

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 7th May, 2008

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.025

DELAY TO POST ADEQUATE STAFF
TO MATUNGU HEALTH CENTRE

Mr. Were asked the Minister for Medical Services:-

- (a) whether he is aware that, despite the elevation of Matungu Health Centre to the level of a district hospital in 2007, sufficient personnel have not been posted to the hospital to cope with the increased demands; and,
- (b) when the hospital will be equipped with essential equipment and sufficient staff posted to enable it serve *wananchi* effectively.

Question No.034

DELAY TO RELEASE FREE SECONDARY
EDUCATION FUNDS TO KAPSINENDET
SECONDARY SCHOOL

Dr. Kones, on behalf of **Mr. Bett**, asked the Minister for Education:-

- (a) whether he is aware that Kapsinendet Secondary School in Bureti District has not received the free secondary education funds; and,
- (b) if the answer to (a) is in the affirmative, when the Ministry will disburse funds to the said school.

Mr. Speaker: The Member asking the Question on behalf of Mr. Bett, have you been authorised to ask the Question.

Dr. Kones: Yes, Mr. Speaker, Sir. I have been authorised by Mr. Bett.

Mr. Speaker: Order, hon. Member! We will allow the Member to ask the Question on behalf of Mr. Bett, but, please, note that because you are relatively new, you may not have known that it is necessary that you notify either the Speaker's Office or the Clerk's Office when that authority has been given to you so that the Chair is aware that you will be asking the Question on behalf of the Member who is not present.

Also, note that there are different categories of Questions. If these were Questions by

Private Notice, then your authority would not be sufficient.

But we can proceed, Mr. Minister!

The Assistant Minister for Education (Prof. Olweny): Thank you, Mr. Speaker, Sir. I beg to reply.

(a) Yes, I am aware that Kapsinendet Secondary School in Buret District did not receive the Free Secondary Education funds together with other schools.

(b) The Ministry has disbursed funds to the school following validation of the school's account number. The school is advised to check the account.

Thank you, Mr. Speaker, Sir.

Dr. Kones: Mr. Speaker, Sir, I thank the Assistant Minister for the answer. But I wish he could be specific and tell us when the funds will be received. I also want to mention that in my constituency, there are a number of other schools that have not been given the funds. It seems to me that the implementation of the free secondary education is problematic. I wish the Ministry could address some of the issues that relate to this fund so that schools can automatically get the funds in good time.

Prof. Olweny: Mr. Speaker, Sir, as I have said, the money has been sent to the account of that school. But with regard to the schools in the hon. Member's constituency, he should specify to us which school has not received the money. So far, money for the free secondary education fund has been sent to most of the schools. Originally, there were some problems when there was a directive that schools with less than 40 student per class will not receive it. That directive was reviewed and all the schools will now get the money. I do not think there should be a problem.

Mr. Njuguna: Mr. Speaker, Sir, I thank you for giving me the chance to contribute to this very important Question. It will be in the interest of this House for the Assistant Minister to give a clearer picture. This is because in my constituency, I have schools which up to now have not received these funds. For example, I have Lari High School with a student population of 750 which has not received any money. By now the school should have received Kshs5 million. This school is suffering due to lack of money. We also have Kirega Boys High School and other schools that have not received money. The Assistant Minister should give a better picture because many schools in the nation could be facing the same problem.

Prof. Olweny: Mr. Speaker, Sir, as I have said, this is a new programme and has had a few logistical problems which have now been sorted out. So, Lari Secondary School and Kirega Boys High School should have their money by now. This is because we sent money to school accounts last week. So, I do not think there should be a problem. But if there is a problem, please, let me know and we shall follow it up.

Dr. Monda: Mr. Speaker, Sir, a similar Question was raised in this House recently and the Minister for Education is on record as having informed this House that no Kenyan student will suffer because of lack of free secondary education funds. Today, the Assistant Minister is saying that we should inform him of individual schools that have not received these funds. It is common knowledge that it is the same Ministry that registers secondary schools. Therefore, the Assistant Minister should be aware of the schools which have received the funds and which ones have not. When will all the Kenyan secondary schools get free secondary education funds so that we do not have Kenyan students suffering?

Prof. Olweny: Mr. Speaker, Sir, originally, when the programme was introduced, as I have said and as we all know, the Ministry gave a directive that schools with less than 40 student per class will not get the money. But this directive was reviewed. The process of reviewing this directive led to a delay in money being released to those schools with less than 40 students per class. This situation has been rectified and the schools are getting money. So, that could have been responsible for the delay, but there should be no cause for alarm.

I also wish to inform the Member that some schools did not give up-to-date enrolment information. All the schools must send complete enrolment data to the Ministry so that we do not have any problem when computing the money to be sent to them. So, the schools must also give us all the information. We know that some schools do not give complete data of the number of students. We need this information because the money is computed based on the number of students in the school.

Dr. Monda: Mr. Speaker, Sir, my question was: When will the money be released to all the secondary schools? The Ministry is aware of the number of secondary schools in this country. We have come to the second term of this year, and yet the Assistant Minister is blaming the schools for not submitting complete data. These schools are under his jurisdiction.

Are we going to wait for the Assistant Minister to ask us which secondary have not received these funds so that they have easy time? That way, we will drag on forever. The year is almost coming to an end and our students are suffering. Our schools are running below the required standards. So, could we know when all the secondary schools will receive the money?

The Assistant Minister has not answered the Question.

Mr. Speaker: Mr. Assistant Minister, could you be precise and answer the Question as asked?

Prof. Olweny: Mr. Speaker, Sir, I have been very precise. I have told the Members that money was sent to the accounts of most of the schools last week and I have indicated that. You may be raising the issue here, yet the money is in the account of the school. So, could the Members confirm with their schools whether they have not received the money by now, then they should let us know?

Mr. K. Kilonzo: Mr. Speaker, Sir, I want to congratulate the Assistant for the good answer. However, there have been concerns since the introduction of the free secondary education. When we go home, members of the public still come to us to inquire about the secondary school bursaries. Could the Assistant Minister tell this House whether they are still giving bursaries to secondary schools so that Kenyans can stop asking about these bursaries?

Prof. Olweny: Mr. Speaker, Sir, last week an answer was given in this House with regard to secondary schools bursary. The money for the bursaries has already been sent out to schools. The schools have received it and disbursed it.

With regard to the Free Secondary Education Programme, we are offering Kshs10,000 per student. That means that the tuition money is covered. The school structures have other facilities such as boarding where boarding fees apply. Day schools have introduced the issue of lunch. Therefore, students are expected to go to school with money for lunch. Some schools ask students to pay money for school uniforms.

Therefore, there are many other things. The Ministry of Education is giving money for tuition. In addition to that, there is bursary which has been disbursed to schools. We also have the CDF which is at the discretion of the hon. Member and the CDF committee of a particular constituency to decide whether part of it should be given out as bursary. There is quite a bit of money. If that is not enough, then they have to get their own money.

Mr. Koech: Thank you, Mr. Speaker, Sir, for giving me this opportunity, first, to thank the Assistant Minister for giving hope to Kenyan children. The directive given earlier on was very confusing and has already disorganised the running of most of our schools.

However, I want to ask the Assistant Minister to clarify some issues. First, when he talks about looking for proper enrolment in schools, he tells us that the Ministry is not aware of how many children we have in our secondary schools. Every other time, we are told the exact number of students in our schools. Is it that the number he is looking for is different from the number he has been talking about?

Secondly, he has confirmed that the money was sent to schools. Last term, a few schools benefited from the Free Secondary Education Programme. Unfortunately, the schools received only Kshs2,000 per child for a whole term. He has just said that the money has already been released. Could the Assistant Minister tell this House how much money has been released per child to all schools in Kenya, and how much money will be released in third term? This will assist the school principals in budgeting and ensure the smooth running of schools.

Prof. Olweny: Thank you, Mr. Speaker, Sir. I wish to give the hon. Member an example with regard to the data that we need. I want to give you an example of Kapsinendet Secondary School which in January this year had 45 projected number of students in Form One. However, the data as of today shows that they have 90 students in Form One class. In Form II, by January this year the school had 27 students. Today, in May, they have 40 students. Form III had 36 students in January last year. Today, they are 35. Form IV had 36 students in January this year, but today they are 43.

So, you can see the difference in enrolment numbers. Had we computed the bursary amounts based on 144 students in January for the Free Secondary Education Programme, that school would have a deficiency in terms of money for students. Today, we would re-do a computation using the number of 208 students. That makes the whole difference. The Minister does not sit in the school. It is the Principal of the school who gives us the information that we use to compute the amounts.

Mr. Koech: On a point of order, Mr. Speaker, Sir. My second question is not answered. I requested for the exact amount per student released to schools so far.

Prof. Olweny: Mr. Speaker, Sir, the money amounts to Kshs10,000 per student at the end of the year. However, it is released in two instalments. Half of it is for first term while the rest of the amount is supposed to be disbursed in second term. However, because of the inefficiency in data submission, we have problems. Each student is supposed to get Kshs5,000 in first term after the first disbursement. The second disbursement follows in second term.

Dr. Eseli: Mr. Speaker, Sir, this fund was set up as a way of alleviating the problems parents were going through in paying school fees, where many children were not accessing secondary education. The fund was supposed to relieve parents of the high cost. However, some schools are subverting this good intention in the sense that the school fees has not gone down at all to the parents. In fact, some schools have actually increased school fees. They are, in fact, subverting the noble intention of the Ministry. What is the Assistant Minister doing about this?

Prof. Olweny: Mr. Speaker, Sir, the principals are not supposed to increase the school fees unless it is approved by the District Education Board (DEB). Any principal doing that is breaking the law. Let us have the name of that principal and the Ministry will act accordingly.

Mr. Midiwo: Mr. Speaker, Sir, I am surprised that the person who was putting questions to the Ministers just the other day is today struggling to say anything. I think that is the nature of this "animal" called the Grand Coalition.

(Laughter)

Mr. Speaker, Sir, given the problems we are having after the post-election violence; the IDPs and all other issues, as of now, 20 out of 40 phone calls we are receiving every day are of people whose children are not being allowed in schools because they have not paid school fees. Some people are IDPs in Gem Constituency and their children were going to school in Nyeri.

Could the Ministry come up with a policy as he figures out how to get the bursary allocation - which he is doing so poorly - to protect the displaced and people who do not have any economic activity throughout the year? Could we just protect those children so that we do

not lose a whole generation in this mess? We should make sure they stay in school so that we give our people hope.

Prof. Olweny: Mr. Speaker, Sir, disbursement of bursaries is usually based on the record that the school had from its registers the previous year. This is apart from Form One where students join and the information is computed later. That could have led to the problems IDP children are facing. They could have been displaced from other schools and then joined other new schools. However, once the Ministry gets the information, it will be computed and then in next disbursement of bursary funds, those students will be catered for. We are willing to have that information.

Mr. Midiwo: On a point of order, Mr. Speaker, Sir. It is important that a statement comes from the Government to reassure Kenyans who have been displaced and have not had any economic activities, even a little. People who are not IDPs are not able to pay fees given the rising food prices. Could the Assistant Minister, even if he cannot answer this, kindly take this up, as a Ministry, to stop the school heads from stopping our children from going to schools?

Mr. Speaker: Mr. Assistant Minister, even as you answer that question, it is interesting to hear you use the word "usually". When you were on the other side, you said that it will not be business as usual!

(Laughter)

Prof. Olweny: Mr. Speaker, Sir, what the hon. Member wants me to comment on is really a heavy issue. I think it should be handled by the whole Government. I will pass that information to the Leader of Government Business, who will take it to the right forum where it will be handled and brought to the House. It involves more Ministries than my Ministry

Mr. Mwangi: Mr. Speaker, Sir, although the Assistant Minister is attempting to answer the Question, the problem we have is that this fund does not affect only the particular school. It is a national problem. I know one of the national schools where students have been asked to pay school fees because they did not receive the funds. Could the Assistant Minister be good enough to tell us how much they had disbursed by the end of the term? Some students have not reported to school yet.

Prof. Olweny: Mr. Speaker, Sir, I have said, and will repeat, that the money for free secondary education was sent last week for the schools which had not received it earlier. So, if your school did not receive it earlier, then you could go and find out with them. The money could be in the account today. I have said that, and it is very specific in terms of time. What else did you say?

(Laughter)

I think I have answered him. The money is there, unless he has something else.

Mr. C. Kilonzo: Mr. Speaker, Sir, they say there is a first time for everything. My good friend is trying his best.

Mr. Speaker, Sir, there are private schools which are currently not benefitting from this funding. Some of these schools are in very remote areas. Some of them have been constructed by religious organisations specifically to address the issue of education in areas where communities and the Government have not been able to establish schools.

Could the Ministry consider giving those schools funding under the free secondary education programme?

Secondly, there are schools that are funded by the Constituencies Development Fund

(CDF). A number of them are very young, and most are not registered. Could the Ministry consider putting these schools under the free secondary education programme?

Prof. Olweny: Mr. Speaker, Sir, as regards private schools they are private. They are not public schools. They belong to individuals. It is the Government policy that this money does not go to them. This money is meant for students in public schools registered as public schools.

As for the schools that are constructed using the CDF, once registered as public schools, they will benefit from the funding. If they are not yet registered--- They have to be registered by the Ministry as public secondary schools. Once that is done, then we will have no problem.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. Obviously, the Assistant Minister has the disadvantage of being still very new in office. Last year, the then Minister for Education said that it was the policy of the Ministry of Education to consider all schools constructed by the CDF, even though they were not yet registered.

Indeed, a number of them have already received teachers from the Teachers Service Commission (TSC). They are operating as if they were already registered. Therefore, to say that they will give funding when the schools are registered is contrary to a policy that the Ministry has already come up with. The schools are already operational. They are recognised by your own Ministry and a majority have received teachers and headteachers. Could the Assistant Minister, rather than state what he has stated, go back and get a clear-cut policy? He knows the procedures in registering schools take very long.

Prof. Olweny: Mr. Speaker, Sir, if the schools already have teachers from the TSC, that means they are already accepted by the Ministry. In that case, they are entitled to benefit from this fund. If at all they have not got the funding, please, let us know the name of the schools. We will ensure that they get the money.

Dr. Munyaka: Mr. Speaker, Sir, is the Assistant Minister aware that some students who are candidates in Form Four were not able to register for examinations because they had fees arrears? They were required to clear fees arrears before they could register for examinations.

Prof. Olweny: Mr. Speaker, Sir, that is actually a different Question. However, arrears are not covered by this fund. This fund is meant for tuition fees for this year. It is Kshs10,000 per student for tuition this year. If someone had previous arrears, then the student and the parents should find a way of handling it. Otherwise, we even have the CDF. I had similar cases in my constituency. I had to find a way of giving our CDF money to sort out a few of the cases of arrears.

Dr. Khalwale: Mr. Speaker, Sir, the Assistant Minister has told us that his Ministry has invested in the wisdom of the District Education Board (DEB) in so far as determining the upper limit a school should charge after the Government has sent the Kshs10,265 per student.

Mr. Speaker, Sir, could he tell us whether they are going to undertake to give clear guidelines on the maximum for national, provincial and district schools? To leave it open means a DEB can as well allow a headteacher to charge Kshs50,000 or more.

Prof. Olweny: Mr. Speaker, Sir, some of these things that the schools include in their fees are boarding expenses, and some day schools have introduced lunch. It is basically that. Otherwise, as you know tuition is covered. However, I do not see any school charging Kshs50,000 per student for boarding only. If they do, it depends on---

Mr. Speaker: Mr. Assistant Minister, please, concentrate on the question asked!

Prof. Olweny: As I have said, Mr. Speaker, Sir, I do not think DEBs will allow such a thing as a school charging fees to the tune of Kshs50,000. Even Kshs30,000 is a little on the higher side for public schools. We, however, have no control over private schools

Mr. Speaker: Last question, Dr. Kones!

Dr. Kones: Mr. Speaker, Sir, as far as the Question on Kapsinendet Secondary School is concerned I am fairly satisfied with the answer given by the Assistant Minister. However, I wish to

get another confirmation from the Assistant Minister that enrolment figures do not determine whether a school will get the funds or not, and that every school will get funding. Secondly, there are new schools which got registration a month ago. Will they benefit from funding for the entire year?

Prof. Olweny: Mr. Speaker, Sir, every student will benefit, so long as we are given the information. It does not matter whether they are registered today. Let us just have the information and they will get the money.

COMMUNICATIONS FROM THE CHAIR

ANSWER TO QUESTION NO.025 EXPUNGED AND QUESTION DEFERRED

Mr. Speaker: Order, hon. Members! As we come to the close of Question Time, there are one or two issues that the House needs to be clear about.

First, I have information that the Minister for Medical Services has not yet been sworn in as Minister. Therefore, he may not have had the capacity to answer the Question that he answered this afternoon. Could the Leader of Government Business confirm if this is so?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I confirm that it is so, because I have just been speaking to the Comptroller of State House and he has informed me that the swearing-in ceremony for the Minister for Medical Services will be done tomorrow morning. So, he really acted out of order.

(Laughter)

Sorry, that is for the Chair. It is not for me to make a ruling.

Mr. Speaker: Thank you, Leader of Government Business. It is unfortunate that, that happened. The Chair was not aware that, indeed, the Minister had not yet been sworn in. If he has not been sworn in, then he lacks the capacity to act as Minister. So, the answer given is invalid. I, therefore, order that it be expunged from the Parliamentary records for today. The Question is, therefore, deferred to Tuesday, next week.

(Question deferred)

MEMBERS SHOULD MAKE USE OF QUESTION TIME BY FILING QUESTIONS TO MINISTERS

Secondly, hon. Members will have noted that we have taken certain liberties, so much so that two Questions have been answered in just about one hour. This is not the way that the House will normally transact its business. Although this matter has been pointed out before, I wish to remind hon. Members that there is a gap of Questions. It is, therefore, necessary that Members rise to the occasion and ensure that they file sufficient numbers of Questions, particularly in relation to their respective constituencies.

I have noted that in the supplementary questions, some Members have asked questions that are so much far away from the original Question, but we have allowed them to do so because we had so much time on our hands. Could hon. Members, please, file more Questions, so that we utilize our time productively?

Significantly, also, note that when the Chair catches your eye on a supplementary question, you are allowed to ask just one question and not three as, indeed, hon. Koech did this afternoon. This liberty will cease very soon.

Let us proceed to the next Order!

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. According to the National Assembly Powers and Privileges Act, could the Chair guide this House whether, because of its displeasure for what the Minister for Medical Services has done, he should be reprimanded for actually masquerading as a Minister when, indeed, he is just a mere Back-bencher?

(Laughter)

Mr. Speaker: Dr. Khalwale, you are out of order! The Chair has already dealt with this matter. I have made an appropriate ruling and that ruling will stand! I will not reprimand the Minister.

Next Order!

BILL

Second Reading

THE INTERNATIONAL CRIMES BILL

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move that The International Crimes Bill be now read a Second Time.

As is stated in the preamble, this Bill is to make provision for the punishment of certain international crimes, namely, genocide, crimes against humanity and war crimes, and to enable Kenya to co-operate with the International Criminal Court (ICC), established by the Rome Statute in the performance of its functions.

So, basically, this Bill is about domesticating the Rome Statute under which the ICC was constituted.

Mr. Speaker, Sir, we talk about the world being a global village. It is, indeed, becoming a global village, whether it is from the perspective of communications; that is, telephones, mobile phones, television and so on, but for institutions such as the national State and so on. Also, from the point of view of issues relating to law and order, there can be no state as such which does not have a criminal justice system. Therefore, to the extent that the international community is developing an international criminal justice system, we are indeed and truly becoming a global village.

After the Second World War, we had what we call the Nuremberg Trials, which were constituted by the victors of the Second World War to try those who had been defeated and led in commission of crimes of grave nature. As you are also aware, those were *ad hoc* international criminal tribunals.

In recent times, and even up to now, we have an *ad hoc* International Criminal Tribunal (ICT) in Yugoslavia, Rwanda and Sierra Leone. I am pleased and proud to be moving this Bill because I do recollect that in 1980, I was part of the International Commission of Jurists. We called for an establishment not of *ad hoc* international criminal tribunals which are set up just to try cases arising out of a particular incident, but of a permanent court.

Mr. Speaker, Sir, I am glad to say that arising out of those discussions, both at non-governmental level and inter-governmental level, it culminated in the Rome Statute being adopted

overwhelmingly in Rome by a vote of 120 States to 7 States on 17th July, 1998. I am proud to say that, actually, at that International Conference which established this Rome Statute overwhelmingly, I was privileged to serve as a Vice-President.

(Applause)

Under the Rome Statute, the ICT after a ratification by 60 countries, established the court and commenced its jurisdiction. The 60th ratification was acquired on 11th April, 2002. The Treaty now formally entered into force on 1st July, 2003. By the end of December, 2000, 139 countries, had signed the Treaty. Kenya had not only signed it when it was adopted, but we ratified it on 15th March, 2005.

Therefore, by the mere fact that we have ratified this Rome Treaty, we are, as a State, under an obligation to domesticate the Treaty, so that it has a force of law in Kenya. Hence, this Bill is to domesticate that Treaty. This Bill has been in existence since 2005. When it was first published, and in the drafting of the Bill, I must inform this august Assembly that we were also guided by the model legislation to implement that treaty that had been drafted, not only by the United Nations (UN), but also by the Commonwealth countries. Because of the importance of the Bill, the UN and also the Commonwealth countries developed model legislation to guide the countries. So, we were well guided by that in the drafting of this Bill.

Mr. Speaker, Sir, after the drafting of this Bill and its publication in 2005, it was subjected to intensive discussions and consultations by the Non-Governmental Organizations (NGOs) in this country, and in particular the Kenya National Commission on Human Rights (KNCHR), the Law Society of Kenya (LSK), FIDA and the International Commission of Jurists (Kenya).

The Ninth Parliament must have seen a very elaborate commentary on the Bill, Appraisal No.5, which was published by the KNCHR. Arising out of that, we looked at the Bill again and I am glad to inform this august Assembly that a number of amendments were then, thereafter, incorporated into this Bill arising out of the recommendations from these consultations. Consequently, the Bill that is before the House today is one that also includes an input from the NGOs, particularly those which operate in the area of administration of justice.

Mr. Speaker, Sir, speaking generally, before I come to the provisions of the Bill, the International Criminal Court (ICC) has a number of advantages. It will, we believe, help end the culture of impunity enjoyed by those responsible for the most serious international human rights violations. It will also provide an incentive and guidance for countries that want to prosecute such criminals in their own courts. It will also offer a permanent back-up in cases where countries are unwilling or unable to try these criminals themselves because of violence, intimidation or lack of resources or political will. This has already happened.

Mr. Speaker, Sir, we have noticed that the international criminal tribunals are already playing a very key role in the prosecution of persons or leaders who have committed serious international crime. The International Tribunal on Yugoslavia has tried many. Nearer home, the *ad hoc* International Criminal Tribunal on Rwanda (ICTR) has also tried and convicted many. Closer home, particularly as far as the ICC is concerned, one of the cases that is before it is a case emanating from Northern Uganda where we have the Lord's Resistance Movement (LRM) led by Kony. And as you know, he has been indicted by the ICC. Although Uganda itself may not have been able to do it, the ICC is now doing it. As you know also, the hearing of the case of the former President of Liberia, Mr. Taylor, is right now going on at the Hague. So, there are many advantages of this.

The ICC observes what it calls the principle of complementaries. In other words, it is, first of all, the duty of each

state to investigate and prosecute these crimes. But it is only where those states cannot do so for a variety of reasons that the ICC can now step in and do so. I will be explaining how that is done when I go to the Bill.

Mr. Speaker, Sir, coming now to the Bill very quickly, as I told you, this Bill is about domesticating the Rome Statute.

Clause 3 states very clearly:-

"This Act shall be binding on the Government".

Clause 4(1) also states very clearly:-

"The provisions of the Rome Statute specified in subsection (2) shall have the force of law in Kenya"

Once again, that is stated very, very clearly in Clause 4. In Clause 5, it is clearly stated there again as follows:-

"For the purposes of any provision of the Rome Statute or the ICC Rules that confers or imposes a power, duty or function on a State, that power, duty or function may be exercised or carried out on behalf of the Government of Kenya by the Attorney-General, if this Act makes no other provision in that behalf".

So, the Attorney-General is given the responsibility under this Act to ensure that the Rome Statute not only has the force of law because of the passage of this Bill, but also is implemented.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, Clause 6 then states that the crimes for which one may be taken to stand trial before the ICC are only in the cases of genocide, crimes against humanity or war crimes.

Let me also inform the National Assembly that, very soon, there will be a fourth category called the crime of aggression. But the definition of what amounts to aggression is currently still being debated at the UN. This is very, very carefully defined: Aggression could unwittingly be the exercise of a people to exercise their fundamental right to self-determination, the war of liberation and other things. So, it has to be defined in a manner as to exclude the legitimate uses of force.

Now, this crime has been properly defined under the statute. Since this is the crux of the matter, I would just try to read the definitions. If hon. Members have the Bill, you will find those definitions at page 354. The crime of genocide, for example, is defined under Article 6. It states:-

"For the purpose of this Statute, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group - in other words you do not want the group's population to multiply and increase.
- (e) Forcibly transferring children of the group to another group".

That is what amounts to genocide.

Article 7 of the Statute at page 355 then defines crimes against humanity. It states:-

"For the purpose of this Statute, crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (i) enforced disappearance of persons;
- (j) The crime of apartheid."

That amounts to crimes against humanity. Then, of course, we have war crimes.

Mr. Deputy Speaker, Sir, I think what is common in all these definitions is that if a particular ethnic, racial, religious group or a section of a community is under attack, then you stand very closely in danger of committing the international crime envisaged under the Rome Statute. The attack should not just be an isolated matter. It should be very systematic and widespread against that particular community. So, those are the crimes which are envisaged to be covered under this Act.

In the proceedings before the International Criminal Tribunal, there are important safeguards to ensure that frivolous cases are not taken and heard before the court. Therefore, there is what we call the principal of admissibility. Before any case can be heard by this International Criminal Court (ICC), it must decide on the issue of admissibility. The court will declare a particular claim inadmissible where, for example, the case is being investigated or prosecuted by a State which has jurisdiction over it. So, if the State comes up and says, "No, this case should not come before us because we are already doing and undertaking our State responsibility to carry out investigations and prosecutions", then it will not be heard by the ICC.

Mr. Deputy Speaker, Sir, so, people should not be in a hurry whenever something happens, to say that they are taking matters to the ICC. Instead, whenever something happens here, they should invoke the institutions which are in this country to deal with that problem first. The matter can only be heard before the ICC if you can demonstrate that there is lack of good faith in implementing this within the national State, that is, bad faith or reluctance to investigate or lack of political will to prosecute. If you can demonstrate that, then the case before the Hague Court may be admissible.

It will also be declared inadmissible where the person concerned has been tried for conduct which is a subject of the complaint. In other words, if the State itself has already begun that exercise and is already prosecuting people arising out of that, then the State will be left to continue that process rather than engaging the International Criminal Court.

The other ground on which a claim may be declared inadmissible by the Court is if the case is not of sufficient gravity to justify the hearing by the ICC. As I stated earlier, murders and killings go on, but they really must, first of all, be targeted against a group. Secondly, they must be very widespread and very consistent with determination of almost saying, "We must eliminate this group". That is when it can attract the gravity that is required for the matter to be heard by the ICC. So, that provides some safeguard for having frivolous cases not heard by the ICC.

Mr. Deputy Speaker, Sir, the other safeguard is the procedure itself. Just like in the national States, the process, for example, in Kenya, under Section 26(3) of the Constitution, directs the police to investigate a matter. However, at that international level, the prosecutor can only initiate

such investigations not on his own. He must, first of all, analyze the seriousness of the information that he has received and may in that analysis call for further information from the complainant; that is, the person who has given that information. In calling for further information on that issue, he may also invoke and call for supplemental information from Non-Governmental Organisations (NGOs), Inter-governmental Organisations and the United Nations. For example, if a matter happens in country X, the United Nations Human Rights Council (UNHRC) is already investigating those matters. Therefore, if the same matters go before the ICC, the prosecutor, in assembling the information to enable him decide whether the ICC should take up the matter, can call for such information as may be within, say, the UNHRC, a special rapporteur on a particular subject and so on.

Mr. Deputy Speaker, Sir, if the prosecutor then concludes that there is a reasonable basis for him to initiate proper investigations, he will do so. He will not, like the Attorney-General in Kenya, just order the Police Commissioner to investigate a matter. He has, first of all, to go to a plea trial chamber of the court, where he will give all the information he has collected to a panel of three judges for them to examine whether there is enough evidence to initiate proper investigations.

If the plea trial chamber, upon examination of the request, and the supporting materials, agrees with the prosecutor that there is a reasonable basis to proceed with the investigations, the plea trial chamber will then authorise the prosecutor to initiate proper investigations. But, again, there is another safeguard. Before that happens, the persons against whom it is alleged those matters were done, now have the right to go before the plea trial chamber and argue that this is a matter which should be investigated properly by the court and, thereafter, be prosecuted.

Mr. Deputy Speaker, Sir, if a particular violation, for example, has happened in country X and the prosecutor forms the opinion that there is a reasonable basis to initiate investigations, and a plea trial chamber agrees with the prosecutor, then the persons affected by that decision will be informed and given the opportunity to challenge the issuance of authority for proper investigations into that matter. In such a case, for example, country X can come up and say: "Although it has happened, it is not proper for this court to do so, because the claim is inadmissible. It is inadmissible because we are already dealing with the matter. We are investigating and prosecuting."

If the court agrees with country X, that will be the end of the matter. If the court does not agree with the state of country X or the person affected, that is when proper investigations are carried out by the International Criminal Court (ICC) and, thereafter, the prosecution ensues. So, the offences contemplated under the Rome Statute are serious offences, which attract the attention of the international community. However, there are safeguards to prevent abuse. There are safeguards to stop frivolous cases from going up to the international level. At the end of the day, it is the primary responsibility of the State to investigate and prosecute.

Mr. Deputy Speaker, Sir, Kenya stands to benefit a lot from domesticating this Bill because, really, as a State party to the ICC we have the right to suggest appointments of our own professionals to go and man the registry of the court, or become judges of the ICC, *et cetera*. The ICC has 18 judges, who must be persons of high moral character, impartiality and integrity. For example, we have a similar court trying suspects of the Rwanda Genocide in Arusha, Tanzania.

We have many Kenyan nationals who are already working there as prosecutors and defenders. In fact, the first Registrar of the *ad hoc* ICC Tribunal on the Rwanda Genocide, the late Dr. Adrenico Adede, was a Kenyan. He was a renowned international jurist. I believe he could become the first Kenyan to be a judge of the ICJ. So, from that point of view, we are already benefiting.

Mr. Deputy Speaker, Sir, on the issue of ratification of this international law, as I said, as a State party, we are already committed. We have ratified and, therefore, it is our responsibility to

ensure that it has the force of law in Kenya. Kenya is living up to its obligations under the Rome Statute. In fact, we have already begun receiving requests for assistance from the ICC. For example, currently, we have received a request from the ICC to temporarily play host to refugee witnesses from Darfur, to come and stay at Kakuma Refugee Camp, because one of the cases before the ICC involves Sudan.

Mr. Deputy Speaker, Sir, there are potential witnesses from Darfur. We have now received a request for those witnesses to come and stay in Kakuma as they await to go to the Hague to give evidence. So, Kenya is already playing its part. From what I have stated, I hope that the National Assembly of Kenya will also play its part in passing the International Crimes Bill.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to move and call upon the Minister for Justice, National Cohesion and Constitutional Affairs, Ms. Martha Wangari Karua, to second the Bill.

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I rise to second this very important piece of legislation, which has been ably moved by the Attorney-General. I wish to congratulate him on bringing this very timely Bill before the House.

As stated by the Attorney-General, Kenya ratified the Rome Statute on 15th March, 2005. This is boldly stated in the Memorandum of Objects and Reasons. The entire Rome Statute has been reproduced at the back of this Bill, so that we can understand the references that are made to the Bill on the Rome Statute.

Mr. Deputy Speaker, Sir, I want to start by saying that the Rome Statute, from the day of ratification, applies to Kenyans and the country even without the passage of this Bill. The only thing that is going to change once we pass this Bill is that Kenya itself can apply the Rome Statute as its domestic law. We can prosecute here in Kenya without waiting for an international tribunal. We can also extradite a Kenyan who has committed a crime and punish him here. We can also prosecute for those crimes. So, even for the period we had not domesticated the law, the Rome Statute was applicable to Kenya.

Just as the Attorney-General has pointed out, we are already very good friends of the Court. We are aware of the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania. Kenya has co-operated in extraditing persons needed for trial in Arusha, and giving any other facilitation. There is a topical case in the newspapers of property that is being attached, of a person who is sought by the ICTR. These are things in which Kenya has actually been playing her role as she is part of the international community.

Mr. Deputy Speaker, Sir, if I may go a little back before there was the Rome Statute, there still was international law. The Rome Statute came to actually codify international law that had been applied ever since the advent of the United Nations (UN). We all remember the unfortunate incident of the persecution of the Jews. I

know that most of us are aware of the trials that have been going on. Even today, if any of the fugitives from the crimes against humanity meted on the Jews is nabbed, it is never too late; they will still be tried. There has been some recent trial. Some came 40 years after the fact. The Rome Statute has codified all that and set up a permanent tribunal because, previously, the world community was setting up *ad hoc* tribunals. This is now set up as a sort of a permanent court.

Mr. Deputy Speaker, Sir, I also want to remember that in Eastern Europe, Mr. Slobodan Milosevic was tried for crimes against humanity. I want to recall that in Liberia, a warrant was out for Serjeant Samuel Doe. I want to remember all the trials that have gone on, and to know that international law has been applicable. What the Rome Statute has done is to codify it, so that we remind ourselves, not just as legislators, but also as citizens of Kenya and the world, that we are all subject to international law. We all have to observe certain standards. We are now translating our

commitment and domesticating the Statute.

In the matter of the recent unfortunate events in our country, it has been in the newspapers that some of our nationals have rightly petitioned the International Criminal Court (ICC). But even without a petition, the ICC, on its own motion, can actually come and investigate. The United Nations High Commissioner for Human Rights (UNHCHR), whose seat is in Geneva, actually sent a fact-finding mission to Kenya. We, as a Government, welcomed them. As the Minister for Justice, National Cohesion and Constitutional Affairs, I facilitated them in arranging meetings with the various Government agencies they wanted to meet. I also met them. On their own, they went to the IDP camps and to the sites where some of these atrocities were committed, to carry out their own investigations. Therefore, even without any of the nationals petitioning the ICC, once the happenings are known, the ICC can, on its own motion, investigate. None of us, whatever our positions, can escape international criminal justice for the things that are cited in the Rome Statute, mainly crimes against humanity, genocide and war crimes. They are ably articulated in this Statute.

Mr. Deputy Speaker, Sir, as a Parliament, in passing this legislation, we shall be together saying, on behalf of our nation, that we want to uphold the highest standards and hold each other to account on all these issues, so that we protect each other and the human race from completely wasting itself.

Mr. Deputy Speaker, Sir, with your permission, I just want to recall the few stated principles in the Preamble to the Rome Statute, because it is the one that we are making part of our domestic law in all these clauses. It states:-

"Conscious that all the people are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time;

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity---

If I may pose there, we as a nation, collectively, have been guilty of standing and watching atrocities get committed, and sometimes not acting appropriately. So, we all need to support each other as the human race by adhering to these principles.

The Preamble further states:-

"Recognising that such grave crimes threaten peace, security and well-being of the world;

Affirming that the most serious crimes of concern to the international community as a whole 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;

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes---

We have all been talking about impunity. Impunity is, indeed, the concern of the entire world. Whether it is in cases of economic crimes or crimes against humanity, impunity is something we cannot support.

The Preamble further states:-

"Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes;

Reaffirming the Purpose and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with Purpose of the United Nations---

So, even under the guise of war, a State cannot aggress another and commit atrocities against its citizens.

The Preamble further states:-

"Emphasising in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State;

Determined to these ends and for the sake of present and future generations, to establish an independent, permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole---"

This Statute is not for every other criminal offence. It is for most serious offences of concern to the entire international community and to humanity as a whole.

The Preamble continues to state:-

"Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions;

Resolved to guarantee lasting respect for and the enforcement of international justice---"

Mr. Deputy Speaker, Sir, therefore, the whole object of this is to protect the entire human race. By passing this Statute we shall be protecting ourselves as individuals, families, communities, Kenyan citizens and as citizens of the world. I would urge all hon. Members to rise up and be counted, and to pass this very noble piece of legislation.

Mr. Deputy Speaker, Sir, we should remember that none of us can hide from our actions. We can run but not hide, because it is not only the national law that will be watching us, the international law will also be watching us. We, therefore, need to do to our neighbours what we would like them to do to us. I want to agree with those who have said, both inside and outside this House, that the best security of each individual is their neighbour.

Mr. Deputy Speaker, Sir, it is time, therefore, we rose up to be counted and we became each other's keeper. Let us not ask like Cain in the Bible that we are not our brother's or sister's keeper. Let us become each other's keeper and uphold the human rights of each one of us.

I beg to second.

(Question proposed)

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Deputy Speaker, Sir, let me also take this opportunity to thank the Attorney-General for, once again, rising to the occasion and bringing our country's laws in line with the international community, especially in criminal jurisprudence.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, during the electioneering periods we have witnessed in the past, there were extremely dangerous statements uttered in the sense of rallying certain communities or a certain community against another community for the sole purpose of gaining political mileage. One of the things that has been stated in this Bill by the Attorney-General is in Clause 6. It is about international crimes. It is a good reminder to all of us as leaders. We are reminded that the international crimes punishable under this law are the crimes against humanity. It is appended at the backside of this Bill, Article 7(h). It says:-

"Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court."

Mr. Temporary Deputy Speaker, Sir, any persecution or planning hatred and speaking against communities for political advantage is actually covered under this Bill as one of the crimes against humanity.

Mr. Temporary Deputy Speaker, Sir, the passing of this Bill is a reminder to all of us to have some form of responsibility even as we seek to rally support around ourselves during electioneering because it has been repeated so many times. It has become like a cancer in this country. One of the good things that has happened is that none of the people in Kenya have reached that level where people have been punished or brought to trial before the International Criminal Court (ICC). We hope it will never ever reach to that level. That is why it is a good thing for us to highlight this Bill. In fact, we should domesticate it and tell ourselves that we will not wage hatred campaigns against communities. This is not just at the national level, but even clans like in our own little areas where we come from.

People come up with such terrible stories about other clans just because someone wants to gain political advantage. It is good that this Bill should now become part of the laws of this country in order that we highlight that this is not something acceptable in the present Kenya that we live in.

Mr. Temporary Deputy Speaker, Sir, having said that, one of the very good things that was agreed upon by the people who were negotiating in the National Accord and Reconciliation Act was to bring the Ethnic Relations Bill. The Ethnic Relations Bill is a more positive approach towards the problem that is sought to be addressed in this Bill. I would have hoped and wished that the Ethnic Relations Bill could have come even earlier than this one. It would have been much more specific to our situation and responsive to our country's situation. It would also have come from the angle of promoting healthy relations among communities, rather than the way this one now is coming, where there is just a punishment that is being levelled against any person who commits crimes against humanity in that sense.

Mr. Temporary Deputy Speaker, Sir, the other thing that needs to be said about this Bill is that it is a Bill that is basically targeting political leaders in Kenya. Today's Press is full of what the country is doing to have the properties of a suspect of the ICC, Mr. Felician Kabuga, seized through legal means. He was a politician of great substance in his country. We have also been told about the former President of Liberia, Charles Taylor. That is also a politician.

Mr. Temporary Deputy Speaker, Sir, a few days ago, summons were issued against another politician in the Congo because he was the field commander of child soldiers. There were crimes against humanity that were opened against him. He is supposed to be arrested and brought for prosecution. In Uganda, there is Kony who we all know has summons that are awaiting for prosecution, and he is yet to be arrested. If you look at all the people who have appeared before the ICC from the African continent, they have been people of great political standing in their own countries. I am mentioning this so that we can know what we are passing here.

Mr. Temporary Deputy Speaker, Sir, when I look at Article No.27 which is attached to the back of the Bill, it is very clear. I will take the liberty to read it. It says:-

"The Statute shall apply equally to all persons without distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or Parliament, an elected representative or a Government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence."

What we are saying is that a clear message needs to go to ourselves. In fact, we are preaching to ourselves that there will be no running away. Like the Minister said, you may run but you will never hide. Article 29 of the Rome Statute, if I could read it again, makes it very clear that the crimes within the jurisdiction of the ICC, the international crimes, shall not be subject to any statutes of limitation. We are saying that today you will be the President of the Republic of Kenya and we may not be able to touch you. Today you may be the Minister and we may not be able to touch but there is no limitation. That means that if you commit those crimes now and we cannot touch you, we will follow you after your term is over. At this time, it is another thing that we are preaching to ourselves. There will be no limitation of those crimes that you will commit against the people of Kenya. What I am saying is that time has come for us even to re-define the way we relate as political parties; how we campaign, the messages we send to our people. Time has come for us to really take responsibility. It will be very sad, as we all know, for any person, be it an hon. Member or a Minister, who has served this nation in the official capacity, that is in public office, for him to be a subject of trial for crimes against humanity. So, I think this statute, to me, not only brings Kenya to a level of international criminal jurisprudence that is desirable, but it is also the kind of statute that gives a warning - I hope we will all read it and understand it as we pass it - to all of us that we need to be responsible officials.

Mr. Temporary Deputy Speaker, Sir, one of the things that I wanted to bring to the attention of the Attorney-General and the Departmental Committee on Administration of Justice and Legal Affairs when they are looking at the Bill at the Committee Stage is Clause 80. Clause 80 of the proposed Bill talks very well about the question of witness protection.

As I have pointed out, the kind of people who are normally suspects in these types of crime are people of high standing in society, at least, in the African experience so far. We have mentioned the names. It is absolutely important for the witnesses to be properly protected. Which country are they going to live in? If for example, you are taking a person to be charged on crimes against humanity or genocide he committed in his state and he is being judged or tried somewhere, which witness will be totally safe to still remain in the country of origin? This is why I am saying that I am totally unsatisfied with the way the proposed Clause 80 has handled the question of witness protection.

Mr. Temporary Deputy Speaker, Sir, what I know is that for these witnesses, there must be a provision and I propose that it should be included somewhere. These people cannot continue to be in their original identification. For example, if Mr. Mungatana gives evidence in such a case, God forbid if it happened in this country, there will be a big section of people who support the accused person. It will be unsafe to retain the same identity.

I have argued this point before when we were debating the Witness Protection Bill in this House. I have said, and I think we should have it here now, that it is not enough to just give nice provisions without making a very clear provision of how someone will completely hide his identity, lose it and be given a fresh one so that this person can even cease. His records can be changed efficiently and effectively so that he can be protected. His life can even begin in another country so that we can have witnesses properly protected and give useful information to the International Criminal Court (ICC).

If we hope to get any convictions, then the witnesses must be protected. This is why I have argued, and I argue again, that there must be a fund established for that purpose. This fund should be clearly stated in this statute and well provided for. If this is an international matter, then there must be an international fund that is set up. That fund must be accessed by the Kenya Government. For example, if we have been asked to provide witnesses, then there must be a mechanism in which money will be accessed; and not just us cutting from our little budget here. Money must be accessed, provided to those potential witnesses, their identities and everything taken care of so that

when they go, they will not be subject to harassment and maybe even loss of their own life because they co-operated by giving evidence against people who committed crimes against humanity.

Mr. Temporary Deputy Speaker, Sir, I am also looking at the fact that we, as a nation, have in the past co-operated very well with international bodies. However, if you look at what we have been given back or what our people have received in return, it is very little.

If you look at Article 36 of the Rome Statute and the qualifications the judges are supposed to have and all the things that they are supposed to attain before they can even contest to be elected to be amongst the 18 judges, it will take a long time before we get a judgeship in the ICC. If we are not getting a judgeship in the ICC, what strategies will the Attorney-General take to ensure that, at least, we have representation or our people up there? We will be required to make payments to support that court and its structures. Even as we pay the taxes to keep those big time lawyers and judges seated at The Hague, how many of our people will be able to access there? I think whether through the Ministry of Foreign Affairs, the Attorney-General's Chamber itself, there has to be a clear method because we have an extremely poor ratio, let me admit of this state, in most international bodies. Here we are, we are co-operating; it means we will be also paying. How many of our people really are there?

If you look at a state like Tanzania, we have very highly placed people seated in UN bodies from Tanzania just here in our backyard. In Kenya, I do not know at what level we are now getting into the UN system. We are so far away down. This point needs to be addressed. Even as we go on to pass this Bill, it is important for us to start thinking of strategy. This lies squarely in the Office of the Attorney-General and the Ministry of Foreign Affairs. How are we going to get our lawyers and judges to also be part and parcel of the system in the ICC so that we can be said to be benefiting directly? That issue needs to be taken up seriously because Kenya is truly under-represented.

Mr. Temporary Deputy Speaker, Sir, Kenya is truly under-represented; we have such a big name in the whole continent but when it comes to real negotiating and pushing for our people to have positions, we are not doing well at all. You never hear of any Kenyan in, for example, a World Health Organization (WHO) position, United Nations (UN) or in any other good position in world organizations.

With those few remarks, I want to say, as the Attorney-General said, that this is a good Bill that we need to pass. It is the kind of statute that we should not have too much argument about. It is the kind of statute that will help Kenya come to the same level as the rest of the world in terms of international criminal jurisprudence. It is the kind of statute that we should pass very quickly to help our country take the right position in international standing.

I beg to support.

Thank you.

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, I wish to support this Bill. I have been a member of the Parliamentarians for Global Action (PGA) for many years. Our own statutes have been the baby of that body for many years. We have tried as much as we could to get our country and our municipal Parliament to also ratify those statutes. It is very welcome that now we have also seen crimes against humanity in our own midst and we are ready, and do appreciate the importance of this thing.

There is one thing that worries me about the Rome Statute; one of the biggest supporters of the International Criminal Court (ICC), which is superpower itself, is not a signatory to the Rome Statute, and that is the United States of America (USA). What we are seeing now is a global statute of a global court that essentially will still have sacred cows. There are some people who cannot become subject to this court regardless of how much genocide they carry out.

I want our own country, as much as possible, to use this in a manner that is very fair, and that is in line with its own objectives and spirit; it should not be used to intimidate sections of the

society. I also want this law to have a retroactive effect. We have had genocide in our country, which the Government and the State admitted, and the people of Kenya are witness to it; it is the Wagalla massacre, which was perpetrated by none other than our security forces. If the Attorney-General is serious about this, and because there is no statutory limitation on crimes against humanity, we will appreciate if he does some real work on the Wagalla massacre.

People should be brought to court to face charges for the deaths of multitudes of people in Wajir. There was also another massacre in Malkamari in which 124 Kenyans were massacred by none other than our own armed forces. These are the security forces which were supposed to protect them. There is another one which happened in Garrissa in Bulla Kartasi, where 330 innocent Kenyans were killed. At that time, the incidents were very simply dismissed as dealing with Somali Shiftas. We were like lesser humans. Now that it has come home, and has happened in other parts of the country, suddenly we have realised that there is a crime against humanity and we need to deal with the situation.

Mr. Temporary Deputy Speaker, Sir, if the equality of this nation and the seriousness of this Government and the Attorney-General, who, incidentally, was also part of this kind of a process globally--- The man did a very good job in East Timor and many other countries in the world by trying to fight such crimes, but he has not impressed us so far in dealing with our own massacres and genocide.

Mr. Temporary Deputy Speaker, Sir, the law states that the States that carry out genocide, the warlords--- Our brothers in Somalia have been in the grip of warlords for the last 18 years. Those warlords have an interest here. The killers and maimers of women, children, the elderly and innocent people and the massacres that were carried out, are right in our midst. After we have ratified this statute, we want to see a situation in which our forces will have some teeth and carry out some investigations. If they need to compile evidence, as it is, we have 400,000 Somali refugees in our midst, many of them being victims of those warlords. Some of those warlords ended up becoming very senior Ministers in the Transitional Government, which we support under the auspices of the Inter-Government Authority on Development (IGAD). Those poor victims and their families are now prepared to come before such a jurisdiction and give evidence if our Government will be serious in apprehending and bringing them to justice.

Mr. Temporary Deputy Speaker, Sir, I am an ardent believer in the presumption of innocence until proven guilty, whether it is in a civil or criminal matter. The world and Kenyans know who the warlords and the criminals, who conducted this genocide, are.

Mr. Temporary Deputy Speaker, Sir, the least of the genocide is the cultural genocide, where peoples' languages, cultures and development have been suppressed by the superior race or tribe. Extreme marginalisation, which is the State marginalisation itself, is to keep a certain section of the society as a permanent under-class living in poverty, and to deprive it of its own land and livelihood; it is formal genocide. That is precisely what has happened to many hunters, gatherers and pastoralists in this country. We need to redefine that in line with the definition of the UN of what genocide is, which also includes cultural genocide. The Ogiek, the Njemps, the Boni, the Walianguru and many other indigenous communities in our midst, who do not have their land, need to have their problems addressed so that their further marginalisation can be arrested, otherwise the Government of Kenya will also be guilty of genocide.

Mr. Temporary Deputy Speaker, Sir, I would have been much happier if Kiswahili was put in as one of the languages of the ICC. I have seen that they have included Russian, Spanish, Arabic, English and Chinese. There are more speakers of Kiswahili than of the Russian. Our own Governments, and the continental body, would have been done a lot of pride if we also had Kiswahili as one of the languages in the ICC.

I get worried about the restrictions on surrender. There are restrictions on surrender here.

Clause 51(1) states:-

"The Minister shall refuse a request by the ICC for the surrender of a person if-

(a) there have been previous proceedings against the person and Section 53(3) applies."

Clause 51(2) states:-

"The Minister may refuse a request by the ICC for the surrender of a person if-

(a) there are competing requests from the ICC and a state that is not a party to the Rome Statute relating to the same conduct and Section 59(4) applies."

Mr. Temporary Deputy Speaker, Sir, one state that we know that is not a party to the ICC---

QUORUM

Mr. Chepkitony: On a point of order, Mr. Temporary Deputy Speaker Sir. I would like to draw your attention to the fact that we have no quorum in the House, yet we are debating a very important Bill.

The Temporary Deputy Speaker (Prof. Kaloki): Clerk-at-the-Table, could you clarify whether we have a quorum?

Ring the Division Bell!

(The Division bell was rung)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members we now have quorum.

Proceed, Mr. Maalim!

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, I just hope this is not another ploy!

The clause says: If a request for surrender of a person is received from the ICC and a request for the extradition of that person is received from one or more states for conduct other than that which constitutes the crime for which the ICC seeks the person, the person to be surrendered, the Minister shall determine whether the person is to be surrendered to the ICC or to the requesting state--- I read a lot mischief in that clause. I equally read a similar mischief where the clause says that should the Minister receive such extradition request from a state that is not a member of the ICC, then the Minister still has the right to determine where that person will be sent to.

Mr. Temporary Deputy Speaker, Sir, one of the biggest abusers of human rights and perpetrators of genocide in the world is none other than the USA. This is fact that we all know. This already gives me the impression: Should a soldier of fortune--- The way that did in Angola in the past and Congo, most of them were from the western hemisphere. They would come and carry out genocide and destabilise the states. We have the failed state syndrome that essentially some of us think is the way forward for some powerful states in the world. If we capture some of those mercenaries, we cannot take them to court because there is a competing extradition treaty from the state. If you would remember the story of Bob Denard, who had carried out so many coups in the Comoros, he could not be taken to the International Criminal Court or the International Court of Justice because the French said they would seize him themselves. They said he had broken French laws. The man just got a slap on the wrist because many people believed he did the bidding during those days for a superpower and that could be the superpower itself.

Mr. Temporary Deputy Speaker, Sir, we now have economic genocide. The failed state syndrome in Africa is the case in Somalia, Congo, Sierra Leone and Liberia. Many other states are also threatened with similar situations. This is economic genocide! The very powerful Western warlords have their own militia! They take away the coal tan, which is very precious mineral, from Congo. There is also tin, diamond and uranium minerals which are the wealth of the continent.

They are also being taken away. This happens because there are no states to negotiate with. It is easier for the West to arm, facilitate and finance the warlords, while they take away the timber from the Congo Forest. All these raw materials end up in the West. The money which is stolen from the continent often ends up in Switzerland, American and European banks. The concessions that are given out by West are a ploy to take away our minerals. Between me and you, as we talk here today, in the entire Somali State, I am told from one end to the other end, there are concessions for prospecting oil exploration and natural resources of the continent that have been given to Western companies. So, even if we get back the so-called state or a Government in Somalia, we would have a problem dealing with those companies. This is because they will be told that these are international treaties. They would be told: "You had given us concessions for exploration of oil and 70 per cent of the proceeds will be taken by the American, British, French or Canadian companies for the next 100 years". That is precisely how it is going now.

Mr. Temporary Deputy Speaker, Sir, I want the Attorney-General to understand that the economic genocide and wanton destruction of property that is taking us back to the days of slavery in the continent should have been included in this statute more than anything else. The permanent impoverishment of the black man, the slavery and the colonisation that we suffered is still what keeps us where we are. There has been no compensation and responsibility for what happened. The context of the statute tells me how little the black continent participated in the formulation of this statute. We need to be compensated, as a continent.

Mr. Temporary Deputy Speaker, Sir, we have to use this Bill to our own benefit as a country. The genocide that happened in Wagalla, Malkamari and the wanton killings of innocent people during the post-election violence should not have happened in our country. To that extent, we welcome this law. Although we could have dealt with the same problems on our own municipal statutes in our country, nonetheless, like I told you, the same people who do not want to become signatories to this law are the same ones who are pushing for it to be ratified by all the sovereign states in the world. The idea is to create a law which I can always hold against you, your leadership and hold your country hostage but the law does not apply to me. That is essentially what it is. To that extent, for the sake of our own domestic interest, I welcome it. I know that we cannot change much about it. You cannot also take it partially. You have to take it wholly.

My advice is that we should have a very special police unit that will work with the Minister for Justice, National Cohesion and Constitutional Affairs and the Attorney-General's office so that we use the provisions of this Bill to create cohesion among our own people so that what happened in the past never happens again.

I have an issue with what is called "command-and-control" in which a policeman shoots someone because he has been asked to do so by his boss. I have a problem with sects that are violent. There are many sects that are violent. I do not subscribe to a situation where people are being killed because they are referred to as members of the *Mungiki*. You cannot kill young people because they subscribe to the *Mungiki* sect. We can do better than that. They are innocent because the presumption of the term innocent is there in our Constitution and in our laws. Someone is innocent until proven guilty. There is no crime called *Mungiki*. Whereas we are steadfast in doing that, I think that in itself, is a form of genocide. I hope that the Minister and the Attorney-General will see this in that light.

Mr. Temporary Deputy Speaker, Sir, the information I have is that hundreds of young men have been killed. We all have that information although we have no way of verifying it. There is a rehabilitation process, a punishment process, jailing process and many other ways of dealing with people who break the law. Killing them is not a solution. I hope that the spirit of this Bill will be used for the welfare and sanctity of the Kenyan lives. It should not be used because a superpower up there, or the international community, because of donor funding, and they want something to be

done, is forcing us to be part of it because we are part of the global community. We have to, first of all, apply it in our own country in a manner that is more profound and determined. Since we are in the midst of many failed states and many states have their own problems---

I know that the hon. Attorney-General wants to conclude this debate fast because he keeps on standing up and sitting down! Nonetheless, I will finish my contribution soon.

I hope we have all been watching news. This country is in the neighbourhood of many failed States. I am asking for professional well-trained people, lawyers included, to be part of this well-paid special force that will be investigating and compiling evidence on genocide or crimes against humanity. That pool of knowledge could come in handy for the neighbouring countries. We could call upon them to conduct a similar thing in Somalia and in the rest of our neighbourhood like in Ethiopia where it happens quite often and in Uganda where the Lord's Resistance Army and the Government are foes. It should also carry out its work in Sudan and in our own country.

Mr. Temporary Deputy Speaker, Sir, there is genocide going on in Mogadishu right now. About 1.5 million residents have fled the country. We watch news and see that because of the conflict in the resistance against the Ethiopian occupation and the Transitional Federal Government that was formed here in Nairobi, and not in Somalia, there is a lot of what they are calling collateral damage where innocent human beings are being killed and shelled without mercy. Not our own leaders or Government, not even the renowned human rights advocate, the Attorney-General Amos Wako, has come out into the open to condemn the wanton killings of innocent Somalis in Mogadishu right now at his behest. We also have to take up certain responsibilities because we are the ones who formed the lame duck Government that has no teeth beyond inviting insurgents to go and wipe out the Somalis or inviting the Americans to come and shell the poor Somalis from the sky.

The reason why I am talking about all this is because I am an ardent believer in the sanctity of life and more so the life of an African. I do not want us to believe that we are any lesser human beings. We know what happened in Bosnia, Kosovo and Europe and the holocaust of the Jews, and we all sympathise with it, but now we think that this is something concerning the rest of the world and not us. We think this way because we have to accept aid and other things that are connected with this and because we have to be part of the globe. The donor community is making a lot of noise and the international community is insisting on this law. It has to come from deep within the depths of our own hearts and conscience; that we need to do this for our own people both as a race, country and as a region.

Mr. Temporary Deputy Speaker, Sir, I wish to call upon the hon. Attorney-General, as the first litmus test, on the enactment of this law, to use his discretion with regard to what happened in Wagalla because that is the first recorded massacre that happened in this country. Some time ago, there was a statutory provision in the country that indemnified members of the security forces from prosecution. That was repealed in 1992. However, before that, we had a law that said that you could kill as many Somalis as possible in northern Kenya and no one would hold you responsible for that. As long as you had bullets in your gun and a target to shoot, that was fine. Mr. Mungatana knows about this. He was a young man in those days but he comes from the same region.

I can see my friend, the Attorney-General, wants me to conclude this.

I wish to support this Bill.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Thank you Mr. Temporary Deputy Speaker, Sir, for giving me a chance to contribute to this Bill.

First of all I want to take this opportunity to thank the Attorney-General for bringing this Bill, which is going to domesticate the statute.

Mr. Temporary Deputy Speaker, Sir, I think it is important to state from the outset that all

this Bill is doing is giving legal effect to the Rome Statute. The Rome Statute is of limited nature. It is basically concerned with three types of crimes. One is crime against humanity. The second is a war crime and the third one is genocide.

We know that the Attorney-General is in the mood of bringing our legal standards to another scale. I think it would not be too much to ask him to look into all the international treaties that Kenya has assented to. He should bring them here, so that we can also domesticate them. There are quite a number of international treaties and agreements that Kenya has signed, but they have not been domesticated. There are others which Kenya has not signed, with or without conditions. My appeal is that he should also look at our register and find the ones which we have not assented to. I think we should assent to them. Those we have not domesticated should be domesticated.

Mr. Temporary Deputy Speaker, Sir, my quarrel with the Rome Statute has been that it does not take preventive action against genocide, crimes against humanity and war crimes. It waits for genocide to happen before it invokes its the jurisdiction. It waits for crimes against humanity to happen before it revokes its jurisdiction. It waits for war crimes to happen before it invokes its jurisdiction. That has been my main concern, even when I was at the Ministry of Justice and Constitutional Affairs.

I am saying this because it is important to me that we take all necessary steps to prevent genocide. We should take all the necessary steps to prevent crimes against humanity from happening. We must take all the necessary steps to prevent war crimes from happening.

Mr. Temporary Deputy Speaker, Sir, if you look at the current situation in Kenya, we have so many militia groups. We have so many warlords in this country. We have the likes of the *Mungiki*, *Taliban*, *Jeshi la Mzee*, *Chinkororo*, *Kalenjin Warriors*; all these. They have been proscribed, yet they still exist. According to me, we need to take steps to make sure that these organisations do not commit genocide, crimes against humanity and war crimes.

Mr. Ruto: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Assistant Minister is referring to a variety of what he is calling militia. He has just referred to, amongst others, which I do not know anything much about, "Kalenjin Warriors". I would like to know of the existence of such a militia group. Could the hon. Assistant Minister substantiate or apologise? This is a slur on an entire community. This is terrible, and he is actually creating a recipe for disasters similar to what we are trying to prevent. This is a serious matter. The hon. Assistant Minister has to apologise to the whole country.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Githae, deal with that matter!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I do not think it is even worth addressing the issue at all. I have just said that these are militia groups. They are on public record. We can go to archives. But that is not the main point. If he just wants me to avoid the last one, then I will avoid it.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Githae, will you just withdraw the remark and we proceed?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, that is exactly what I am saying.

(Mr. Ruto stood up in his place)

The Temporary Deputy Speaker (Prof. Kaloki): Order! Mr. Ruto! Could you please take your seat?

Mr. Githae, could you withdraw the remark, so that we can continue, please?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, that is exactly what I said. If his only quarrel is on the last one, then I have withdrawn it. It does not reduce my argument! The argument is that we need to do away with these---

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

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I think he is being disorderly!

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Ruto, please, will you please sit down? Mr. Githae has already apologised. He has withdrawn the remark.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, he has not apologised. He has continued with the slur. He thinks it is a small issue!

The Temporary Deputy Speaker (Prof. Kaloki): Order, please! The remark has already been done away with!

Mr. Githae, would you please, proceed!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir. I am saying that we need to do away with the militia. They are there and they are on record. We also do not want militia in Parliament!

Mr. Ruto: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Assistant Minister is saying these militia are on record. We want a substantiation that they are Kalenjin Warriors! Failure to which, Mr. Githae should stop talking! He should withdraw and apologise for this slur. He is belittling this issue and telling us that there are Kalenjin Warriors. Are there Kikuyu Warriors?

Mr. Temporary Deputy Speaker, Sir, this is the attitude this Government is taking and creating unimaginable confusion. These sort of Assistant Ministers are not doing us any service! This hon. Assistant Minister is speaking on record and saying that it is clear that there are Kalenjin Warriors. Mr. Temporary Deputy Speaker, Sir, could he substantiate this? We want substantiation. We are not going to accept a situation where he is telling us that it is on public record! Produce the record now! The Attorney-General is here; give us the record! You are in the same Government.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Githae, I think Mr. Ruto is in order! The Chair rules that you apologise properly!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I have said clearly that it does not reduce my argument. If that is all he wants me to do, I have withdrawn and I apologise.

(Mr. Ruto stood up in his place)

Mr. Temporary Deputy Speaker, Sir, I think Mr. Ruto is now being disorderly! I am calling upon you to take action.

Mr. Temporary Deputy Speaker, Sir, we need to take care that these crimes do not happen in this country. Some pills are bitter to swallow, but must this be accepted.

Mr. Temporary Deputy Speaker, Sir, this country almost came to destruction after the last general election. We just survived by the grace of God. This country would have become a failed state like many others. My argument is that we must take action. We must take measures that will prevent this from recurring. It will not happen, if there are some people who do not want to hear the truth. It will not happen!

Mr. Temporary Deputy Speaker, Sir, we saw clearly that many people were displaced from their farms. We saw this and it does not need any clarification. In fact, what is happening is that the same people are being resettled. They have been taken back to their farms. Why are you avoiding

this? We must say that some people were displaced. They were not displaced by aliens from the moon. They were displaced all over the country. That is a fact. We cannot avoid it. If we try to pretend, I think we will do disservice to this country.

Mr. Temporary Deputy Speaker, Sir, it is upon every Member of this House to encourage those who were displaced to go back to their places of work and farms. We must say it. We must also appeal to the Internally Displaced Persons (IDPs) to accept the Government offer to take them back to their farms. They should not fear. The Government will provide security. This will be done.

It is important for people who are in those areas to also welcome the IDPs. This must be said. If we do not do that, then all what we are trying to do is to sweep things under the carpet. At the same time, we are creating conditions for genocide and war crimes. This country survived by the grace of God. We do not want to go back to those times. So, we must be prepared to accept the truth. Probably, some people know more than we do in this House.

Mr. Temporary Deputy Speaker, Sir, one of the good things that the Ninth Parliament did was to pass the Presidential Retirement Benefits Act. This Act basically tells our current President and future Presidents: "Please, rule us well. Do not commit any genocide and crimes against humanity. After you retire, we shall look after you well. Do not steal money from us Kenyans because when you retire we shall look after you well." I am proud that I was a Member of that Parliament. We have now assured our current President, and future Presidents, that they will be taken care of. So, they do not have to kill anybody for political purposes. It is not necessary because, after they retire, we shall take care of them.

Again, we are telling them: "Do not steal from the public coffers, because after you retire we shall take care of you well. We will give you a house in Nairobi and a motor vehicle in your rural area. We will give you a salary that will enable you live comfortably."

Mr. Temporary Deputy Speaker, Sir, as I said, my quarrel with the Rome Statute is that it waits for these things to happen. What happened after the Presidential results were announced could actually have been predicted. Why am I saying this? We used to receive, on our phones, short messages almost encouraging genocide. Anybody who says he or she did not receive any messages is not really being truthful. We must avoid that incitement. We must avoid inciting the people who vote for us. For the sake of getting a few votes, you make disparaging remarks against other tribes. We must avoid it. That is the solution if we are to avoid a recurrence of what happened in 2007. We must avoid certain generalisations of certain tribes. These are the cause of what happened in 2007. We will continue saying it, however uncomfortable some people are, so that we avoid it in future.

There are enough safeguards in this Rome Statute, to avoid malicious, petty and frivolous prosecutions. Again, we must take steps to prevent genocide from happening. There is no need of waiting until it has happened before we take action. By the time happens, it will be too late and many people will have been killed. Look at what happened in Germany when the Jews were all taken to gas chambers. People just kept quiet! When they started with the disabled, people who were able said nothing. When they came to people who were insane, people said nothing. They said: "We are not insane." When they turned to Catholics, people said nothing. When they came at long last to Jews, there was nobody to speak for them. We must say it loud and clear.

Any Member of Parliament in this House who does not encourage IDPs to return to their farms, is doing a big disservice to this nation. We must say it, regardless of whether, somebody is uncomfortable! If you were involved in any of those heinous acts, I think you need to seek forgiveness from fellow Kenyans. No politics will remove you from what you have done. If you are feeling guilty that you may have been involved, you need to seek forgiveness from Kenyans. If you are looking at me with bad eyes because I have said so, you must come to us for forgiveness. We

shall forgive you because we want reconciliation. That is the purpose of what is happening.

We do not want to see a repeat of what happened. We should not see those theatrics again in this House when somebody says the truth. We are here to tell Kenyans the truth. The truth must be said. Anybody who gives IDPs conditions is an enemy of this country. No conditions should be given. People should be allowed to go back to the places where they were farming.

Mr. Temporary Deputy Speaker, Sir, in conclusion, we must take steps to prevent these crimes from happening. When somebody says measures must be taken to abolish and proscribe all the militia groups, that must be done; unless somebody is a commander of those militia groups and he does not want them to be abolished. This is the incitement that caused this country to go to the brink of war. We must say it, however uncomfortable somebody is! We must continue saying it and we will continue doing so! It was disheartening to see a fellow Kenyan taking a machete, because he was incited by somebody else, to kill his neighbour and take his cow. If you incited somebody, you must apologise and ask for forgiveness from Kenyans. If you know more than we do, you must tell us what happened. It is important to say so! If you do not say it and this happens again, you will be found guilty.

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

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, please, protect me! He just wants to waste my time!

Mr. Ruto: He is just repeating himself!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): I am not repeating myself! I have been to school and I know when I am repeating myself. I

am emphasizing a point! I do not know why Mr. Ruto is so uncomfortable. Is it because I have said the truth? What is happening?

Mr. Temporary Deputy Speaker, Sir, we must now appeal to IDPs to go back to their places. The Government has assured them of security. The main reason why chaos erupted after the general elections is because the police were involved in the general elections. We had more than 20,000 polling stations. Every polling station had a minimum of two policemen. So, more than 40,000 policemen were not involved in security duties. They were involved in the general elections. That is why, when chaos erupted, the policemen were not there to help our people! Now, we have finished with the elections and, therefore, the police are now available and more police stations have been built.

Mr. Temporary Deputy Speaker, Sir, once again, we must say it, however uncomfortable some people are, however stressed they become, however gloomy or black their faces become; we must say it and say it forthrightly!

Mr. Temporary Deputy Speaker, Sir, we need to copy what Rwanda is doing. After the 1994 Genocide in Rwanda, the Government has come up with a policy of villagization. They are asking people or the *shamba* owners to build next to the road. Instead of having houses in every corner of your farm, they are asking Rwandese to build the houses near the road. It is easier to bring services to them like electricity and water. It is even easier for security purposes. I think this is the direction we should go. If you look at places where there was orderly settlement, a lot of houses were not burnt. But in those places where the farms were in isolated places, that is where a lot of destruction took place. That is the position. The Constitution is very clear that, as a Kenyan, you can live anywhere in the Republic of Kenya! As a Kenyan, you can buy land anywhere in the Republic of Kenya! Last week, there was an accusation that other people have not bought land in Central Province. The land is available there and if you look at any newspaper, land is available there and you can go and buy it. The only problem is that it is expensive. In fact, if there is any hon.

Member who wants to buy a piece of land in Central Province, let him see me now! I know of three or four farms that are on sale. They can go and buy them and nobody will protest! They will be most welcome!

An hon. Member: They will steal from you!

(Laughter)

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, the law is very clear in that you can buy any piece of land anywhere in Kenya, and they are there. I know of four people who are selling their parcels of land. Please, if there is any hon. Member who was so bitter when I talked about this issue--

What we are saying is that, until we amend the Constitution of Kenya, you are entitled to buy a piece of land anywhere; you are entitled to live and work anywhere in the country. The law has not been amended! Therefore, nobody should be given conditions on where he can live in this country. This is what makes this country great, that you can live, marry and work anywhere! We must talk to our leaders and they must tell their people that this is the law. You would not have committed any offence if you bought a farm anywhere in the country! There is no law you would have broken or breached!

I support this Bill. My intention was not to cast aspersion on any community. That was not the intention. Once again, if there is any hon. Member who felt that I have defamed a community, I am very sorry. That was not the intention. He misunderstood what I was saying. I am surprised that one hon. Member did not comment on the other militias. He only commented on one. There is no good or bad militia. They are all bad and they should be disbanded!

Mr. Temporary Deputy Speaker, Sir, let me now come to my last point. If you look at the newspapers, the police seem to have declared war on the *Mungiki*. I am wondering why they have not declared war on the other militias. I will not mention all of them because I do not want somebody to stand on a point of order and say that I have mentioned a name that he does not want to hear. What is good for the goose is good for the gander.

If the police have declared on the *Mungiki*, I think they should also declare war on all the other militias irrespective of who the commanders are, where they are or what station in life they occupy! We must say it loud and clear that a militia is a militia! We do not want militias in this country. We have got the police in this country and they can do a good job! There is nothing good in being a member of a militia at all! It is not a distinction to be a member of a militia! It is not a mark of respect to be a member or a commander of a militia. It is not and we must say it, however bitter some people are!

Mr. Temporary Deputy Speaker, Sir, coming to my last point, there have been calls that the people who have been arrested on suspicion that they were involved in the killing of people and the destruction of houses in the Rift Valley Province should be released by the President. I will say it loud and clear, however uncomfortable some people are. The President has absolutely no authority to release any suspects. He has no authority! The only person who can release--

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

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, Mr. Ruto should read his Standing Orders! I am authorized by the Standing Orders to quote the President as an Assistant Minister. You should read your Standing Orders!

The Temporary Deputy Speaker (Prof. Kaloki): Could you address the Chair, please?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Sorry, Mr. Temporary Deputy Speaker, Sir. I was saying that under the

Standing Orders, I am authorized to quote the President as an Assistant Minister. Those who do not know the Standing Orders should actually go, read and understand them so that they do not rise on unnecessary points of order.

The President has no authority or power to release any suspects. That call should be made to the Attorney-General. Under our laws, it is only the Attorney-General who can authorize non-prosecution and not the President. The President would only come in after somebody has been convicted, then he is authorised to pardon him, but not before. Once again, I am saying this for the benefit of those who do not know; those who have been calling for the release of the suspects. You are asking the wrong person. You should be asking the Attorney-General to do that.

Once again, Mr. Temporary Deputy Speaker, Sir, if you are to release some suspects, then you should release all of them! Why are some special? If you want to release suspects, let us release all of them! Are some special? If you want to release suspects, let us release all of them! That will be against the rule of law.

Mr. Temporary Deputy Speaker, Sir, this is the time for reconciliation and the truth must be said.

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

The Assistant Minister for Public Health and Sanitation (Dr. Gesami): On a point of order, Mr. Temporary Deputy Speaker, Sir. I think we have debated this Bill adequately. Would I be in order to request that the Mover be now called upon to reply?

(Applause)

The Temporary Deputy Speaker (Prof. Kaloki): Let me now ask the Mover, the Attorney-General, to reply.

The Prime Minister (Mr. Odinga): On a point of order, Mr. Temporary Deputy Speaker, Sir. The procedure is that you should put the Question first; that the Mover be called upon to reply.

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

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I wish to congratulate you for enlivening the session this afternoon. I just wish to thank all those who have spoken in support of this International Crimes Bill. Mr. Githae mentioned, and quite rightly so, that it is there to prevent rather than coming in after the event has occurred. However, prevention is not for the court. Prevention lies elsewhere. It lies with the people of Kenya and the Government of Kenya. Prevention, at the international level, lies with the Security Council of the UN which can come in to prevent. In fact, under the Bill that we are now enacting, the Security Council can refer a matter of that nature to the ICC.

Mr. Temporary Deputy Speaker, Sir, prevention, as far as the ICC is concerned, is the same type that would occur if you had a deterrent sentence on your statute books such as capital punishment. Some people may fear now to commit the offence of murder because they know that the punishment is murder.

Mr. Temporary Deputy Speaker, Sir, as I stated earlier, part of the benefit of having this ICC is actually to act as a deterrent to leaders who may think that they can commit these offences and escape punishment. In fact, that is why it was put in place. This is because we have had what is called a culture of impunity all over the world where leaders commit these types of offences knowing that they will escape punishment. Now they are on notice because of the wrong statutes and the Bill that we are now enacting. If you commit that type of offence, then even if your own state may not be able to call you to account, or even if you may manipulate the forces in your own country so that you are not called upon to account, at the international level, you will be called

upon to account. You will not be able to plead that other people did it and not you for as long as you are in charge. In fact, there are clauses in this Bill that clearly show that leaders will be held accountable.

Mr. Temporary Deputy Speaker, Sir, what happened in the Nuremberg Trial, when various leaders were being called, is that they would say that it was not them who were responsible, but their juniors. The juniors said that they were not responsible and that they were only acting under the command of their leaders. Now you cannot throw the blame either on your leader or yourself. You are personally liable. The one committing the act and whoever has authorised him to do that is also accountable under the international law.

Mr. Temporary Deputy Speaker, Sir, we now have the ICC and it is a deterrent for these types of things happening. The fact that the *ad hoc* tribunals have already had some success on this, for example, the leaders from the former Yugoslavia, the leader of Sierra Leone, Lord Kony in Uganda and so on--- They are being prosecuted. To me, it is a deterrent to whoever is in a leadership position; to ensure that he does not have to be arrested after he has ceased being a leader and taken to the Hague for trial.

Mr. Temporary Deputy Speaker, Sir, if it were to happen, for example, in Burma, that is the killing fields, they are also going to be prosecuted. In fact some people have already been charged for the crimes they committed. So, the passage of this Bill is also going to help us here in Kenya to ensure that this type of things that, perhaps, happened in the past, cannot escape liability.

Mr. Mungatana mentioned a very important point which I also mentioned yesterday. This is the issue of witness protection. I want to inform him that, in fact, as I speak now, the ICC has already established a fund to assist a programme of witness protection and the victims of these atrocities. They already have a trustee. Last year, we proposed a Kenyan to be a member of that board of trustees from Africa, but it was by mistake because the current term of the trustee from Africa had not yet expired. That person comes from South Africa. I will not mention his name, but he is a very prominent personality in South Africa. So, that is already happening.

I also want to take this opportunity to inform you that at the national level, the Witness Protection Act that you enacted some time ago, is about to become operational. In fact, tomorrow, we shall have the launching of the operational manual for the witness protection programme in Kenya. I set up a Committee to come up with the operational manual which I will be launching tomorrow.

Mr. Temporary Deputy Speaker, Sir, I also wanted to inform this House that it is true that Kenya does not have its share when it comes to holding top and prominent positions within the UN system and even within the ICC. However, we are now becoming very aggressive at it. We have already begun making some measure of success. Only about two years ago, I was the campaign manager for a Kenyan to be an *ad hoc* judge on the International Criminal Tribunal on Rwanda. Indeed, we succeeded. In fact, the Kenyan got the most votes from Africa at the General Assembly in New York. He was second overall in the whole world. That Kenyan is Justice Lee Muthoga. He is now in Arusha as an *ad hoc* judge of the International Criminal Tribunal on Rwanda. So, we are having people and they are coming up. In fact, that is why I am very anxious that we pass this Bill so that we can even be more aggressive now in recommending our own Kenyans who are well qualified to undertake this.

A point was mentioned about having people to investigate these issues in this region. I have no doubt in my mind, particularly, in Kenya and some of the neighbouring countries, we have our own very active NGOs operating in this field and they are doing a marvellous job in carrying out investigations and exposing these types of activities that have been going on. I am quite sure that they will also continue.

Mr. Temporary Deputy Speaker, Sir, a lot was spoken about economic genocide. This Bill is not concerned with what one may call "economic genocide." Important as it is, it is only

concerned with criminal genocide.

Mr. Temporary Deputy Speaker, Sir, I know that there are other mechanisms to address the concerns that the Deputy Speaker referred to. They may not be as effective as they should be, but they are there. We have, for example, the United Nations Economic Committee, which is entrusted with the responsibility of seeing how the economic, social and cultural rights are implemented in various countries. We know that all countries are mandated to report to that committee which makes assessments of a data of this kind.

With regard to some of the communities he has mentioned, for example, the Ogiek community, has filed complaints, not before the ICC, but before another mechanism under the African Union, called the African Commission on Human Rights. In fact, some of those cases will be mentioned in Swaziland next month. So, the mechanisms are there, although they may not be as effective.

Mr. Temporary Deputy Speaker, Sir, this Bill is worthy of being passed unanimously by this august House.

With those remarks, I beg to move.

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, there being no other business on the Order Paper, the House stands adjourned until tomorrow, Thursday, 8th May, 2008, at 2.30 p.m.

The House rose at 5.45 p.m.