

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 18th November, 2009

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Sessional Paper No.3 of 2009 on National Land Policy

(By the Minister for Lands)

NOTICE OF MOTION

ADOPTION OF SESSIONAL PAPER NO.3
OF 2009 ON NATIONAL LAND POLICY

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts Sessional Paper No.3 of 2009 on National Land Policy laid on the Table of the House on Wednesday 18th November, 2009.

QUESTIONS BY PRIVATE NOTICE

ALLOCATION OF RELIEF FOOD TO SAMBURU DISTRICT

(Mr. Letimalo) to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) Could the Minister state how much relief food has been allocated to Samburu District per month since April 2009 to date and the population targeted, and provide the breakdown of food distribution per location during that period?

(b) Under which circumstances have some locations like Ngare Narok, Ndonyo-Wasin, Uaso West and Engilai Central missed out on relief food for up to four months?

(c) How many locations have not received the August 2009 allocation?

(d) Could the Minister also provide the membership of the District Food Distribution Committee and clarify whether or not it has been operationalized?

Mr. Deputy Speaker: Is hon. Letimalo not here?

Next Question by Dr. Khalwale!

RENEWAL OF M/S DE LA RUE CONTRACT

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

(a) Under what circumstances was the contract for printing of new currency notes by M/s De La Rue renewed and/or extended and what other options were explored?

(b) Was the current contract materially different from the earlier one, and if so, how?

(c) Did the award of the tender occasion any loss of public funds?

(d) Was the renewal in conformity with the Public Procurement and Disposal Act and, if so, why has the Minister not ordered an audit of the tender?

Mr. Deputy Speaker: Is the Deputy Prime Minister and Minister for Finance not here?

We will now go to Ordinary Questions. Question No.029 by Mr. Olago!

ORAL ANSWERS TO QUESTIONS

Question No.029

LIST OF FATALITIES FROM *SABA SABA* RIOTS /POST ELECTION VIOLENCE IN KISUMU

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

(a) whether he could table before the House a complete list of persons injured and/or fatally shot by Police in Kisumu Town during the *Saba Saba* riots and the whole duration of post-election violence in 2007/2008; and,

(b) what steps he is taking to ensure the victims and/or their families are, as a step towards reconciliation, paid *ex-gratia* compensations and to settle suits now pending before various courts in Kisumu resulting from the above events.

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

(a) The number of persons shot dead during the *Saba Saba* riots on 7th July, 2004 is three and there were no reports of injured persons. During the whole duration of the post-election violence, a total of 48 people were fatally shot. I have the list of the names and I am going to table it.

(b) The issue of *ex-gratia* and compensation can only be decided by the Attorney-General upon completion of the cases which are pending in various courts or under inquiry.

I wish to table the list of the people who were injured and also those who died during the entire period.

(Prof. Saitoti laid the document on the Table)

Mr. Olago: Mr. Deputy Speaker, Sir, it is absurd to note that the hon. Minister is saying that only three people were fatally injured during the *Saba Saba* riots. But what was important is the number of people who were fatally hurt in the *Saba Saba* riots of 2007 in Kisumu. The hon. Minister has referred to *Saba Saba* riots of 2004 in Nairobi.

Mr. Deputy Speaker: There seems to be a misunderstanding on this, in the sense that the Government side assumes that there was only one *Saba Saba* riots, that is, the one of 2004. The Questioner without specifying also refers to *Saba Saba* riots. How many instance *Saba Saba* riots have we had in Kisumu?

Prof. Saitoti: Mr. Deputy Speaker, Sir, I must say that the Question talked of the number of people who were killed during the *Saba Saba* riots. This *Saba Saba* riots that took place on 7th July, 2004, is the one that I believe the hon. Member has sought. But in the event that he wanted to ask about several *Saba Saba* riots, we would be quite happy about it. But it is very clear that the hon. Member has not been that specific.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. The hon. Minister cannot say that I have not been specific. Last week, this Question came up and I specifically said that I was referring to the *Saba Saba* riots of 2007 in Kisumu. Many hon. Members may not know, but there were riots in 2007.

Mr. Deputy Speaker: Order! Hon. Olago, the Question does not specify which *Saba Saba* riots! So, to the best of the recollection of the Chair, *Saba Saba* started in the 1990s and not even in the 2000s. So, when you say *Saba Saba* without being specific---

Mr. Olago: Mr. Deputy Speaker, Sir, the Question says: "2007/2008." I have made no reference at all to 2004.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. I am just seeking guidance from the Chair because I heard you ask the Minister clearly, and that is a direction from the Chair; to explain how many *Saba Saba* riots we have had. To the best of my knowledge, we have had *Saba Saba* riots since November, 1991 and the Minister should not escape answering your own direction on the issue of what is his understanding of the *Saba Saba* riots.

Mr. Deputy Speaker: Hon. Minister, this is a very crucial question, please answer it.

Prof. Saitoti: Mr. Deputy Speaker, Sir, I have got no reason whatsoever to withhold any information. But the manner in which it is explained, it must cover the entire duration. I am quite happy, to come and lay the entire documents on the Table for all the *Saba Saba* days that we have had.

Mr. Deputy Speaker: Fair enough! I think under the circumstances--- Yes, what is your point of order?

Mr. Olago: On a point of Order, Mr. Deputy Speaker, Sir. Under the circumstance, could the Question be deferred to next week?

Mr. Deputy Speaker: The Question is deferred to next week, hon. Minister, in which case, you are going to furnish us with all the details regarding all the *Saba Saba* riots.

(Question deferred)

Prof. Saitoti: Mr. Deputy Speaker, Sir, I oblige to do exactly that.

The Assistant Minister for Water and Irrigation (Mr. Kiunjuri): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Kiunjuri, the matter has been put to rest, unless it is a very pressing point of order. What is your point of order?

The Assistant Minister for Water and Irrigation (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, I was just wondering why the Chair is not guiding the hon. Minister when Mr. Deputy Speaker is fully aware of the *Saba Saba* which he was involved in!

(Laughter)

Mr. Deputy Speaker: Fair enough!

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, as matter of fact, I think the hon. Kiunjuri here is entirely out of order! It is a pity that he himself, as an Assistant Minister, would be in a position to put a Minister also in an extremely awkward position!

An hon. Member: The Mombasa bonding retreat did not work!

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

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

Mr. Imanyara: Mr. Deputy Speaker, Sir, is it in order for a Minister to say that he is being put in an awkward situation by a Member of this House asking for clarification on *Saba Saba*, which the Minister knows very well is what brought the changes that he is enjoying today as a Minister?

Mr. Deputy Speaker: I think we should put this matter to rest as much as possible.

Next Question, hon. Shakila Abdalla!

Question No.031

EXISTENCE OF EXTRACTIVE INDUSTRY
TRANSPARENCY INITIATIVE

Mr. Deputy Speaker: Hon. Shakila Abdalla is not in?
Next Question by hon. Yusuf Chanzu!

Question No.252

IMPROVEMENT OF WATER SUPPLY/
RETICULATION IN KISUMU

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

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

My Ministry, through the Lake Victoria South Water Services Board, is implementing the short-term action plan for rehabilitation of the water facilities in Kisumu City. The works being undertaken include construction of a new treatment plant of 24,000 cubic meter a day capacity and rehabilitation of 17 kilometres distribution network at a total cost of Ksh175 million. The short-term measure will be completed by December, 2009, and hence ease the water problems in Kisumu City. Plans are at advanced stage by my Ministry to implement the long-term action plan; which include construction of intake works at “Kajuju” River. Forty eight thousand cubic meters a day capacity treatment plants, storage and distribution network and capacity building of staff for Kisumu City Water and Sewerage Company.

Mr. Chanzu: Mr. Deputy Speaker, Sir, I thank the Assistant Minister, but Kisumu City is going to be a major regional centre and the city is on the Lake. I do not know why the Government has not considered doing a major programme using the lake water rather than talking about short-term measures since 1963. Could the Assistant Minister tell us what major plans they have in place to improve the water situation and reticulation in Kisumu City?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, I have talked about the short-term measures. But for the long-term measures, we have a project of Kshs3.3 billion which is meant to augment and expand the existing water sewerage systems to meet the demand for such services for Kisumu City; that is, by 2031. This will include not only the flow of water, for which we are laying pipes of about 40,100 metres, but it will also be able to take care of the sewerage system for the whole of Kisumu City. The project of Kshs3.3 billion is underway and it will be implemented in phases. Up to now, we have spent Kshs430 million on short-term measures.

On the issue of whether we should be able to draw water from Lake Victoria and pump back the water, it will be very costly. I agree with the hon. Member that the first treatment works were done in 1956, 1963 and then 1984. This is the first time we are taking seriously the issues of Kisumu City. After the intake at “Kajuju River”, we shall be able to pump in the 48,000 cubic litres that would rest the case. In addition, over the 600,000 people living in Kisumu City will be provided with water.

Mr. Olago: Mr. Deputy Speaker, Sir, for the sake of the record, the river that the hon. Assistant Minister has referred to is not “Kajuju”. It is “Kajulu”. Kisumu City is a transit city for west Kenya and some parts of the southern rift. So a lot of people travel through Kisumu and that is how hon. Chanzu witnessed one night; I think when we did not have water in the hotel where he was staying. But I agree that, indeed, Kisumu Water and Sewerage Company (KIWASCO) and the Lake Victoria South Water Board are doing a good job and what they are doing in the short-term is going now and which is good enough. But the important question is; why does the Ministry act only when there is a crisis? Why do they not plan ahead?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, I have said that since 1984 nothing had been done for Kisumu City. The hon. Member who is a resident of the city agrees with

me that a lot of works are going on. That started when this good Government started working. Therefore, we need to compliment the Government and give it support.

Mr. Chepkitony: Thank you, Mr. Deputy Speaker, Sir. Pumping water involves use of a lot of energy. I would have thought that the best way to supply water to Kisumu City is by gravity means. Are there plans to convert supply of water through gravity system in Kisumu City?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, the question hon. Chanzu asked is whether we can use the water from Lake Victoria, and I said it is very uneconomical. That is why we are now tapping water from River Kajulu, as corrected by Mr. Olago.

Mr. Deputy Speaker: Fair enough. Let us have the last question from hon. Yusuf Chanzu.

Mr. Chanzu: Mr. Deputy Speaker, Sir, I want to thank again my friend and the substantive Minister. I think they are doing good work, but I would like the Assistant Minister to make sure that what he is assuring this House is going to be implemented. Looking at what we have gone through, we are trying to come up with a Constitution which is going to divide this country into regions and Kisumu City is going to be a major centre. It is even catering, not only for Kenya but for East Africa and we want the image of this country to be at the top. Could the Assistant Minister assure this House that what he has told us is going to be effected? We do not want to be told that this will be achieved by 2030. There was a Minister who used to say that we are going to have water in the whole of this country by the year 2000. So, let us not base it on that. Let us just concentrate on what we can be able to do now.

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, this Assistant Minister is very serious. Bearing in mind that Kisumu City is the city where the Prime Minister of this country comes from, I will be risking my job if I try to give information that cannot be fulfilled. We are going to undertake the project at the cost of Kshs3.3 billion and we will do whatever we can.

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

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

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. The Prime Minister of this country is the MP for Langata. Is the Assistant Minister in order to say that the Prime Minister comes from the City of Kisumu?

Mr. Deputy Speaker: Mr. Assistant Minister, the Prime Minister of this country has a constituency called Langata and not Kisumu or anywhere else near Nyanza Province!

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, I was just tracing his roots, but I withdraw.

Question No.323

AFFORESTATION OF ABERDARES/
MOUNT KENYA AREAS

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

(a) what measures he is taking to ensure that areas around the Aberdares and Mount Kenya, which have continually been deforested, are

rehabilitated and more trees planted to restore the water catchment base; and,

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

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Deputy Speaker, Sir, I beg to reply.

(a) In our effort to ensure that the Aberdares and Mount Kenya Water Towers are conserved and the degraded areas within the forests preserved and rehabilitated, my Ministry, in collaboration with the Local Communities, Development Partners and other stakeholders have been actively undertaking tree planting and other conservation activities geared towards restoration of the water catchment areas.

(b) My Ministry, through the Kenya Forests Service, has been engaging the youth in afforestation programmes both in Kieni East and Kieni West Districts in Government and donor-funded programmes. In this endeavor, the Ministry, through the *Kazi Kwa Vijana* Programme Phase 1, engaged 342 youths in afforestation programmes in the two districts. However, the tree planting programme was hampered by lack of sufficient rains and will resume as soon as the situation improves.

During the Phase II of the *Kazi Kwa Vijana* Programme, the Ministry intends to plant trees in public degraded lands, institutions and water catchment areas. These activities will be accomplished through engagement of youths in the two districts.

Mr. Warugongo: Thank you, Mr. Deputy Speaker, Sir. While I appreciate the answer given by the Minister, I think he should give us more information, because we are not aware of the 342 youths who were employed to do the tree planting work. We all know how we have destroyed our forests. We all know that we need to plant trees all over the country, not only in Kieni East or Kieni West Districts. The Assistant Minister should tell us in which area the youths planted the trees during the first round.

Mr. Nanok: Thank you, Mr. Deputy Speaker, Sir. I can confirm to the hon. Member for Kieni that, indeed, the 342 youths were engaged in the area to plant trees measuring a total of 119 hectares during the Phase I of the *Kazi Kwa Vijana* Programme. During the last financial year, we produced 17,490,000 seedlings that were raised and planted in farm lands all over the country.

Mr. Bahari: Thank you, Mr. Deputy Speaker, Sir. It is true that disafforestation has caused a disaster in this area, particularly downstream in some of the constituencies like mine. Part of the problem is caused by commercial farmers and others who tap water from the streams in this area without authority. What has the Ministry done to ensure that the use of water is regulated in this area?

Mr. Nanok: Thank you, Mr. Deputy Speaker, Sir. If I understood the question very well, it was about regulating the use of water, which is basically under the Ministry of Water and Irrigation. However, I guess we will work closely with the sister Ministries to ensure that they effectively do their job. In terms of the areas that have been deforested, I think the Ministry wants to implement the Forests Act, so that all the deforested areas, the ones that we know--- I also urge hon. Members to bring to our attention other areas which we may not know about so that we can take action.

Mr. Wamalwa: Thank you, Mr. Deputy Speaker, Sir. I am happy that the Government is doing something about the Aberdares and the Mount Kenya areas because

we seem to have been concentrating on Mau only and forgetting other water towers, including Mount Elgon where we are hoping that similar programmes will be implemented. My question to the Assistant Minister is, what procedures were used to engage the 342 youths in the *Kazi Kwa Vijana* Programme in terms of identifying them and engaging them without involving local leaders like the area councilors? Similar situations are happening in other parts of the country.

Mr. Nanok: Mr. Deputy Speaker, Sir, I do not have those details but I can avail them to the hon. Member once I get back to the office.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. The question was very specific. Apart from the Aberdares, it also refers to Mount Kenya. We know that Mount Kenya region is larger than Kieni where he gave 342 jobs. Could he give a breakdown of the entire region, giving the number of jobs that were given to youths, the money spent and the criteria used in selecting them? He should also confirm that, in fact, these youths have been paid. Youths from Central Imenti, which is part of Mount Kenya area, are yet to be paid for the *Kazi Kwa Vijana* Programme.

Mr. Nanok: Thank you, Mr. Deputy Speaker, Sir. As I said, the information I had was very relevant to this Question. Regarding the information asked for, I can provide it later because I do not have all the details.

Mr. Wamalwa: On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to request that this Question be deferred, so that the Assistant Minister can avail the information since it is very important? Youths, including those in my constituency, in Machewa, who have been engaged in the *Kazi Kwa Vijana* Programme have not been paid to date. It is very important that the Assistant Minister supplies these particulars.

Mr. Deputy Speaker: Hon. Assistant Minister, the Chair has taken note of the fact that the Question talks about Mount Kenya area. The position is that Mount Kenya area is Mount Kenya area, and it is a large area. I think it would be fair that we defer this Question until such a time when you can provide all the information that you have promised.

Mr. Nanok: Most obliged!

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

(Question deferred)

Question No.341

TOTAL COST OF TEAMS PROJECT

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

(a) the total cost of the recently launched East African Marine Systems (TEAMS) project:

(b) when the project will start actual operations;

(c) what security measures are in place to ensure safety of the fiber optic cables; and,

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

Mr. Deputy Speaker: Where is the Minister for Information and Communications? Let us move on to the next Question!

(Mr. Pesa moved to the Dispatch Box)

Mr. Deputy Speaker: You cannot ask your Question from the Dispatch Box!

Mr. Pesa: Mr. Deputy Speaker, Sir, I have not been furnished with the answer, and that is why I was consulting with the Minister!

Mr. Deputy Speaker: Would you like to still proceed and ask the Question?

Mr. Pesa: Yes, due to the urgency, I would like to proceed.

Question No.376

SHORTAGE OF TEACHERS IN
SUBA PRIMARY SCHOOLS

Mr. Pesa asked the Minister for Education:-

(a) to confirm that primary schools in Suba West and Suba East Divisions of Migori Constituency suffer serious understaffing due to hardship in the area;

(b) to table a staffing list per school in Suba West and Suba East Divisions in Migori District; and,

(c) when he will, in conjunction with the Minister of State for Public Service, declare Suba West a hardship area, so that teachers and other civil servants can be paid hardship allowance and be retained in the region.

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, I kindly request the House to give me a little more time so as to give a more comprehensive answer. I am not satisfied with the answer I have here.

Mr. Imanyara: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us why he is not satisfied before you can exercise discretion to allow him more time?

Mr. Deputy Speaker: If he says why he is not satisfied that will be the same as giving the details as if the Question has been asked. I think it is not fair for him to say why he is not satisfied when he is not satisfied. Hon. Assistant Minister, how much time do you want?

The Assistant Minister for Education (Mr. Mwatela): Mr Deputy Speaker, Sir, I will give a proper answer on Tuesday next week.

Mr. Deputy Speaker: The Question is deferred to Tuesday next week.

Mr. Pesa: Mr. Deputy Speaker, Sir, I reluctantly oblige.

(Question deferred)

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

Question No.402

PLIGHT OF EMPLOYEES OF NGARANGETI CAMP

Mr. Kiema Kilonzo not here? Next question by Mr. Sambu!

Question No.404

NUMBER OF CASES GIVEN PECUNIARY AWARDS BY HIGH COURT

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

a) whether he could state the number of cases in which the High Court of Kenya has given pecuniary awards to the litigants in the last 10 years;

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

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

Mr. Deputy Speaker: The Minister for Justice, National Cohesion and Constitutional Affairs! Is the Minister not here?

Next Question, Mr. Kiilu!

Question No.418

COMMISSIONING OF REP PROJECTS IN MAKUENI

Mr. Kiilu asked the Minister for Energy:-

(a) to inform the House when the Kwasomba (Emali/Masumba and Matiliku/Kilili Rural electrification projects, which were constructed in 2007, will be commissioned;

(b) what the cost of each project is; and,

(c) why Spring Hill Youth Polytechnic, Kwakivoko Market, Tutini Borehole and Kalima Market, which are situated along Kwasomba-Masumba power line, were not connected during the construction of the power line.

Mr. Deputy Speaker: Is the Minister for Energy not here?

Next Question by Mr. Ochieng!

Question No.354

NUMBER OF ROADS INSPECTORS IN NYANDO-DISTRICT

Mr. Yinda, on behalf of **Mr. Ochieng**, asked the Minister for Roads:-

(a) to tell the House the number of road inspectors the Ministry has in Nyando District; and,

(b) when the Ministry will post more officers to the district to meet the apparent deficit.

The Minister for Public Works (Mr. Obure): Mr. Deputy Speaker, Sir, Mr. Bett, the Minister for Roads and the two Assistant Ministers in the Ministry are also out of the country on official business. Therefore the Minister requested me to stand in for him.

Mr. Deputy Speaker, Sir, with your permission, I beg to reply.

Mr. Deputy Speaker, Sir, there is one Road Inspector in Nyando District. The Ministry of Roads is not in a position to post technical officers to any district since the responsibility for development and maintenance of roads has now been transferred to the new Roads Authorities in line with the ongoing reforms in the road sector. In this connection, the Ministry of Roads has already deployed all technical staff that were previously attached to the roads department to these new authorities. The authorities are in the process of setting up their structures and operations in various regions. Therefore, I would request the hon. Member for Nyakach to be patient as the authorities, and in this case the Kenya Rural Roads Authority, finalize modalities for operationalizing their activities.

Mr. Yinda: Mr. Deputy Speaker, Sir, I have instructions from the hon. Member to thank the Minister for that comprehensive answer and he instructed me to accept the answer because; he is satisfied with the Ministry's response.

Mr. Gunda: Mr. Deputy Speaker, Sir, could the Minister tell the House the role of the roads inspectors, given the state of our roads?

Mr. Obure: Mr. Deputy Speaker, Sir, the roads inspectors and other technical staff in the Ministry will actually work with the local residents to examine the state of roads, report on the condition of the roads to the appropriate authorities, so that maintenance can then be undertaken.

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

Question No.457

REHABILITATION OF MUCHORWE-KAMWAURA
-SITOITO-KAMORE ROAD

Mr. Cheruiyot asked the Minister for Roads what plans the Ministry has for rehabilitation of Muchorwe-Kamwaura-Sitoito-Kamore Road (E261) and the road from County Council to Chepsir (D315).

The Minister for Public Works (Mr. Obure): Mr. Deputy Speaker, Sir, I beg to reply.

The Ministry of Roads has no immediate plans to rehabilitate Muchorwe-Kamwaura-Sitoito-Kamore Road. Nevertheless, this road is classified as class E. The District Roads Committee or the envisaged Constituency Roads Committee should use the available funding under the Roads Maintenance Levy Fund to give the necessary priority for roads maintenance. The road from county council at Molo to Chepsir is also under the jurisdiction of the DRC; therefore, it should include it in its plans for rehabilitation.

Mr. Deputy Speaker: Are you satisfied Mr. Cheruiyot?

Mr. Cheruiyot: Mr. Deputy Speaker, Sir, the answer given by the Minister, to say the list, is far from satisfactory. These are roads which are over 60 kilometres. They are the main arterial roads within the constituency, and they serve a high production area in terms of food and security. The answer given is really not satisfactory.

Mr. Deputy Speaker: What is your supplementary question therefore?

Mr. Cheruiyot: Mr. Deputy Speaker, Sir, is the M minister going to provide funds rather than advice?

Mr. Obure: Mr. Deputy Speaker, Sir, by virtue of the classification of the roads, they actually fall under the DRC, which will now be converted into the CRC where the Member of Parliament will play a key role. We recommend that the hon. Member places these particular roads on a priority for maintenance.

Mr. Langat: Mr. Deputy Speaker, Sir, considering what the hon. Member has told the Minister about the importance of the roads and the fact that it is class E, could he tell the House whether he is going to re-classify the roads so that they can take care of what the hon. Member has said?

Mr. Obure: That is a request which will certainly be considered. I will convey the sentiments of the hon. Member to the Minister for Roads for consideration.

Mr. Deputy Speaker: Mr. Cheruiyot, the last question on this!

Mr. Cheruiyot: Mr. Deputy Speaker, Sir, these roads have not been done for the last 20 years. They used to be maintained by the Ministry. Could the Minister give a firm commitment that funds will be allocated to these particular roads because the Roads Maintenance Levy Funds are not sufficient at all? We require about Kshs60 million for these roads.

Mr. Obure: Mr. Deputy Speaker, Sir, I am aware that funds have been allocated to Mr. Cheruiyot's constituency for this purpose. However, if he feels that the funds will not be adequate to complete the maintenance to the level required, he should be at liberty to raise that with the Ministry of Roads for consideration for additional funding.

Mr. Deputy Speaker: Fair enough! Let us go back to Question No.1 by Private Notice. I understand that this Question was answered yesterday. I think there was a mistake. If so, let us move to Question No.2 by Dr. Khalwale.

QUESTIONS BY PRIVATE NOTICE

(**Mr. Letimalo**) to ask the Minister of State for Special Programme:-

(a) to state how much relief food has been allocated to Samburu District per month since April, 2009 to date and the population targeted, and provide the breakdown of food distribution per location during that period; ,

(b) to explain the circumstances under which some locations like Ngare Narok, Ndongyo-Wasin, Uaso West Engile Central have missed out on relief food up for four months;

(c) to state how many locations have not received the August, 2009 allocation; and,

(d) to provide the membership of the District Food Distribution Committee and clarify whether or not it has been operationalized.

(Question dropped)

RENEWAL OF MESSRS DE LA RUE CONTRACT

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

(a) Under what circumstances was the contract for printing of new currency notes by Messrs De La Rue renewed and/or extended and what other options were explored?

(b) Was the current contract materially different from the earlier one, and if so, how?

(c) Did the award of the tender occasion any loss of public funds?

(d) Was the renewal in conformity with the Public Procurement and Disposal Act and if so, why has the Minister not ordered an audit of the tender?

Mr. Deputy Speaker: Is the Deputy Prime Minister and Minister for Finance not here? Under the circumstances, as the Standing Orders dictate, the Deputy Prime Minister and Minister for Finance will not transact any business in this House unless he is able to give a satisfactory explanation as to why he is not able to answer this Question. This is in line with the new Standing Orders.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.031

EXISTENCE OF EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE

Ms. S. Abdalla asked the Minister for Environment and Mineral Resources:-

(a) whether he could confirm the existence of a reputable international body, Extractive Industry Transparency Initiative (EITI), that encourages governments to disclose revenues received from mineral exploration; and,

(b) what steps he has taken to ensure Kenya joins the body and to domesticate the instruments governing its operations.

The Assistant Minister for Environment and Mineral Resources (Mr. Kiptanui): Mr. Deputy Speaker, Sir, I beg to reply.

I wish to confirm the existence of an international body known as Extractive Industry Transparency Initiative (EITI) that encourages governments to disclose revenues received from mineral exploration. The body aims at enhancing transparency over payments by extractive companies to governments and government linked entities as well as transparency over revenues by the host governments.

(b) In its efforts to assess the feasibility of implementing EITI, the Kenya Government formed an inter-Ministerial Committee comprising of the Ministry of Finance, Ministry of Environment and Mineral Resources, Ministry of Energy, Ministry of Justice, National Cohesion and Constitutional Affairs, and the National Oil Corporation of Kenya (NOCK), and contracted the Kenya Institute of Public Policy Research and Analysis (KIPPRA) in September, 2006 to undertake a study to assist in recommending the desirability and feasibility of implementing EITI in Kenya.

KIPPRA carried out extensive consultations with the Government, the private sector and civil society in the country from October, 2006 and submitted the stakeholders' survey report in December, 2006.

Mr. Deputy Speaker, Sir, this demonstrates in principle, the Government's willingness to consider the views of the Extractive Industry Transparency Initiative (EITI). In addition, the interministerial Committee is consulting on the basis of the report of the task force, so as to recommend the way forward.

Ms. S. Abdalla: Mr. Deputy Speaker, Sir, while I appreciate the initiative by the Ministry, could the Assistant Minister tell us when the Government will fully commit the implementation of EITI?

Mr. Kiptanui: Mr. Deputy Speaker, Sir, I have said that there is an interministerial committee which is consulting. On the basis of the report from the task force, I believe we shall have a way forward.

Mr. Affey: Mr. Deputy Speaker, Sir, the Assistant Minister says that this process was started in 2006. Between 2006 and now, is nearly three years. How long does he require to process this, so that Kenya can be part of this important organ? What kind of consultation can take three years for the Ministry to complete? What kind of stakeholders are the Ministry getting involved for three years?

Mr. Kiptanui: Mr. Deputy Speaker, Sir, I wish to inform this House that there was parliamentarians breakfast meeting which was followed by a workshop in 2006 and 2007. There was also another workshop in Mombasa. We are consulting.

I am informed that the interministerial committee is said to have met in 2007 and agreed that the National Oil Corporation of Kenya prepare a Cabinet Memo on the implementation of EITI. So, it has not taken three years. I can say that we are ongoing.

Ms. S. Abdalla: Mr. Deputy Speaker, Sir, as you are aware, countries with rich natural resources always have conflict problems. The implementation of the EITI is a very bold move to avoid such conflict in the future in terms of resources. Could the Assistant Minister tell us if they have a fully costed work plans which have been published and widely available; containing measures, targets and time table of implementation and the assessment of capacity constraints?

Mr. Kiptanui: Mr. Deputy Speaker, Sir, I have said that we are consulting, but we are yet, to have the work plan. As the hon. Member said, the EITI it is very important. It might be important for us to understand that from the time it was started in 2002, the countries who have qualified to be members of the EITI in the whole world are less than five countries. We have quite a number of---

Ms. S. Abdalla: On a point of order, Mr. Deputy Speaker, Sir. There are 30 countries already Tanzania being one of them, which is on the validation process.

Mr. Kiptanui: Mr. Deputy Speaker, Sir, I agree Tanzania is on validation process. It is yet to become a member. I am saying that those who have qualified as per

this year are less than five and I am right. We are not late. I believe we have attained some measures. I want to believe that very soon, this interministerial committee will agree on the way forward. We shall be members of the EITI.

Mr. Deputy Speaker: How soon is “very soon”?

Mr. Kiptanui: Mr. Deputy Speaker, Sir, the soonest possible.

Mr. Deputy Speaker: Which is? You owe the House definitive answers so that the Members are not left in abeyance. You had this for three years and then you say very soon.

Mr. Kiptanui: Mr. Deputy Speaker, Sir, I promise that by next year, we should be able to be members of the EITI.

Question No.341

TOTAL COST OF TEAMS PROJECT

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

(a) what the total cost of the recently launched East African Marine Systems (Teams) project is;

(b) when the project will start actual operations;

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

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

Mr. Deputy Speaker: Minister for Information and Communications! Under the circumstances, the Minister for Information and Communications will not transact any business in the House until such a time he is able to give a satisfactory answer.

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. The same Question was on the Order Paper last week and you gave the same order. Today, the Minister has not turned up again. I do not know whether another Minister can undertake because what we want is an answer.

The Minister for Development of Northern Kenya and Other Arid Lands (Mr. I.E. Mohamed): Mr. Deputy Speaker, Sir, I undertake to inform the Minister to make sure that he is here to answer the Question latest next week.

An hon. Member: Tell the Assistant Minister!

The Minister for Development of Northern Kenya and Other Arid Lands (Mr. I.E. Mohamed): I will tell his boss!

(Laughter)

Question No.402

PLIGHT OF EMPLOYEES OF NGARANGETI CAMP

Mr. Deputy Speaker: Fair enough! We are issuing the same ruling that we made last time. Essentially, I think that is when the Minister will have quite a lot of explanations to do.

Next Question, Mr. K. Kilonzo. Is hon. K. Kilonzo by any chance out of the country on an important Parliamentary business? In the event that he is out on a Parliamentary business, the Question will be rescheduled. But in the event that he is not, the Question is dropped. Under the circumstances the Question is dropped until we have information that can lead us to a ruling other than that.

(Question dropped)

Question No.404

NUMBER OF CASES GIVEN PECUNIARY
AWARDS BY HIGH COURT

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

(a) if he could state the number of cases in which the High Court of Kenya has given pecuniary awards to the litigants in the last 10 years;

(b) if he could indicate how many of these awards were against the Government, State Corporations, private companies and individuals, stating the total amount involved for each category; and,

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

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Mr. Deputy Speaker, Sir, before I answer the Question, I would like to seek the indulgence of the Chair. Last week, on Wednesday, I was to answer this Question, but I was together with my Minister engaged in Mombasa on official matters. That is why I was unable to answer this Question.

Mr. Deputy Speaker: Hon. Assistant Minister, you will make your explanation why you were not able to answer it for the benefit of the House. You have already approached the Chair on that but you came late for answering this Question again. So, you must apologize to the House before you continue.

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Mr. Deputy Speaker, Sir, I apologize. I had just gone to the library and that was when you called the Question.

However, I beg to reply.

(a) The Judiciary in its pursuit to ensure justice for all determined and granted litigants pecuniary awards on a number of cases in the last ten years. The number of cases in which the High Court of Kenya has given litigants awards in the last ten years is 4,817.

(b) The pecuniary awards against institutions are as follows:

The Government, 87 awards, amount awarded, Kshs5,214,902,681; against State Corporations, 121 awards, awarded amount, Kshs1,774,342,836; private Companies, 995, amount awarded, Kshs18,878,263,973; individuals, 894 awards, amount awarded is Kshs6,394,304.

(c) Suits by and against the Government are governed by the Government Proceedings Act, Cap. 40, Laws of Kenya. Such suits are brought in the name of or against the Attorney-General. Indeed, all settlement cheques arising from these suits are processed and paid through the Attorney-General's Office. As a result, particulars of awards settled against the Government are within the knowledge and custody of the Attorney-General.

Accordingly, we have since referred part "c" of this Question to the Attorney-General to prepare an appropriate answer. A copy of that letter is forwarded to the Clerk of the National Assembly.

Mr. Sambu: Mr. Deputy Speaker, Sir, much as I like the answer given by the Assistant Minister, I am totally disappointed that the most important part of the Question which is the settlement of the pecuniary awards has not been answered. As you can see, the amount of money involved is a lot. The total is roughly Kshs25 billion and in terms of business, this is very serious. I would like to know whether this money has been settled or not. I assume that it has not been settled. In which case, could the Assistant Minister, in view of the fact that these awards are large and affect business in the country, put a limit on the time given in their settlement? In other words, is he willing to bring up a law to limit the time so that the awards are actually paid within a certain time?

Mr. Cheptumo: Mr. Deputy Speaker, Sir, the payment of awards, as it is stipulated in our laws today, do not have a specific timeframe within which they should be settled. In any event, it is really the business of those parties that have been awarded those amounts to pursue settlement with the Government. I agree with the fact that these are huge amounts. In fact, in ten years, we will be talking of Kshs5.2 billion, which translates to about Kshs500 million in a year. So, it is substantial. However, the issue is not really the amount; the issue is whether those awards are properly settled. I think that is not the question before us today. So, as it is today, we do not have a specific timeframe within which awards should be made. They should just be pursued by the litigants who have proved their claims against the Government.

Mr. Deputy Speaker, Sir, I do not want to give an undertaking as to whether I can bring a law because at the end of the day, it is the litigants to pursue the Government, the state corporations or private companies, to receive their claims.

Eng. Maina: Mr. Deputy Speaker, Sir, the hon. Assistant Minister is not really addressing the matter. Both the Government and the citizens are equal in law. Could he tell the House when and after how long each judgment payment will be made? Secondly, could he admit that these cases come up because of the inefficiency and corruption in Government affairs?

Mr. Cheptumo: Mr. Deputy Speaker, Sir, in my answer to part "c" of the Question, I said that we referred this matter to the Attorney-General because he is the custodian of those awards. So, I cannot really give a timeframe within which the Attorney-General will settle these awards or if at all he has already settled them. I cannot answer that. I think the Attorney-General should be the right person to be able to address this House and give an appropriate and accurate answer. I have a duty to this House to state what I know is right and true so that I do not mislead it.

Mr. Deputy Speaker, Sir, as to whether these awards are arrived at because of inefficiency, I cannot confirm that because every case should be assessed on its own merit. So, again, who is supposed to do that? It is the Attorney-General because he is the

one representing the Government in the courts. Again, it will also be difficult for me at this point in time to do so because we cannot just make a sweeping statement that it is true because of the inefficiency. So, it depends on every case and I cannot be able to give that answer here at this point in time. It is still the Attorney-General who can deal with the two issues.

Mr. Imanyara: Mr. Deputy Speaker, Sir, it is common knowledge that the Attorney-General is only the advocate for the Government and indeed, any payments that he makes, he does so after receiving them from the relevant ministries. Is the Assistant Minister in order to tell us that it is only the Attorney-General who can give us these facts when we know that the Attorney-General makes payments after receiving the same from the relevant ministries? For example, if an award is made against the Ministry of Agriculture or any ministry, whichever Ministry that is concerned, will send the cheque to the Attorney-General who in turn will make the disbursement.

Therefore, it is within the knowledge of the Assistant Minister if they have all this information that totals over Kshs5 billion, to tell us when these instructions were sent to the Attorney-General for disbursement of the claims and if he has in fact effected those payments. It cannot be true that the Attorney-General is the one who makes payments because he acts as the advocate for the various Government departments.

Mr. Deputy Speaker: Hon. Assistant Minister, your Ministry is in charge of administration of justice. It falls under your mandate!

Mr. Cheptumo: Mr. Deputy Speaker, Sir, I would like to agree with my learned senior that it is the various Ministries that avail the settlement cheques but centrally, it is the Attorney-General's Chambers which at the end of the day, will be able to confirm all these. It is still possible to get from the Ministries the kind of awards they have made but centrally, it is the Attorney-General who is doing that. So, it is a question of how do we get the information. I have said that it is the Attorney-General who can give us very quick information within a very short time because he has all the information. Getting it from the various Ministries can still be done but I am saying it is the Attorney-General who has the entire picture of the various settlements to various Ministries.

Mr. Olago: Mr. Deputy Speaker, Sir, time has come for the hon. Assistant Minister to take the bull by the horns. He knows as well as we all do that the stumbling block once judgment has been given by the courts against the Attorney-General and the Government is the Civil Procedure Rules which provide that no warrant of attachment can be issued against the Government. It was supposed to protect the Government but now the Ministries are using this and abusing these powers of law. So, to this extent, therefore, could the Assistant Minister inform the House when his Ministry will take steps to advise the Rules Committee of the High Court to change these rules so that they are not abused by the Ministries?

Mr. Cheptumo: Mr. Deputy Speaker, Sir, I would like to agree with my colleague that the laws of this land should serve Kenyans and we have a duty as a Ministry first and foremost and as Members of this House to come forward and rectify them. I am happy that he has made a very good proposal that it is high time we also looked at the law where perhaps, we think it protects the Government much more than the Kenyan people. So, it is a good proposal and we can consider that. I would also want to request my colleague here that he can also lead in making those proposals.

Mr. Mbugua: Thank you, Mr. Deputy Speaker, Sir. A lot of people have committed suicide and lost their lives as a result of not being paid by the Government. A lot of people have lost their companies as a result of settlements which have been decided by courts and they have not been paid. This is a very important Question. So, I request that we reroute this Question to the relevant Ministry or to the Attorney-General so that it can be looked into by this House.

Thank you.

Mr. Cheptumo: Mr. Deputy Speaker, Sir, that is a very good proposal. It actually agrees with part “c” of my answer. So, it is unfortunate that people have died as a result of non-payment by the Government. We will pray for them. But I think it is important that the Attorney-General, as I have said, addresses those issues, especially part “c” of the Question.

Mr. Deputy Speaker: Hon. Alfred Sambu, you are the Questioner in this case. Are you of the opinion that this Question should be sent to the right Ministry or deferred?

Mr. Sambu: Thank you very much, Mr. Deputy Speaker, Sir. Since the Assistant Minister is unable to answer part “c”, which is a very important part of the Question as you can see from the general interest of the Members of Parliament; could I ask that you defer this Question until he gives us a proper answer for part “c” also?

Mr. Deputy Speaker: Order, hon. Silas Muriuki! I thought you stood on a point of order.

(Mr. Deputy Speaker consulted the Clerk-at-the-Table)

Mr. Assistant Minister, your Ministry is in charge of justice, and justice essentially presupposes that justice to Kenyans too, including settlement of their own claims. Under the circumstances, since you have the collective responsibility in the Government and you have written to the Attorney-General’s Chambers asking them to furnish you with the information that you need to be able to adequately answer part “c”, the Chair directs that this Question appears on the Order Paper on Thursday next week. Are you okay? Is that ample time for you to be able to come up with a comprehensive and complete answer?

Mr. Cheptumo: Mr. Deputy Speaker, Sir, I do not have a problem with that because as long as we have information from the Attorney-General’s Chambers, I will be prepared to answer the Question. May be, you could give us the other week so that we deal with him and---

Mr. Deputy Speaker: The week after next week?

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

Mr. Deputy Speaker: Then you will have to have the answer in full. You cannot come back here again and say that you are not having this information!

Mr. Cheptumo: No, I think we will have all the information.

Mr. Deputy Speaker: You work for the same Government in the same Executive and I think you have a collective responsibility.

Mr. Cheptumo: Yes, Mr. Deputy Speaker, Sir. It is in order for the other week.

Mr. Deputy Speaker: This Question is deferred to the week after next week on Wednesday morning!

(Question deferred)

Question No.418

COMMISSIONING OF KWASOMBA/MASUMBA/MATILIKU/KILILI
RURAL ELECTRIFICATION PROJECTS

Mr. Kiilu asked the Minister for Energy:-

(a) when the Kwasomba (Emali)/Masumba and Matiliku/Kilili Rural electricity projects, which were constructed in 2007, will be commissioned;

(b) what the cost of each project was; and,

(c) why Spring Hill Youth Polytechnic, Kwakivoko Market, Tutini Borehole and Kalima Market which are situated along Kwasomba-Masumba power line were not connected during the construction of the power line.

The Assistant Minister for Energy (Eng. M.M. Mahamud): Mr. Deputy Speaker, Sir, first of all, I apologize for coming late. It was unavoidable.

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

(a) These projects are complete save for the installation of a transformer. We are expecting transformers within this month. The projects, hopefully, will, therefore, be commissioned in December, 2009.

(b) The costs for each project were as follows: Masumba/Emali, Kshs20.6 million and Matiliku/Kilili, Kshs7.5 million

(c) As for the Spring Hill Youth Polytechnic, this polytechnic was constructed well after the project was completed and is not, therefore, connected. For the Kwakivoko Market, this is a very small market and hence the estimated costs were not included in the projects. For the Tutini Borehole, the borehole is not along the Masumba Power line and, therefore, was not part of the coverage. It is located 1.3 kilometers off the power line. As for the Kalima Market project, I am informed that this market does not exist on the ground along the Masumba power line. What exists is the Kalima Primary School.

Mr. Deputy Speaker, Sir, the area Member of Parliament has, so far, also not submitted a request to the Ministry for electrification of the above projects. Once he does so and subject to funds being available, this project shall be considered for funding.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Kiilu: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for giving a fairly satisfactory answer. As I do so, I want to thank the Assistant Minister for accepting that these projects were completed some two years ago and that what they have been waiting for are transformers. They were expecting the transformers in November, 2009. Now we are in the middle of November. Can the Assistant Minister assure this House that the transformers are now available in the country and that he is going to install them so that the people who are supposed to be served by this line are connected to power by Christmas; December 2009, as a gift?

(Applause)

Eng. M.M. Mahamud: Mr. Deputy Speaker, Sir, I appreciate the sentiments of the hon. Member. I said in my answer that we expect to commission the projects by December, 2009, and we will endeavor to make sure that happens.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Do you have the last question on this, hon. Kiilu, or are you satisfied?

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

Mr. Deputy Speaker: Thank you.

Next order!

POINTS OF ORDER

SUSPENSION OF ID CARDS ISSUANCE IN NORTH EASTERN PROVINCE

Mr. Affey: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Immigration and Registration of Persons on the circumstances why the Ministry has suspended the issuance of national identity cards in North Eastern Province which, as you know, the acquisition of a national identity card is a basic constitutional right.

Mr. Deputy Speaker, Sir, I would like the Minister to inform the House on the number of youths affected in this particular exercise and the period for which they were affected, particularly the youths who just completed their national examinations and who wanted to register in order to participate in the referendum and also to participate as voters. As you know, the Interim Independent Electoral Commission (IIEC) will commence the registration of voters very soon. Therefore, the circumstance is such that a very large population of Kenyans in that part of the country will not have access to this registration exercise. I seek this Statement from the Minister very, very urgently.

Thank you, Mr. Deputy Speaker, Sir.

The Assistant Minister for Energy (Eng. M.M. Mahamud): Mr. Deputy Speaker, Sir, I undertake to inform the Minister of State for Immigration and Registration of Persons. I have realized that I am also an interested party in this matter. So, I will ensure that I inform the Minister so that---

Mr. Deputy Speaker: When can we have the Ministerial Statement?

The Assistant Minister for Energy (Eng. M.M. Mahamud): By Tuesday next week latest, Mr. Deputy Speaker, Sir.

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. Clearly, this is a matter that is so serious; Tuesday next week is a week – you are denying these Kenyans another week of lack of registration. We need this Ministerial Statement this afternoon or latest tomorrow, if possible, because it is the question of getting the Minister to come and explain to the country why this decision has been taken. It cannot wait until Tuesday next week.

The Assistant Minister for Energy (Eng. M.M. Mahamud): I agree, Mr. Deputy Speaker, Sir. I will contact the Ministry, so that we can issue the Statement by today afternoon.

Mr. Deputy Speaker: Today afternoon?

The Assistant Minister for Energy (Eng. M.M. Mahamud): Tomorrow I will be away; I think most of the people will be away for a conference.

Mr. Deputy Speaker: Today afternoon?

The Assistant Minister for Energy (Eng. M.M. Mahamud): Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Okay that is fair enough. It is so ordered.
Next Order!

BILLS

First Reading

THE ALCOHOLIC DRINKS CONTROL BILL

(Order for First Reading read – Read the First Time and referred to relevant Departmental Committee)

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Mr. Imanyara on 11.11.2009)

(Resumption of Debate interrupted on 11.11.2009)

Mrs. Shebesh: Mr. Deputy Speaker, Sir, I rise to support this Bill by our colleague, hon. Gitobu Imanyara. There have been a lot of misconceptions and misgivings about this Bill. It is very unfortunate that we sit here as a House, professing to care about Kenyans. We speak about the plight of the Internally Displaced Persons (IDPs) and how to deal with impunity and yet when it comes to putting money where our mouths are, we do not see same commitment from this House. I am, therefore, urging my colleagues to look seriously at the issue of portraying our country as a failed State.

Just a month ago, Members of Parliament were all over the country speaking about how important it is for us to set up a special tribunal; that is, our own mechanism to deal with the issues of post-election violence. Today, the same issue is on the Floor of the House, but we do not see the same support. For how long are we going to push issues for the sake of political expediency and not for the sake of the people of this country?

The first time we debated this issue, I supported, with reasons, the proposal that we set up a special tribunal. It is the same reasons I want to expound on today. During the post-election violence, women were grossly affected. Many women were sexually violated; some of them contracted HIV/AIDS and others even got pregnant. There is a report that was compiled by women organizations under International Federation of Women Lawyers (FIDA) and CREW. The report shows clearly the injustices that women suffered during that time. The question we have asked many times is: If we do not set up our own mechanisms to deal with this issue, how will these women ever get justice?

We want to deal with impunity, even though it is at the top and the bottom. There is no way you will convince me that getting rid of three or four people will stop impunity. I believe that impunity must be dealt with at the top and the bottom. It is clear to me that the only mechanism we can use to deal with the policemen, who raped women and shot people, or the person who took a *panga* against a neighbour, is our own internal system. This country needs to heal, but we have not started that process.

Mr. Deputy Speaker, Sir, I feel very let down by this Coalition Government. This Government was constituted by the goodwill of Kenyans because it promised that it was going to put aside its differences for the sake of Kenya. It is obvious that they put their differences aside for their own sake. If, indeed, it was for the sake of Kenya, this issue would not have dragged on this much. We would not be in the second year of operation still dealing with the issue of post-election violence and never seeing closure. The Government, therefore, must be called out and informed that it has acted irresponsibly. It must tell us whether what we are seeing now is what we will see in 2012. Is this what they are promising Kenyans? Are we going to experience the same violence we experienced in 2007 come 2012? We have neither seen commitment from the line Ministries nor the two principals.

As Members of Parliament who have been speaking on the issues of post-election violence, we are, therefore, saying that we are committed to speaking out on this issue, with or without the support of the Government. Kenyans are watching us. This is the true test of Kenyan leadership. The issue of post-election violence will remain a mark on the history of Kenya for the rest of our lives. The way we deal with it will be written in history. My colleagues and I want to be written in history as those who saw the real consequences of allowing people get away with impunity and allowing tribes to rise against other tribes. As politicians, we are ready to take responsibility for what happened during the post-election violence. We are willing to right the wrongs. We want to show Kenyans that there are Members of Parliament in this House who think with the masses. It is obvious that if you look at the number of hon. Members in the Chamber today, you will realize that there are some who just do lip service. If we are going to be honest, let us stop shifting goal posts every time whenever, for us, it is political expediency.

Mr. Deputy Speaker, Sir, I am saying this because I want to appreciate that we have lost the confidence of Kenyans. The major reason this has happened is that we have failed to issue guidelines. We have failed to be clear on the way we want to deal with impunity in this country. We have failed to be clear on the way we want justice to be achieved in this country. Unfortunately, today, the young people of this country are better of listening to ambassadors and high commissioners in this country. Those are the people they think can give them leadership and yet we have a House of 210 Members. They feel we are not offering leadership. This is because when they look at the way we are dealing with issues, especially this kind of an issue that is critical, they feel that we have failed to offer leadership. We are now saying that, as Members of Parliament who are willing to stand the test of time, we want to offer leadership.

When this issue came to the fore, that is, at a time when Kenya was bleeding and almost split into two, there are those of us who said that we can deal with our own problems. We are not saying that we do not want the International Criminal Court (ICC) process to continue. In fact, it must continue because we are signatory to the Rome Statute. It is, therefore, an obligation that we have already signed to. However, ICC will

not be solving our problems forever. If we go to the next General Election and something like this happens, we cannot, again, call on the ICC. We must show that Kenya can control its own issues.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, in conclusion, out there, we have police officers who raped women and shot people and yet they are still in employment - others have been promoted. Those people were involved in the post-election violence and they are known. We risk turning into a failed State, not only to Kenyans but also to the world, if we do not do what Rwanda, Uganda, and Liberia did. Why is Kenya unable to do what these countries did? It is because of lack of political commitment and goodwill. A few people will be held accountable for that and as far as I am concerned, they are the two principals of the Coalition Government which continues to collude to take away justice from its citizenry.

I support this Bill because it is critical. Women will not get justice in any way other than through a local process.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, I would like to thank you for giving me an opportunity to speak on this very important Bill. Before doing so, may I spend some time to thank hon. Gitobu Imanyara because he has put in a lot of work to make sure that this Bill appears before this House in its present form.

Hon. Imanyara is, indeed, a very good brain - I have no doubt about that. He has a great track record in this country. He is a wonderful and successful lawyer. In fact, he is a seasoned journalist and a tested reformist. Hon. Imanyara was actually the Secretary-General of Ford Kenya and, indeed, is one of the heroes of the second liberation. He is actually one of the few survivors of the infamous Nyayo torture chambers. How ideal that it is him who has penned this particular Bill.

Mr. Temporary Deputy Speaker, Sir, having said this, I would like to acknowledge that this is, indeed, a very remarkable week. Kenyans will remember that it was only yesterday when we launched the Harmonised Draft Constitution. Since not all of us could speak yesterday, allow me to join all those Kenyans who happily, witnessed that occasion; and make a small correction: That somebody, deliberately, forgot to mention the great history that was contributed in this process, by Messrs. James Orengo, Martin Shikuku, and the late Masinde Muliro, when they went to Kamukunji grounds on a pick-up vehicle. We must not also forget the person who drove that pick-up vehicle. Those were, indeed, the symbols of change that brought about multiparty democracy in this country.

We could make this week not only unique but also the finest week of the year if we resolve the issue of the post-election violence once and for all. It is true that when we are in this House, we are able to think on our feet and come up with very good ideas but it is also important for us to remember that we are exercising the representative role of Members of Parliament. If that is the case, what are Kenyans saying about our handling of the post-election violence?

Mr. Temporary Deputy Speaker, Sir, I have listened to Kenyans from all walks of life through Short text Messaging Service (SMS). Hundreds of them are saying that the solution is The Hague. I have read on my *Face Book* address, and Kenyans are saying “The Hague!” I have listened to debate on FM radio stations and, again, it is a resounding case for The Hague. I have watched television stations’ poll results on our handling of the post-election violence and, again, it is an overwhelmingly case for The Hague.

As if that is not enough, if you go through the Mail Box in all the print media, you will see that the majority of Kenyans support The Hague option. I have attended funerals and church summons. I have been to wedding ceremonies as well as to bars, where people drink *busaa* or beer. When they were sober or drunk, the people have always insisted that we must take The Hague option.

Mr. Temporary Deputy Speaker, Sir, having considered all that Kenyans are saying, I wish to join them in saying that this Bill will create a loophole for the Executive to manipulate the process of dispensing justice, as they have done in the past. I am, therefore, joining Kenyans in saying that The Hague will do just fine. The Hague is good. Let us take all of them to The Hague, not because of personal considerations but, because we live in Kenya, where the current Constitution may not be offering an appropriate environment in which to operate a special tribunal.

Forgetting the fact that the current Constitution has very explicit Sections limiting the Executive either directly or indirectly, in facing a challenge as big as this one, is not living to the realities of the moment. It is still possible that even after passing a beautiful Bill like the one that has been written by Mr. Imanyara, the Executive can directly or indirectly, through the Attorney-General, interfere with the process to the extent that we will get nowhere.

Mr. Temporary Deputy Speaker, Sir, it is a fact of history that in Kenya, no “big fish” has ever been convicted of any serious criminal offence. When you see a conviction in this country, it is because the man in the dock is a “small fish”. Are you telling me that what we saw on the video clips that were replayed at the Kenyatta International Conference Centre (KICC) yesterday was not witnessed by the security agents of this country?

Video tapes of the men, who pulled youths out of *matatus* and cut them into pieces, as we saw at the KICC yesterday, are still there. The security organs were there. What law is missing in this country today that prevented the security organs from arresting those people? It is a question of goodwill. All you want to do is to go for the “small man” – the watchman – who was near the scene when that was happening, and tell him: “We saw you on video”. You want to go for the headmaster of the primary school in Kisumu, where a teacher died. You want to focus on the “small man”.

Mr. Temporary Deputy Speaker, Sir, so that we are not seen to be passing laws to just suit the emotions of the moment, I want to ask Members of Parliament: Today, you appear to have changed your mind. Where was your mind when this House, resoundingly, said that the appropriate option was The Hague? This is the same Parliament that said, a few months ago, that the best option was The Hague. We cannot turn 180 degrees and, all of a sudden, say that we were collectively wrong. At that time, we were right. We must remain consistent and say that The Hague is the best option.

Some Members of the Cabinet have treated Kenyans to a circus on this particular issue. Kenyans will remember that at one time, these same Members of the Cabinet went

on a chest-thumping spree across the country, after we had voted in this House, telling Kenyans: "What we want is a special tribunal." After some time, the same persons changed their positions and said: "No, we do not want a special tribunal. We want The Hague, because The Hague will take hundreds of years to prosecute these cases."

Mr. Temporary Deputy Speaker, Sir, the same Ministers went to State House for a Grand Coalition Cabinet meeting, where they said: "We do not want a special tribunal or The Hague. We want the Truth, Justice and Reconciliation Commission (TJRC)". After that meeting, they organised a fantastic Press Conference that was addressed by both the President and the Prime Minister. Where are we taking the country? The same persons are today saying that they want both The Hague and special local tribunal options. What are they telling Kenyans?

Taking this country round in circles is a clear demonstration of lack of goodwill. The best laws in the country, and in the world, will get nowhere when they are not clothed in impeccable goodwill. Since there is no cloth that is clean enough to fit the description of goodwill in this particular case, I submit that, for the benefit of history, they must be taken to The Hague, so that the "small fish" can realise that this Parliament is not using this opportunity to silence them through our collective representation; so that after we have created a "bush" in which the "big fish" will hide, we start playing to the gallery by having "small people" arraigned in court in the name of making them to serve as an example to the rest of Kenyans.

Mr. Temporary Deputy Speaker, Sir, Parliament must, therefore, desist from joining in the competition, with the Cabinet, for bad manners. Parliament must not compete with the Cabinet in indecisiveness. We must not compete with the Cabinet in showing callousness in respect of those who died, those who lost their loved ones, and those who lost their livelihood and homes. We must not, as Parliament, join in demonstrating callousness in respect of all those who have lost their pride of living in a community of functioning nations of the world.

Mr. Temporary Deputy Speaker, Sir, we must have a substantive reason to oppose this Bill. We should demonstrate to the two principals; the President and the Prime Minister that this House does not engage in double-speak the way they have been doing on this issue. We must speak in one voice. The issue of double-speak is not here.

We must also remind ourselves that this Special Tribunal would operate within the context of the current Constitution. If, maybe, we have promulgated the new Constitution, then one would imagine a situation where a new scenario would obtain. But not in the current Constitution!

Mr. Temporary Deputy Speaker, Sir, having said all the above, I think Members should find solace in the fact that trial of ordinary Kenyans has never been a problem in this country. Even small people in Kakamega who steal chicken always go before the magistrate and end up in Shikusa Prison in Kakamega for five years. Trying small people has never been a problem in this country. Therefore, if trying small people is not a problem in this country, then we should use the existing criminal judicial system to address the so called small offenders of the post-election violence.

Finally, I would like to refer to Section 11 of this Bill where it contemplates in Sub-section 3(ii) a situation whereby, under the current Constitution, you arrest the Head of State while he is in office.

Section 11(3) (ii) says:-

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

Mr. Temporary Deputy Speaker, Sir, you are, therefore, saying that you sell the Republic of Kenya just because you do not want to address these people who you know. You do not want to send them to the Hague. You want to set the Republic of Kenya on a rollercoaster, whereby you have arrested the Head of State. This is mischief; I beg to oppose it.

With those few remarks, I may be joined by Members who subscribe to the welfare of the small man in this country.

Thank you.

Mr. Affey: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Bill.

When the Government brought a similar Bill to this House a few months ago, I voted against it. However, today I stand to support this one. Over the last few months, I have reflected very deeply on matters that are current in the country. I have not changed because this Bill will see the light of the day. I have changed because of the spirit in the Bill itself, not necessarily the text, wording or its application in the country. I thank Mr. Imanyara for bringing this Bill before the House. The spirit resonates with the majority of Kenyans.

Mr. Temporary Deputy Speaker, Sir, the reason for this is simple: Yesterday, we were given an opportunity by the Committee of Experts (CoE) to see a clip, reminding us of a very serious issue in the history of this country. I agree with Dr. Khalwale, that the Government has sufficient laws under the current Constitution to try Kenyans who participated in the killings of innocent people. These are the people who did what we saw on our television screens. The Government has sufficient mechanism even to try them today. However, because in this country the Government has refused to implement the law, we have invited foreigners to take over leadership of this country. It is foreigners who are driving the reform agenda and trials. I want to disagree with Dr. Khalwale that this Bill, as designed by Mr. Imanyara, does not preclude the fact that those who were responsible for crimes against humanity can still end up at the Hague.

The Bill was carefully crafted. The worry we had last time was that we had a Government which was determined not to prosecute anybody. The only option all of us had was the one the international community provided. Nothing had stopped the Kenyan Government from prosecuting those involved in crime. But because they refused to do so at the time they brought a similar Bill before us, all of us felt compelled to give justice to these victims. The only way to give justice to them was to find other options. Since we had failed as a country to try them, was there a possibility to try them elsewhere? That is how we rejected the Government Bill.

Mr. Temporary Deputy Speaker, Sir, now that this Bill is hybrid, it gives a possibility for those of us who feel-- The Head of State is not synonymous with Kenya. This should be very clear. God forbid if we have a Head of State who blatantly breaks the law and because he is the Head of State you cannot try him, we are going to lose the country. Nobody should ever tell us that crimes committed by sitting Heads of State are synonymous with Kenyans. It is not! We must have a distinction here.

This Bill is attractive because it gives visible justice to the victims. The Bill addresses the issue of compensation in a major way. The Bill covers and addresses the issue of impunity. Therefore, if we had our way, we would have an opportunity to try Kenyans who were involved. If this fellow called Mr. Moreno Ocampo came here and said he is only interested in three or four people, they could not have been able to organize the massacre we had in the country. They could be more. Therefore, if the majority will not find the possibility to be tried, this Bill provides the way out.

As representatives of the people of Kenya, we are saying that we must be sensitive to those people who are still languishing in Internally Displaced Persons (IDPs) camps, two years down the road. It is not an easy matter as some people may think. I chair the Committee on Equal Opportunities which recently visited Rwanda. We visited their memorial sites. Rwanda is just close to us. What happened there could easily happen here. Why should we just brush it aside and pretend that nothing is happening here? Right now, we are discussing the Draft Constitution as though nothing has happened in the past in this country. We must deal with our past in a manner that it will never be repeated.

There is a lot of impunity that happened in this country. Personally, I sympathise with all those Kenyans who have been displaced from their homes, particularly those who have left the Mau Complex. We want to get some reasonable justification from the Government as to why people who have lived in the Mau Forest for many years have been evicted even before an alternative land had been found for them. They are now living by the roadside. We, as leaders of this country, are saddened to see on the television screens children and mothers being rained on by the roadside. We belong to the Government that cares. In fact, we have taken this country, unfortunately, to a path that we shall end up regretting. When you take the laws of your country very casually the way Somalia and Rwanda leaders did, it is the Ministers and Presidents who were the first people to take the first flight out of those countries. In fact, if you go to the Daadab Refugee Camp, you will be confronted by a number of former Ministers, generals and Members of Parliament who are now languishing in poverty and desperation. When they were in leadership, they took the laws of their country very casually.

My personal position is that the leadership of this country has been taken away. As a Member of Parliament, I suggest that we find a way of getting it back because we have lost it. We are now not in charge of our affairs. We could be in this Parliament talking or a Minister flying a flag, but we have no control over the affairs of this State. It has been taken over; it is now being discussed in Washington DC and in other capitals as though this country has no leadership.

The fact that we have failed to use the laws and the Constitution to try crimes that we saw being committed in this country, is an indication of a collective failure of leadership in this country. All of us are guilty of this.

I want to thank Mr. Imanyara for giving us an opportunity to reclaim our position. This is an opportunity to see whether, in fact, sense will prevail when we put a special tribunal in place. Sometimes I ask myself whether it is important to do so when I have seen on television screens, somebody hacking a Kenyan to death. Why should we be required to establish a very special tribunal to try that person? Let us be serious as a country and reclaim the leadership given to us by the people of this country.

Mr. Temporary Deputy Speaker, Sir, I want to congratulate the Committee of Experts on Constitutional Review because they have done a good job even though there

are certain grey areas that we need to address. We will discuss this document within the 30 days given by Committee of Experts on Constitutional Review. I want to plead with the House to make sure that we do not go into the next general election before we have fundamentally reformed our laws because that is where we have a weak point.

With those few remarks, I support this Bill and congratulate the Mover.

Mr. Ngugi: Thank you, Mr. Temporary Deputy Speaker, for giving me this chance to also contribute to this Bill. In so doing, I want to salute the courageous Members of Parliament since Independence who have at very critical times spoken without fear or favour on behalf of people of this country. Change was never brought by people who just followed the wave or by the people who never read even a Bill like this to understand it, it was brought by those who read widely so that once they contributed they did so from an informed position. I have read this Bill no less than three times. I have discussed it with the lawyers and understood it. This Bill provides both for Hague and a Special Tribunal here.

Section 5(1) says:-

“Without prejudice to (1) above, the Tribunal may invoke Article 14 of the Rome Statute if deemed necessary and for the avoidance of doubt, it is declared that the person or persons on the list submitted to the International Criminal Court by the Chair of the Panel of Eminent African personalities shall be deemed to have been referred to the International Criminal Court.”

It can never be any clearer than this. Those people who are in the Waki list have been referred to Hague. Yesterday when we were at KICC witnessing the launch of the Draft Constitution, we were shown a clip where Kenyans were hacking each other to death and police shooting them. Many of us shed tears and yet, people do not want justice meted on those people who maimed others, raped or shot others dead. They want to play politics. They want political expedience out of this unfortunate situation. When a similar Bill was brought to this House, most of the people who were guilty preferred the Hague option. They thought Hague option will never happen. They believed it will take years and, probably, it will not happen and they will go scot-free.

The other side voted also for Hague because we had no confidence in the Judicial system in this country. So, the two sides converged to prefer Hague option to local tribunal. However, Hague can only prosecute a handful of people. What about those other people who committed crime against humanity? We must provide for a mechanism to try them without impeding or creating roadblocks for them as would happen in the current Constitution where we take people to court and then they ask for constitutional reference and the matters drag forever without being concluded. This Special Tribunal is so important. It will be contained in an amendment to the Constitution such that when this Bill is passed and assented to by the President, nobody will move to the High Court for constitutional interpretation.

We have been speaking about impunity. If we do not punish the hundreds of people who participated in this very heinous crime, are we ending this impunity? The 2012 elections may be much worse than what happened in 2007. If we do nothing to deter the perpetrators and other people who contributed to the post-election violence; those who raped and, maimed others, 2012 elections could be much worse. That is why it is so important that we pass this Bill, even if only to guarantee peaceful elections in 2012.

Mr. Temporary Deputy Speaker, Sir, the other beauty about this Bill is that it is the only legislation in this country on the table now that provides or calls for victims' compensation. The first Bill that was brought to this House by the Government did not provide or call for compensation of the victims. This Bill calls for compensation of thousands of people who were either raped, murdered and their property burnt or taken away. If we are a country that believes in justice and the right of law, then my life should be equal to that of any other Kenyan. If I lose my property, even as the Constitution guarantees that the Government should protect the right to life and property, then this Bill is on the right course in calling for compensation of the victims.

Mr. Temporary Deputy Speaker, Sir, we must be honest with ourselves. Let us not be hypocrites. We are signatories to the Rome Statute. Last year, this House enacted the International Crimes Act. In the International Crimes Act, we appended the Rome Statute. What this means is that there is nobody; whether the two Principals or any other person in Kenya---

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. This Bill before us is a Constitutional Bill and I wonder whether we are really utilizing our time effectively. Personally, I do not like being a hypocrite. Why can we not just put this Bill to the vote and then we do away with it, because it appears that there is no interest in it. I am suggesting, with your indulgence, that you call the---

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Mbadi! We have not reached that part.

Mr. Ngugi: Mr. Temporary Deputy Speaker, Sir, thank you for protecting me and the rights of Kenyans; thousands of them who died. Some of us lost relatives and so, we can feel the pain.

Mr. Temporary Deputy Speaker, Sir, the Rome Statute and the International Crimes Act do not provide immunity for anybody. I would want to go on record as having said that every Kenyan's life should be equal to that of every other Kenyan. If one Kenyan commits a crime it does not matter their position in society. They should be able to face justice just as well as the man on the streets.

Mr. Temporary Deputy Speaker, Sir, we have the Truth, Justice and Reconciliation Commission (TJRC). We are supposed to be reconciling and yet, all we are hearing in Rift Valley are war cries. Is this how we are going to reconcile? The only way to reconcile this country, call for compensation for the victims and guarantee peaceful 2012 elections is for us – men of courage and conviction – to pass this Bill and be on the right side of history when we are judged by it.

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

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Thank you, Mr. Temporary Deputy Speaker, Sir. The Bill before the House is largely a repeat of the Bill that we had some time back, which was hugely opposed and rejected. But we do realize that there are sections that have improved on the material quality of the Bill.

Mr. Temporary Deputy Speaker, Sir, more important is the spirit of the House. Without contemplating the results of this Bill, we need to be very candid and frank. There is an apparent disinterest in this Bill, particularly so because of the works that have happened, and I think it provides a great lesson. The Mover has done good research. He

has incorporated sections that need to take it to a new level and bring the hybrid process, so that trials and prosecutions are undertaken not just locally, but if need be, through the Rome Statute, at the international level.

Mr. Temporary Deputy Speaker, Sir, the motive is as important as the results. The process is as important as those executing it. A word of caution is that I do not think there has been good lobbying and networking for this Bill from the very beginning. There were Press conferences outside the House and statements in rallies, in villages, that sort of threatened Members of Parliament, that if they do not support this Bill they will be betraying Kenya. As a political scientist, I would like to dissect the science in this Bill. This House must rise to its expectation. We have seen important issues causing shifts that many times confuse our very people that we want to help. We have all seen certain Motions demarcated in the way they are voted for, because of ethnic and sometimes party lines. We have seen in this House individuals shouting loudest about the need to end impunity and deal with corruption, but the same individuals not taking a firm position when individuals from their ethnic groups are concerned. It is an issue that should lead us to serious soul searching. This is because it is not only about your individual conscience, but also the political chemistry and anatomy of the legislative agenda that we want to execute.

Mr. Temporary Deputy Speaker, Sir, I say this with a heavy heart because the Mover of this Motion stands shoulders high among the heroes of reforms, inspired by *The Nairobi Law Monthly*, which was actually the very exemplification of the platform where reformist gathered intellectually and ideologically to feed the nation to move forward. Also, without risking discussing the character of a colleague, I appreciate the Mover's courage. While many other people went into hiding when there was a crackdown on reformists in 1990, I have evidence that the Mover of this Motion was the only one who did not go into hiding. He drove from his house to a police station in this country and delivered himself to the police to be jailed for calling for multiparty politics. It is only Mr. Gitabu Imanyara who did so. But faults are also found in individuals. Perhaps, for all of us from the Government side and the Back Benches, when we are moving Motions we need to have tact. We need to expand goodwill and strategically harvest from the diversity of individuals that constitute this House.

Therefore, I submit boldly that the strategy to bring this Bill to this House was not good. I can predict, and I am not likely to go to the detail that the goodwill may have adversarial effect on the outcome of this Bill. It is an important Bill. It is a milestone!

Mr. Temporary Deputy Speaker, Sir, we have said that we have to be consistent. We have come to this House; we have supported the Special Tribunal, as a first step towards trying the masterminds, the perpetrators, the sponsors and the promoters of violence after the 2007 elections. This is not about 2007 or 2008! The culture has been developed in this country! There was violence during 1992 election in Likoni and in the Rift Valley Province. It is like it is a ritual that after every election, those particular areas in this country cannot be touched! Sometimes I hear individuals speaking, including the former Chief Executive Officer (CEO) of this nation, talking about violence and yet during his reign, Kenyans had been killed day and night, while he was the Commander-in-Chief of the Armed Forces and, the CEO of this country. He did nothing. I think we need to have courage; and also questioned all those, who have been in reign in this country, to sometimes shut up, if they failed when they had the responsibility to lead this

country and to execute programmes that could terminate impunity. It is important for us to have that courage and allow this House and this Government to do what it can to register its success or failure.

Mr. Temporary Deputy Speaker, Sir, in 1997, the same scenario was repeated, but in 2002, because, perhaps, some people thought that there was diverse investment and any outcome would benefit them, it was on a lesser level. Even today, we are here as national leaders, even as late as yesterday when we witnessed what was presented by the Committee of Experts on Constitutional Review, as an example of the madness and insanity that bedeviled this country because of our political irresponsibilities, we still go and say that, those who died in a church, either committed suicide, or it was an accident. A lot of nonsense has been perpetrated and, we are saying, in order for this impunity to come to an end, we must deal with issues with courage.

Mr. Temporary Deputy Speaker, Sir, I am one of the Members of Parliament who do not agree that foreigners are interfering with this country. If you go to Treasury, you will realize that a lot of programmes are being funded by the multilateral donors. If you go to the Office of the Prime Minister, the strengthening of that office includes resources from America. If you come to this House, including this live coverage by Kenya Broadcasting Corporation (KBC), it is being facilitated by the United States Agency for International Development (USAID). Even our own Press Centre in this Parliament, the supreme law making body in Kenya, the Press Centre here was actually opened by the American Ambassador to Kenya and the resources used from the American people to build this Parliamentary Press Centre.

Mr. Temporary Deputy Speaker, Sir, we have gone with our bowls everywhere in the world asking for relief food. In fact, we called ambassadors and other foreign agencies to a special conference hosted by the President and the Prime Minister to tell them how hungry Kenyans are and we have gone there with bowls to ask for cash. Our chiefs in the political ladder, the President, the Prime Minister and the Vice-President, have gone to every capital city in the west and east; asking for partnerships and scholarships. Therefore, this doublespeak and hypocrisy now going round asking that we do not allow ourselves to be interrogated or interfered with is not consistent and we need to be very firm.

Mr. Temporary Deputy Speaker, Sir, protect me from the smiles of these hon. Members.

It is my submission to this House that what we need as a beginning is a heavy whip from the international community. The community we asked to send His Excellency Kofi Annan as the eminent African, to come here with Graca Machel and His Excellency Benjamin Mkapa, former President of Tanzania---

Mr. Affey: On a point of order, Mr. Speaker, Sir. I am trying to follow the contribution of my good friend. I do not know whether actually he is supporting the Bill or he is not. He is my friend and I want to know what he is contributing on.

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Thank you, Mr. Temporary Deputy Speaker, Sir. Mr. Affey is still in an ambassadorial mood. I think we should dispatch him to Somalia to continue with the work that he was engaged in.

Thank you, very much.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Kabando wa Kabando, are you supporting the Bill or not?

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Mr. Temporary Deputy Speaker, Sir, I am coming to that statement and I have every right, as a political scientist to build the anatomy of my statement, and you must be patient and consume this information. Therefore, because we have done things that have been facilitated by our international friends, and because we have a National Accord that has brought this Coalition Government together and because as Parliament, we have enjoyed facilitation and, even escalation of our capacity by the international community--- But, because we have failed collectively to do certain things that can make a foundation for good governance, and because we have shown doublespeak and confusion, even making statements that actually contradict what we have agreed to do or what we stated yesterday, my submission is that what we need is a very strong international whip; those interventions that will allow us have logic and rationality that will put us on a pedestal of visibility where we can be seen to be a nation that is actually in control. But to pretend otherwise, is clear deception and it cannot endure. This Bill seeks to do two things that are necessary to punish those who perpetrated post-election violence. But it will be hypocritical for us to pretend that in this Government and in this Cabinet, all of us are innocent. It will be hypocritical for us even in this House, we who could not talk to each other for the better part of last year, some of who celebrated the massacres that were happening and issuing statements. My declaration is that, what we need is a whip that this House called for the prime suspects. That would be the biggest and the most significant message to be taken away. There should not be any fear or any ethnic or Government protection.

Mr. Temporary Deputy Speaker, Sir, I want to register that, last year, many of these Members, and the country knows that I was a recipient of a communication from the American Ambassador supposedly to explain my role in promoting peace and ethnic reconciliation in the Republic of Kenya. I never sought support from any Member of Parliament from my region, from my ethnic community, Parliamentary Group nor did I seek any information or assistance from Ministers or from the President. I dealt with it personally, as a son of a woman! Through that, I travelled to America and gave an address during an convocation as the Chief Guest at the State University of New York, because I was sure of whom I am. The business of rushing to your ethnic group, making declarations and saying that your ethnic group is being finished, your religious community is being affected, or your political party is being affected is all nonsense, pettiness and triviality that cannot hold. Let there be a first step of arresting and trying perpetrators upon comprehensive investigations which will be done by Mr. Ocampo.

However, we have heard people in Government and in Parliament talking from the crescendo of their village hills ,saying that they will not listen to President Obama, they will not listen to Dr. Anan and that they will not listen to Mr. Ocampo. That is a shame! Dr. Anan is an eminent African. We are the ones who called him here. Kenyans know that he brought a resolution to our dispute. President Obama is a celebrity, internationally, and more so in Kenya, being the only country that set aside a public holiday upon his election. Our CEO, the President and our coordinator and supervisor for Government, the Prime Minister, wrote a letter within 24 hours to congratulate him when

he was given the Nobel Peace Prize. Therefore, let us not blame Ocampo, Obama or even Dr. Annan. *Wakati wa kuubeba msalaba*, your cross, is now.

I oppose this Bill.

Mr. Mututho: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to speak in *Sheng* when he is supposed to be speaking in English?

The Temporary Deputy Speaker (Prof. Kaloki): You should speak in one language.

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Mr. Temporary Deputy Speaker, Sir, I can only withdraw. However, I explained myself in English.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Kabando wa Kabando, could you withdraw?

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Mr. Temporary Deputy Speaker, Sir, I have withdrawn. I do that humbly and in acknowledgement that I have given Mr. Mututho a few lessons in Kiswahili.

I will conclude by saying that I oppose this Bill because my conscience and foresight tells me that it is unlikely to have any impact. I, therefore, call upon the Mover and those who have supported it to take solace and consolation in the fact and reality that the dawn of justice being done to the girls and the women who were raped, the poor victims whose purported crime was only to have voted otherwise, or just because we did not have evidence of how somebody voted--- Voting was made criminal because we belonged to ethnic groups. Perhaps, voting was not accepted by certain people because it did not measure to their criteria.

These are weighty things. I can see the confusion that we have, not just in the House, but everywhere about this matter. That is why there is no single position of the Government. Therefore, nobody should claim to speak on behalf of the Government of Kenya with regard to this matter. No one should claim to speak on behalf of a Parliamentary group. No one can claim to speak on behalf of any caucus. The message must come out because the consolation and solace is built on pain and not because people do not want to support this Bill. Those who are the main beneficiaries of the post-election violence--- Evidence will come out and reality will dawn on them that they should never repeat those heinous actions .

There is nothing that prevents our courts from trying those who were executing people in the streets and those who were carrying pangas. That will be done. We can do it because there is nothing that prevents the Attorney-General of this country from carrying out investigations even today. I do not know why we should be seeking protection of any office.

I strongly oppose, so that we move to The Hague.

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Temporary Deputy Speaker, Sir, I think as Kenyans, we must ask ourselves two fundamental questions. One, in January and February this year, a similar Bill was before this House. People made very passionate arguments and some made very technical arguments. We must start from there and ask why people were anxious about the Bill as it had been presented at that time. One of those reasons was the fear that the process was not insulated from the ability of the Attorney-General to take over matters and extinguish prosecution. You can well understand why Kenyans felt that way. This is because we

have a history of the last 18 years where cases have been before court and the State Law Office has entered *nolle prosequi*. Therefore, you should understand Kenyans, and their representatives, when they say that if you were serious about this matter, then in the very least, you must have shielded a special tribunal from the authority of the Attorney-General, which he derives from the Constitution. Therefore, I am surprised that those who oppose this matter now do not wish to recognize the fact that this issue has been successfully dealt with. This is a constitutional amendment and much of it is schedules or annexures.

Mr. Temporary Deputy Speaker, Sir, there is also a suggestion that if we do not pass this Bill, the ICC will continue with its business. Nothing could be further from the truth. The ICC forces will take place with or without this Bill. The passage of this Bill will not stop the ICC from carrying out its duties under the Rome Statute. So, whether we pass this Bill or not, the ICC, by international conventions, is expected to proceed with its own processes. The ICC does not need direction from those of us who are in this august House or this country. The processes of the ICC must, and will, continue. Therefore, to suggest that we should not pass this Bill so as to allow the ICC to do its work is far from the truth.

Mr. Temporary Deputy Speaker, Sir, I agree with Mr. Kabando wa Kabando in his suggestion that we have accepted, in so many spheres of our life as a nation, foreign help, and even the language that I am speaking to you now, is not our choice. Even the names that we call ourselves like Fredrick, Moses, Ephraim and so on are borrowed from foreign cultures with no meaning to us. Therefore, I agree with Mr. Kabando wa Kabando's sentiments that having borrowed so heavily from the entire world, why do we find it convenient every now and again to say that we do not wish the rest of the world to speak to us about those things that we should do and about the fact that we refuse to live by the rule of law. We must ask the question, what is the purpose of the State? Why do you, as a citizen of Kenya, agree to live under this Constitution? As a citizen, I give up my right to walk around with a bazooka for the cardinal, fundamental and unshakeable contract between me and the State that it is for protection of my life.

We are on the dawn of the new Constitution which shall also say that life is the most fundamental right. Therefore, if we as hon. Members, come to this National Assembly and swear to protect the Constitution, which guarantees the individual his or her right to life, how do we in good conscience not punish those who take the life of the Kenyan citizens? How can we, in good conscience, stand here and oppose any measure that seeks to bring justice to Kenyans?

Mr. Temporary Deputy Speaker, Sir, this issue is at the heart of whether we wish to have one nation and one state, which respects the sanctity of life. As a resident of the Rift Valley, I was moved from Eldoret in 1992. My house was brought down at Burnt Forest and my brother was killed. Today, I eke out a life in Nairobi, Nakuru or some other town, and the State expects me to pay tax. The same State does not live up to the expectations that it protects my life. How can we in good conscience stand in the way of a process that seeks to punish those among us that refused to respect the very Constitution that we swear to defend?

Mr. Temporary Deputy Speaker, Sir, the foundation for prosperity of this country must be the respect for the rule of law. If we, as a nation or a Government, acting on behalf of the people of Kenya, are not willing to respect the sanctity of life, or who take

the lives of others and destroy their property, we cannot, and will not, move forward in prosperity. I think that a lot has been said as to whether we should have a special tribunal, and whether or not the current laws allow for the process of prosecuting those who are involved in these issues. We know that we got to where we got last year because we had lost faith in some of our key institutions and the ability to find justice.

This Bill sets up a mechanism to restore faith in us and shield our processes from vagaries that have existed before. So, I urge that all of us, as representatives of the people of Kenya, pass this Bill and expedite the process. We know that the International Criminal Court (ICC) process, as good as it may be, will deal with only a few individuals. We know that there are many more who need to see justice done. So, we have a choice to make as to whether we want communities to have the faith to live in peace in this country or not. As the leaders of this country, we must be willing to take that choice and pass a message to the communities, not just in Rift Valley, but all over Kenya, that you cannot break the law by taking somebody else's life, burning his or her house or taking his or her cow away and expect to get away with it.

As a nation, if we wish to live with one another in a civilized fashion and without having to walk around with machetes and bazookas, we must be willing to live by the rule of law. That is quite straightforward. So, we can talk here or castigate this or that idea, but ultimately our wish is to build a country that is prosperous and which has middle class income, industrialized and that will have a high quality of life by 2030. How can my life be of high quality if I cannot walk freely in this country and buy property and live in peace? How can we have a high quality of life if certain segments of our society are excluded from living in certain parts of the country? How can we have a high quality of life?

Mr. Temporary Deputy Speaker, Sir, we have spoken a great deal over the last 18 month about impunity. What has brought about that impunity? Why is it that the justice system has not been able to deal with impunity? I want to submit that the very structure of law enforcement in this country leaves the process open. For example, the State Law Office is both the prosecutor and defender of the Executive. So, if a member of the Executive is alleged to have committed an offence, the State Law Office, must at the same time, prosecute and defend that member of the Executive. No wonder that for a long time there has been conflict arising from the State Law Office being the prosecutor and the defender; this has resulted in very many crimes remaining unpunished.

Mr. Temporary Deputy Speaker, Sir, even though the approved establishment for magistrates in this country is in the order of 501, we are operating with 250 in office. So, how do we expect to provide justice, or how do we expect to dispense timely justice? No wonder that the number of judges in this country is less than half of what is already the approved establishment in the books. I think we have to be honest with ourselves and accept that this matter requires a special process, which can be insulated from the existing rigidities in our system. This is a process that can be insulated from misuse; it is a process that can restore the faith of the citizen in the ability of the State to do that which is the most cardinal responsibility of the State: to protect life.

Mr. Temporary Deputy Speaker, Sir, the world over, you will see commanders or governments sending a whole brigade to go and recover a single citizen, and taking the risk that a whole brigade could actually be wiped out. If you cannot protect the life of one person then you cannot protect the life of many. I want to urge my colleagues to take this

matter seriously, and accept that the only way we shall restore credibility of the State and restore the faith of citizens in it is if we are willing to punish wrongdoers, and if we can look each other in the eye and tell each other that they are wrong. If you have broken the law you must face the consequences.

Mr. Temporary Deputy Speaker, Sir, impunity is not just at the top level of leadership of this society. Impunity is everywhere at every level of society. Every time we sweep issues under the carpet, we increase the level of impunity. Today, it is not uncommon for you to be driving in the streets of Nairobi and find that people no longer respect simple traffic rules. When it says stop for a pedestrian, nobody bothers to stop. When the light is red, people drive past because we have proven over and over again that we can break the rules and nothing happens to us. We have proven over and over again that we can break the rules, but there is no consequence. Well, there may be consequence. It may not be now or tomorrow, but there will be consequence if we bring back the rule of law and sanity in the way we conduct the affairs of this country. We saw last year, the beginning of those sorts of consequences. So, I think we, as leaders, have to ask the simple question: Do we want to heal? Do we want to solve the problem or do we wish to wait until it gets out of hand for us to grapple with it? The way to solve the problem is to ensure that we have a credible process that deals with the crimes that were committed.

With those many words, I beg to support.

Mr. Yakub: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this very Bill which I support.

You heard some of my fellow legislators before who have mentioned the issue of video clips which were played at the KICC yesterday by the Committee of Experts on Constitutional Review. That was only for less than ten minutes, but took the hearts of everyone who was there seeing fellow Kenyans murdering each other, hitting each other with different types of weapons. I wish the same thing would have been shown to other Members in one of the Kamukunjis, so that we realize what really had happened at that time.

The issue of impunity did not start during the 2007 General Election. It was started when white settlers and explorers came to Kenya starting from the Coast Province to the hinterland. They did not respect the people who they met. There was no rule of law. Our land was taken and, at that time, the Government governed with impunity. Some of us have been trying to ask ourselves: Why now? What happened when the same Bill was brought here and almost many of us opposed it? There are really fundamental reasons. One of the issues was compensation to those affected and the other issue was whether we should go for the Hague option or local tribunal. With this Bill, both are allowed. In fact, that particular Bill did not reach the required standards. That was why many of us decided to oppose it. I would like to remind many of us who are here that 1,200 innocent Kenyans lost their lives without any fault of their own. We should not forget that over 300,000 Kenyans were internally displaced. Last night, we saw on our television screens some Kenyans living and sleeping by the roadsides just because of the 2007 post-election violence.

QUORUM

Mr. Nyammo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Are you aware that we have no quorum in the House to continue discussing this very important Bill?

The Temporary Deputy Speaker (Prof. Kaloki): Indeed, Clerks-at-the Table, could you ascertain that we do not have quorum in the House? Ring the Division Bell?

(The Division bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, due to lack of quorum, I will now interrupt the business of the House. The House, is therefore, adjourned until today afternoon, Wednesday, November 18th, 2009, at 2.30 p.m.

The House rose at 11.43 a.m.