation number 2 of the Waki Report and in recognition that this country has fully operationalised the International Crimes Act, 2008 and in recognition of the Vienna Convention Section 11(3)(i) and (ii) of the Bill are coached in the following words:-

“(3)(i) This section shall apply equally to all persons without any distinction based on official capacity and shall in no case exempt a person from criminal responsibility nor shall it in and of itself constitute a ground for reduction of sentence;

(ii) Immunities or special procedural rules which may attach to the official capacity of a person whether under national or international law shall not bar the Tribunal from exercising jurisdiction over such a person with respect to Vienna Convention.”

Mr. Deputy Speaker, Sir, in line with Article 28 of the Rome Statute which ratifies this, the Bill proposes as follows in Section 11(4):-

“The fact that any other acts under the interpretation section herein above was committed by a subordinate does not relieve his superior of criminal responsibility if the superior knew or had reason to know, or to have ought to have known, or owing to the circumstance at the time, should have known, or consciously disregarded information which clearly indicated that the subordinate was about to commit such acts or has done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to submit the matter to the Competent Authorities for investigation and prosecution.”

Section 11(5) says:

“The fact that an accused person acted pursuant to an order of a Government official or of a superior shall not relieve him or her of criminal responsibility.”

Mr. Deputy Speaker, Sir, contrary to assertions from some quarters, the Bill does not target any one personality, institution or community. It targets the perpetrators of impunity wherever they are from whatever community or racial group in Kenya.

Mr. Deputy Speaker, Sir, Section 11(1) of the Bill is coached as follows:-

“A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime shall be responsible individually for the crime”.

Mr. Deputy Speaker, Sir, in line with recommendation number one of the Waki Report, the Bill has given the Tribunal wide powers to look at events that not only took place after the disputed Presidential results were announced, but also that preceded the general election.

Section 4(1) of the Bill gives the Tribunal the following functions:-

“The functions of the Tribunal shall be to investigate, prosecute and determine cases against persons bearing responsibility for genocide, gross violations of human rights, crimes against humanity and other crimes which occurred in relation to the General Elections held on 27th December, 2007.”

Section 4(2) says:-“The Tribunal shall have power to investigate prior and subsequent events, circumstances and factors relating to the crimes and to prosecute related offences arising from and connected with the crimes.”

Therefore, those who fear that and I quote their words “stole elections will be scot-free” will not go scot free because the Tribunal does have powers to make investigations on all aspects. The Tribunal shall determine who to pay compensation for the identified victims after assessment has been undertaken by special magistrates.

Lastly, the effects of investigation, indictments and convictions on holders of public office are stipulated in Clause 55(1) of the Bill. It reads as follows:-

“A public officer under investigation shall stand relieved of duties until exonerated.”

Section 55(2) says:-

“A public officer who is indicted or convicted of a crime under this statute shall cease to hold public office.”

The Bill before this House today does not aim to replace the criminal processes or work of the Kenyan judiciary. It is not imposed upon us from outside, but as I have explained, it does recognise the efforts of international community as entrenched in the Constitution through the Panel of Eminent African Personalities.

The Bill has four parts. Part one contains preliminaries, part 2 providing for the operations and structure of the Special Tribunal for Kenya as a body corporate; it sets out the procedure for the appointment of judges of the Tribunal, Prosecutor, Registrar, Defence Counsel, Special Magistrates and it also specifies the crimes to be prosecuted. Part three contains financial provisions in respect of the Tribunal and provides for the sources from which funds of the Tribunal will be drawn. Part 4, contains miscellaneous provisions, including requirements that the Tribunal do prepare and submit a report on its work to the National Assembly.

The Bill gives the two principals signatories, His Excellency the President and Right Hon. Prime Minister extra-ordinary authority to ensure the proper functioning of the Special Tribunal. That is why the Constitution itself, through the Bill that we entrenched, gave special responsibility to the eight Cabinet Ministers who have been charged with that solemn responsibility of ensuring, not only that the special Tribunal is formed, but it functions smoothly and in accordance with the recommendations contained in the Waki Report.

All we are doing this morning is supporting those efforts. It is a pity that 90 per cent of those who are charged with that responsibility are not here to understand and hear that we are doing what is expected of them. We are only supporting their efforts. This solemn obligation they took when they signed the agreement setting out the principles. If you look at those principles as I have read, you will see that we are lagging far behind the reform agenda. That is why we, as a Parliament, are called upon to take responsibility of leadership to ensure that this country never again has to undergo through what we went in December, 1997 and early January, 1998.

Mr. Deputy Speaker, Sir, in conclusion, I want to emphasize that the Special Tribunal Bill that we seek to establish is a truly Kenyan Tribunal. It uses the best of international practice and international legal know-how as recommended by the Panel of Eminent African Personalities. It is created by the will of the Kenya people and a creature of this House and none other. The Special Tribunal is not answerable to the United Nations (UN), Koffi Annan or any foreign envoy. The Bill clearly differentiates between culprits and minor collaborators. The chief perpetrators go to The Hague. Their names are contained in an envelope. The other violators will be dealt with here in accordance with the law without distinction as to their community, status in life and official capacity. It does not victimise any group of any class. It serves the victims while dealing with new ones and differentiations with the culprits. The Special Tribunal we are creating does not depend on the International Criminal Court (ICC), but will collaborate with it.

Mr. Deputy Speaker, Sir, passing this Bill will strengthen our sovereignty and show critics and detractors that we are not a failed state, but a state that is able, ready and willing to regulate her own affairs. I urge the hon. Members to enact this Bill into law.

In the words of Winston Churchill, we are still toiling up the hill. We have not yet reached the crest line of it. We cannot survey the landscape or even imagine what condition will be when that longed for morning comes. The task which lies before us immediately is one that is practical, simpler and has higher standards more stands. I hope and, indeed, pray that we shall not be found unworthy of our victory if after toil and tribulations of it, it is granted to us. For the rest, we have to gain the victory. That is our task.

Mr. Deputy Speaker, Sir, I beg to move the Constitution of Kenya (Amendment) Bill and request hon. Mr. Mungatana to second it.

Mr. Mungatana: Mr. Deputy Speaker, Sir, I want to congratulate hon. Gitobu Imanyara for moving this Bill. I also want to thank him so much for taking time to move The Constitution of Kenya (Amendment) Bill, which essentially seeks to introduce the Special Tribunal in Kenya.

Mr. Deputy Speaker, Sir, hon. Imanyara has gone into details about what the technical bits of the law that are necessary for us to get the Special Tribunal for Kenya and he has gone into the details of the kind of things and the standards that we need to set. However, I want to bring this debate to another level. Crimes were committed in this country after the general election of 2007. There were crimes of murder, rape, robbery with violence, those that involved injuries to people, burning of homes and things like that. However, there are what we call ordinary crimes and crimes that threaten the very existence of a state.

Mr. Deputy Speaker, Sir, when we have a crime that is committed and threatens the existence of a State and also brings the fear of disintegration of a whole nation, such a crime cannot be treated as an ordinary crime. There have been arguments that the Attorney-General of the Republic of Kenya could have arrested all those people and tried them under the current existing laws. He could have taken all the people who were involved in whatever forms of little crimes that were committed at the time, have them arrested and then charge them in court under the existing laws. People have argued before saying that because the Attorney-General did not do that, it is a failure on his part. I stand here as the devil's advocate. The kind of crimes that were being committed at that time were threatening the existence of the state that we know as Kenya. They were not

ordinary crimes that were committed in this country. Those were crimes that were threatening the very fabric of the state that we know as Kenya. Therefore, it is not the failure as such of the Attorney-General. It was the failure of the law that existed at that time that would not be able to address the issues that were in existence.

Mr. Deputy Speaker, Sir, that is why, right now, we need to pass this statute of the Special Tribunal that will deal with those kind of crimes that were threatening the existence of the nation. These were not ordinary crimes. This is the reason why this Parliament should be persuaded to pass the law that hon. Imanyara has just moved.

Mr. Deputy Speaker, Sir, the existence of this kind of situation is not new. It has been existing in other parts of the world and there are many examples that people can look at. However, what comes to my mind, and every hon. Member can quickly access it if they go to the Cable News Network (CNN) blog, is that they will see what happened in Cambodia; 1.7 million people were killed in Cambodia in three months because of the uprising of the Khmer Rouge. Many of us would remember hearing about the Khmer Rouge again and again. It was not possible in Cambodia to deal with those murders, rapes, killings and burning of properties that took place using the normal laws that existed at that time. It was necessary to set up a special law that would deal with that situation.

Mr. Deputy Speaker, Sir, so in seconding this Bill, I am urging Members of Parliament to bring to bear the fact that there is need for us right now to set up this Special Tribunal so that we can deal with a situation that existed and could not be handled with the current laws that exist in this country. Legally and politically speaking, the laws that were in existence at this time and the laws that are in existence at that time are not capable of dealing with the situation that we have. Therefore, this is one fundamental reason why I am urging hon. Members in this House and those who are listening to us even outside this House, that there is need for us to come together as a nation and support the aspirations of many Kenyans and set up this Special Tribunal.

Mr. Deputy Speaker, Sir, this brings me to the second point why we need to set up this Special Tribunal. A lot of Kenyans out there were injured and suffered crimes. People lost their lives. Children were butchered. Women were raped. Young men were killed at the prime of their youth. A lot of people show the clips that were there during the post-election violence. Those are images we cannot forget. These Kenyans who were victims are listening to us today and looking up to the leadership of the country to do something about the problems of victimization they encountered at that period. It is a time in history for this Parliament to rise to the occasion and listen to the cries of the people in the countryside and those in towns who suffered the brunt of the election violence.

Mr. Deputy Speaker, Sir, even reading what was recommended by the Justice Waki and Kriegler Commissions, our people suffered and need a closure to that sad chapter of history. I know that we need to forgive and this is what the good book tells us and we will forgive. That opportunity will come under the Truth Justice and Reconciliation Commission (TJRC) but under this law, we want people to be held responsible so that Kenyans who brought us to this Parliament would be able to see leadership in us. Leadership is not about being popular; leadership is about walking and charting places which may not necessarily have been charted before. Sometimes it is

dangerous, unpopular and difficult. That is why I am saying we need to congratulate hon. Imanyara for this bold step he has taken.

Mr. Deputy Speaker, Sir, Kenyans today would like to see a situation where those people that wronged them can face justice in this country. They know them. Some of them were their neighbours and are still walking around in their neighbourhoods. Some of them are laughing at them. It is important for us as a nation to meet the aspirations of the people of Kenya who want to see a closure to this sad chapter in our history, which is the second reason why we need to pass this Bill and offer leadership to the people of Kenya.

Mr. Deputy Speaker, Sir, the third reason I am seconding this Bill, and I think we should all support it, is that the victims of post-election violence who would wish to give their evidence have a special arrangement under this law. People will not be living in fear again in the countryside. They will be able to come out to give their bit. When the Truth, Justice and Reconciliation Commission commences work, it will find people who have already started the process of healing.

This Bill also provides clearly that the victims of post-election violence will be compensated. In the whole debate about the post-election violence, the country has been concerned about those who need to be protected. They have forgotten about the victims of the violence. When we have national disasters in the country, say, as a result of bad weather, the nation always wakes up to the occasion. For example, Ministries come together to help people resettle. However, the Internally Displaced Persons (IDPs) have been forgotten. Those who had farms were given only Kshs35,000. There are those who were employed but are not jobless and they cannot go back where they used to work. They have lost their livelihood! These people need to be compensated. So, in this Bill, the victims of post-election violence have been clearly provided for. The Bill seeks to set up a fund. This will enable the victims of the violence say: "Indeed, our country did not forget us"

If we say that the problem that arose was collective because of the failure of the electoral system at that time, then it was a failure of the State. We failed collectively. However, if we also say that these victims should be forgotten, then that is another failure. In this Bill, it is proposed that a fund be set up. The State will try to reach out to the victims of post-election violence and compensate them. That way, the nation will start a true healing process.

Mr. Deputy Speaker, Sir, hon. Imanyara touched on the reasons that made us reject the initial Bill. The most crucial thing is to realize that in this particular Bill, people are being treated equally. According to this Bill, in all circumstances, there is no regard to the position you hold. You could be the President, Vice-President, Prime Minister, Deputy Prime Minister, or Police Commissioner, but this Bill is not restrictive. It seeks to deal with and bring equality to everybody. It is for that reason, again, that I urge my colleagues to support it.

Kenya has suffered impunity right from Independence. Impunity has been there since the regime of the late first President, the second President and even now. The notion in this State is that when you are a big person, you cannot commit any wrong and that you need to be protected at all costs. This Bill seeks to correct that. For the first time in this country, we will see people being taken to trial. Impunity needs to be dealt with in this country and we must begin from somewhere. I was very happy when the other day I

read in the newspapers that the former President of France, Mr. Jacques Chirac was being questioned and warrants had been issued that he appears in court to answer to charges of improper use of resources when he was the mayor of Paris. You can imagine the levels where justice has reached in that country – a former Head of State can be called to account!

In the same country, the current President, Mr. Sarkozy, has gone to court to fight for his rights. Apparently, when he was running for the presidency, the former Prime Minister, Dominique de Villepin was involved in some schemes to ensure that Mr. Sarkozy does not succeed. In Kenya, we call it “*kupakana matope*”. That is the level we need to take our country. I know of democracies that have been in existence for many years. For example, we all know about the French Revolution of 1779.

Mr. Deputy Speaker, Sir, here, we are talking about impunity and we do not need to reinvent the wheel. In Kenya, you hardly ever hear of a Government Minister being taken to court to answer to this-and-that charge. That is why, today, even on small matters like traffic jams, you will see a flagged car ‘flying’ on the wrong side of the road. They do not care that they could cause an accident and kill someone. They just ‘fly’. They do not know that we are the ones paying for the flagged vehicle, whether it is a Passat or the big guzzlers. The sense of impunity exists in this country and it is what we need to deal with. It is impunity which tells you: “Because my father is So-and-So, you cannot touch me. Because my grandfather is So-and-So, I need to get this tender. I can shoot you and nothing will happen to me. I can plan violence and nothing will happen to me so long as I fight so hard to catch that flag. Once it is on my car, nothing will happen to me”.

We need to take our country to the level of France. Everybody must be ready to pay the price so that the State can move forward. This is a big reason we need to support this Bill. It is seeking to deal with that impunity. In this Bill, nobody is big or immune. If you have been mentioned, whether you are a Government officer or not, you are required to come out of that office so that you can be dealt with in a normal way. We have to respect the flag and that is why we have to remove you from office so that you can be dealt with.

Mr. Deputy Speaker, Sir, for those reasons, I second this Bill and urge hon. Members to show leadership and go for it. Let us close this chapter of our nation. I beg to second.

(Question proposed)

The Assistant Minister for Roads (Dr. Machage): Bw. Naibu Spika, huu ndio wakati wananchi wa nchi hii wanapaswa kuwatambua viongozi wazalendo ambao wana uchungu na utu; viongozi ambao wanamtambua kila mtu kwenye sehemu ya uwakilishi Bungeni kama binadamu, na kujua kwamba binadamu wote ni sawa.

Kwa wale, wale ambao wanapenda kusoma Biblia, wanajua kwamba wakati fulani, Mwenyezi Mungu alimuumba binadamu na binadamu akawazaa watoto wawili; Abel na Kain. Baadaye, Kain aliamua kumuua Abel. Mwenyezi Mungu akamuuliza Kain: “Ndugu yako yuko wapi?” Kain akamujibu: “Sijui.” Mwenyezi Mungu akamuuliza: “Unasema hujui na damu ya ndugu yako inalia mbele ya macho yangu?”

Bw. Naibu wa Spika, damu ya wananchi zaidi ya 1,000 waliofariki wakati wa ghasia za baada ya uchaguzi mkuu wa 2007 inalia mbele ya macho ya Mwenyezi Mungu.

Mwenyezi Mungu amemweka hapa mwawakilishe watu wake ili mweze kusikia vilio kama hivyo lakini wengine wetu tunakipuuza kilio hicho. Mimi niliupinga Mswada wa kwanza ulioletwa Bungeni. Mhe. Imanyara, na viongozi wengine wengi, pia waliupinga Mswada huo kwa sababu ulikuwa umetayarishwa na hila. Mswada huo ulikuwa umeandikwa kuwatetea wauaji na wavunjaji sheria. Mimi na Waziri Msaidizi mwingine mmoja tu ndio tuliokataa Mswada huo miongoni mwa wale tuliomo Serikalini.

Tulilazimishwa na Serikali kuunga mkono Mswada huo lakini tulikataa. Tulisema kwamba haiwezekani kwa sababu Mswada huo haukufaa. Nikauliza: “Kwa nini Mswada huu hauna vipengele ambavyo vinamruhusu kila mtu kulingana na mwingine kisheria?” Lakini hakuna aliyetaka kulijibu swali hilo, isipokuwa tu kutulazimisha kuja hapa kuunga mkono Mswada huo, ambao haukuwa unafaa. Kwa hivyo, nikasema “la”. Ukaja mswada wa pili ambao ulikuwa na tatizo kama hilo, nikasema “la”.

Bw. Naibu wa Spika, leo hii, kuna Mswada ambao umependekezwa kwetu na mhe. Imanyara, na ninampongeza mhe. Imanyara kwa kazi nzuri aliyofanya ya kuuandika Mswada huu vile inavyotakikana. Hakuyatoa mambo haya kutoka kwa kichwa chake, bali amefuata sheria. Amefuata mapendekezo yaliyowekwa na kuratibishwa na viongozi wetu wakati walipoweka sahihi yale makubiliano baada ya vita.

Kipengele cha Nne cha ile memoranda waliyoweka sahihi kinasema kwamba mtu yeyote atakayepelekwa kortini kwa mashtaka ya kuvunja sheria ni lazima aondoke Serikalini. Mtu huyo ni lazima aondolewe madaraka pamoja na mshahara wake na marupurupu yote anayopata kutoka kwa Serikali. Wakuu wawili wanaoshikilia Serikalii, pamoja na wale Mawaziri wengine wanane waliokuwepo, waliweka kidole wenyewe. Walisema kwamba sheria ni lazima ifuatwe na korti kuandaliwa ili haki itendeke kwa walioadhirika.

Bw. Naibu wa Spika, ninashangaa kuona kwamba labda wameusahau huo mkataba waliouweka mbele ya macho ya wananchi wa Kenya. Bw. Ocampo aliwasili humu nchini kuyashughulikia mambo hayo lakini wale wazee wawili wanaoshikilia Serikali, ambao ninawaheshimu sana, walirudisha nyuso zao nyuma na kukataa kumuruhusu Bw. Ocampo kuwafungulia mashtaka wahalifu hao. Wawili hao waliogopa kusema hivyo kwa sababu miongoni mwa wale waliotenda madhambi hayo ni marafiki zao.

QUORUM

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. With a heavy heart, this Bill is very important, given that it has far-reaching effects on this country but looking around, I do not think the Quorum in this House is adequate enough to give this Bill enough attention.

Mr. Deputy Speaker: Indeed, we do not have a Quorum. So, could the Division Bell be rung?

(The Division Bell was rung)

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, there being no quorum, this House is, therefore, adjourned until this afternoon, Wednesday, 11th November 2009, at 2.30 p.m.

The House rose at 10.55 a.m.