

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 19<sup>th</sup> August, 2009

The House met at 9.00 a.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### QUESTIONS BY PRIVATE NOTICE

**Mr. Warugongo:** Mr. Deputy Speaker, Sir, before I ask the Question, I would like to state that I have not received a copy of the written answer.

**Mr. Deputy Speaker:** Do you wish to proceed with the Question?

**Mr. Warugongo:** Yes, Mr. Deputy Speaker, Sir.

### STALLING OF MT. KENYA ELECTRIC FENCING PROJECT

**Mr. Warugongo:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Forestry and Wildlife the following Question by Private Notice.

(a) Why has the electric fencing around Mt. Kenya stalled even though construction materials are available at the site?

(b) When will the construction commence?

(c) What measures is the Minister taking to keep away wildlife, especially monkeys from farmlands around the Aberdares?

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Deputy Speaker, Sir, I seem to have a different answer to a Question that is almost similar to this one. Probably, that is why the hon. Member does not have a copy of the written answer.

**Mr. Deputy Speaker:** Do you want to revisit the Question later on? Are you waiting for the right answer?

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Yes, Mr. Deputy Speaker, Sir.

### ILLEGAL ALLOCATION OF ASK WATER SPRING LAND TO CHURCH

**(Mr. Shakeel)** to ask the Minister for Water and Irrigation:-

(a) Is the Minister aware that the large parcel of land which is a spring source of water flowing to the Nairobi Ask show ground water dam, previously occupied by the Ministry of Energy has been allocated to a church?

(b) Could the Minister clarify whether the church had authority to construct the concrete barrier at the water source, resulting in the drying up of the dams serving the ASK show ground?

(c) What measures will the Minister take to remedy the situation?

**Mr. Deputy Speaker:** Is Mr. Shakeel not here? We will come back to that Question later on!

Let us move on to Mr. Kiuna's Question!

#### SALE OF ADC MOLO FARM

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

(a) Could the Minister state the original acreage of the ADC Molo Farm, the acreage of the farm sold so far and money made out of the sale?

(b) Could the Minister table the list of beneficiaries of the sale and explain how the sale has contributed positively towards agricultural development?

(c) How much did the Government spend in the purchase of 700 acres of Asante Farm in Kuresoi District?

**The Assistant Minister for Agriculture (Mr. Mbiuki):** Mr. Deputy Speaker, Sir, this Question was deferred to this week because the list of beneficiaries of the ADC farms I tabled had not been certified. However, I now have a certified list of the beneficiaries of the ADC farms totaling to 59,873 acres. The list is certified by the Permanent Secretary, Ministry of Agriculture. It is an extract from the famous Ndung'u Report.

Mr. Deputy Speaker, Sir, I would like to table the list.

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

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, while I thank the Assistant Minister, I do not agree with what he has said. This is because the list he laid on the Table last week did not contain genuine squatters and the landless, and yet those were the people who were supposed to be allocated that land. The beneficiaries of those farms were rich people. I would like the Assistant Minister to confirm to this House, and to the whole nation, whether that list contains genuine squatters or the rich few people in the Republic of Kenya.

**Mr. Mbiuki:** Mr. Deputy Speaker, Sir, first of all, I humbly request the hon. Member to peruse through the list and see who is named in it.

Furthermore, the list I have just tabled shows that the original owner of the land was the ADC which was subsequently required by the Government to surrender the land as a block to the Settlement Fund Trustees (SFT) for onward allocation. As the Ministry of Agriculture, we cannot know who is who in terms of the allottees. I would like the Chair to guide this House because I believe that this Question can be answered appropriately by the Ministry of Lands.

**Mr. Kiuna:** On a point of order, Mr. Deputy Speaker, Sir. From the list the Assistant Minister has tabled here, could he confirm who gave the authority for this land to be allotted? This is because as I speak here now, there is information from the ground-- - Could the Assistant Minister confirm to this House whether the Molo Potato Cold Plant has requested the Ministry to sell to it the ADC farms in Molo for research? Could he also confirm whether the ADC Farm the Molo Potato Cold Plant has requested the Ministry to sell to it will also be allocated to the same people or not?

**Mr. Mbiuki:** Mr. Deputy Speaker, Sir, the ADC was requested by the former Government to surrender eight farms to the SFT for onward allocation. Out of 59,000 acres, the ADC is left with 1,330 acres currently. I would also like to confirm that the management of the ADC has approached the Ministry of Agriculture to allow it acquire more land. So far, the Ministry has acquired 700 acres for the ADC in the Asante Farm.

Since the policy of the Ministry of Agriculture is to continue supplying farmers with seeds, we have an obligation to support the ADC to acquire fresh land because the previous one was grabbed.

**Mr. Wamalwa:** Mr. Deputy Speaker, Sir, out of the eight ADC farms, how many were in Trans Nzoia District? Who were the beneficiaries of the ADC farms allocated in Trans Nzoia District?

**Mr. Mbiuki:** Mr. Deputy Speaker, Sir, that is a completely different Question, but I have tabled the list showing the eight ADC farms. The list includes the beneficiaries who acquired more than five acres of this farm.

**Mr. Mututho:** Mr. Deputy Speaker, Sir, I have perused the list. It contains names of Ministers who are serving in this Government, and senior civil servants. In include people who cannot, in the faintest imagination, be termed "squatters". They are the high and might in this country. So, would I be in order to ask the Assistant Minister to own up to the fact that they gave the land to their friends and people who are powerful in the Ministries, and that they did not give land to any squatter?

**Mr. Mbiuki:** Mr. Deputy Speaker, Sir, it is true that part of the list may read as who-is-who in Kenya today but, maybe, at that particular time, in the 19990s, they were squatters.

**Mr. Deputy Speaker:** Last question, Mr. Kiuna!

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, I would like the Assistant Minister to tell this House and the whole nation--- If he continues with this trend of dishing out the little land we have in this Republic to the mighty and strong people on this land, surely, where

will Internally Displaced Persons (IDPs) and squatters get land from? Could he confirm, or advise us, whether it is possible for the big fish, whose names are contained in this list, to surrender that land to the IDPs in Molo and other parts of the country, so that they can leave the IDP camps?

**Mr. Mbiuki:** Mr. Deputy Speaker, Sir, the land was bought on willing seller, willing buyer basis. So, I would like to request the hon. Member to, first of all, bear in mind is the fact that the Ministry of Agriculture was requested by the KANU Government to surrender this land to the Ministry of Lands and the Settlement Fund Trustee. It was actually the Ministry of Lands that allocated the land. It is not the duty of the Ministry of Agriculture to allocate land. So, he can re-direct that question to the Ministry of Lands.

**Mr. Deputy Speaker:** Let us go back to the first Question by Private Notice. Is the Minister ready with the answer?

**Mr. Warugongo:** Mr. Deputy Speaker, Sir, the Minister has gone for the answer. He asked whether he could be given a few more minutes. This Question is very important.

**Mr. Deputy Speaker:** Question deferred to tomorrow afternoon!

#### STALLING OF MT. KENYA ELECTRIC FENCING PROJECT

**(Mr. Warugongo)** to ask the Minister for Forestry and Wildlife:-

- (a) Why has the electric fencing project around Mt. Kenya stalled even though construction materials are available at the site?
- (b) When will the construction commence?
- (c) What measures is the Minister taking to keep away wildlife, especially monkeys, from farmlands around the Aberdares?

*(Question deferred)*

**Mr. Deputy Speaker:** Next Question by Private Notice, Mr. Shakeel Shabir! Is Mr. Shakeel not here? The Question is dropped!

#### ILLEGAL ALLOCATION OF ASK WATER SPRING LAND TO CHURCH

**(Mr. Shakeel)** to ask the Minister for Water and Irrigation:-

- (a) Is the Minister aware that the large parcel of land, which is a spring source of water flowing to the Nairobi ASK show ground water dam, previously occupied by the Ministry of Energy, has been allocated to a church?
- (b) Could he clarify whether the church had authority to construct the concrete barrier at the water source, resulting in the drying up of the dams serving the ASK show ground?
- (c) What measures will the Minister take to remedy the situation?

*(Question dropped)*

## ORAL ANSWERS TO QUESTIONS

*Question No.325*

## BENEFICIARIES OF WEDF IN THE LAST TWO YEARS

**Mrs. Noor** asked the Minister for Gender, Children and Social Development:-

(a) whether she could provide a list of individuals and organisations that have benefited from the Women Enterprise Development Fund (WEDF) in the last two years, showing distribution by region;

(b) how many among the beneficiaries are marginalised women, women with disabilities, female-headed households and pastoralist women; and,

(c) what measures she is putting in place to reach out to the categories mentioned in (b) above.

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

**Mr. Deputy Speaker:** What is it, Mr. Olago?

**Mr. Olago:** Mr. Speaker, Sir, when this Question came up before the House last week, the Minister was ordered to supply details of names of individuals and groups that were loaned monies. I was just wondering whether this has been complied with before the Question can be answered.

**Mr. Deputy Speaker:** Which Question are you talking about, Mr. Olago?

**Mr. Olago:** Mr. Deputy Speaker, Sir, I talking about Question No.325.

**Mr. Deputy Speaker:** Are you the Minister? The Question is to the Minister. It is only after the Minister responds that you can rise on a point of order.

**Mr. Olago:** Then I will do it, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Minister for Gender, Children and Social Development! Next Question, Mr. Nkoida ole Lankas!

**Mrs. Noor:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order, Mrs. Noor! We will come back to your Question!

**Mrs. Noor:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** What is it?

**Mrs. Noor:** Mr. Deputy Speaker, Sir, this Question was on the Order Paper last week. It was deferred because the Minister did not address the issues raised. However, the answer I have now is the same one that was given last week. There is nothing that has been changed.

**Mr. Deputy Speaker:** You will express your sentiments on a point of order when the Minister is here.

**Mrs. Noor:** Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Next Question!

*Question No.317*

## NUMBER OF TOURISTS CIRCUIT IN KENYA

**Mr. ole Lankas** asked the Minister for Tourism:-

(a) how many tourist circuits exist in Kenya and what packages they offer; and,

(b) what the Ministry is doing to ensure sufficient promotion and publicity for all of them.

**Mr. Deputy Speaker:** Minister for Tourism! Is he not here? We will come back to this Question.

Next Question, Mr. Mungatana!

*Question No.337*

**Mr. Mungatana** asked the Minister for Energy:-

(a) whether he is aware that there has recently been a major transaction involving the purchase of all Chevron Oil Company outlets, trading in Kenya as M/s Caltex by French multinational Total outre' mer SA (Total);

(b) whether he could state the respective oil market share of M/s Total Kenya before and after the above acquisition; and,

(c) how the Government will protect citizens against possible monopolistic pricing and accompanying exploitation resulting from the transaction.

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

(a) I am aware.

(b) Before acquisition, the market share of Total Kenya was 12.373 per cent. After the acquisition, it was 19.67 per cent in the period ended March, 2009.

(c) Competitiveness and inter-relationship within the Kenya petroleum industry will make it difficult for Total Kenya to employ monopolistic tendencies. However, my Ministry, through the Energy Regulatory Commission, is and will continue monitoring the operations of Total Kenya and, indeed, all other oil marketers with a view to safeguarding citizens against any monopolistic tendencies.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, Total Outre' Mer SA is a French company that trades in Kenya as Total. M/s Caltex is an American company. When you look at what has happened, you will see that Total has acquired a lot of the things that Caltex used to own. In particular, Caltex had 165 service stations in East Africa, 89 of which were in Kenya, eight logistical facilities, six aviation facilities and a lubrication plant in Mombasa. This is not the first time that Total has acquired huge interests in the energy sector, in particular, the oil sector. When Exxon Mobil was exiting the Kenyan market, Total acquired the entire 14 subsidiaries. What we are seeing is an actual ceding of the entire energy sector to foreign multinationals. The question that begs is: What strategy is the Government putting in place to avoid total control of the energy sector by these private multinationals? A clear example is what happened recently.

**Mr. Deputy Speaker:** You have made your point. Can you put the question now?

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, can he tell us what they are doing? It is strategically dangerous for this country.

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, the Government has been aware of the impending sale of Chevron Oil Company outlets in East Africa over the last year. Indeed, my Ministry was actually involved in supporting the National Oil Corporation of Kenya (NOCK) to bid for the outlets of Chevron Oil Company in Kenya. However, Total, with the support of its parent company, outbid the NOCK and other bidders. In fact, the NOCK was third. My Ministry has subsequently been involved in the approval of the acquisition, and has engaged severally with Total.

Indeed, as an avenue for reducing the holding of Total, and safeguarding the country against monopolistic tendencies, the Government, through the Ministry, has supported the NOCK to negotiate the acquisition of ten retail stations from Total. The two companies have subsequently signed a Memorandum of Understanding for the acquisition of ten stations. Total has proceeded to advertise for sale another 12 stations, over and above the ten stations being sold to the NOCK.

So, the NOCK has increased competitive pricing for its products by taking lower margins than other marketers. So, the Ministry is aware of this, but I assure the House that the said acquisition will not distort the share of Total, which, as I said, is now 19.67 per cent.

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, a while ago, the Government has been saying it wants to participate more seriously in the issue of fuel retailing through NOCK. If there were 165 stations which were being offered for sale in the market, why did the Government not aid the NOCK to buy them?

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, it was a long process. What were on sale from Chevron were the assets in Kenya and Uganda. Initially, the NOCK was interested in all of them. Later on, we zeroed down to the Kenyan assets. There are 86 active stations of Chevron in Kenya. There are five aviation operations just to correct what Mr. Mungatana said. There are two LPG storage facilities. There is one lubricant plant. There are five lubricant warehouses, one fuel terminal and three fuel depots.

At the beginning, the NOCK were not even allowed to go to the next process. The Government did intervene and talked to the Chevron headquarters. They were allowed to proceed to the third stage. They reached a level where they said they would offer US\$130 million which we found to be much lower than the other bidders.

It was again decided that because the acquisition must be cleared by the Government, they must concede and sell some of their assets to the NOCK. The NOCK bought ten stations. We need 100 per cent interest in Chevron Nairobi filling stations. Up to now, we have not finalized.

We are also seeking hospitality accommodation for the sale of percentage share by Total Kenya Limited or Chevron Kenya Limited in our Mombasa LPG facilities owned by one of them. Up to 25 per cent share in Total Kenya Limited, lubricants blending plant in Mombasa. Up to 20 per cent share of joint storage facilities is at Mombasa Joint Terminal owned by Total Kenya Limited and Chevron Kenya Limited.

Up to now, we are targeting these assets. The deal has not been finalized yet. With all this effort, the Government tried its best to acquire some of Chevron assets.

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, this is a very important Question. The answer the Minister is giving does not address the seriousness of the issue. Last year, these multinationals held the Government at ransom in terms of price until the Government had to threaten to get involved in price controls. These two multinationals hold 80 per cent of the fuel outlets in this country. What is he doing to ensure that the multinationals do not keep on holding the Government and Kenyans at ransom by ensuring that Kenyans are also involved in this business to ensure a level playing field?

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, the bid was open. It was an international bid. So, everyone who was interested in doing so, could bid. In the past three years, the Government through the NOCK, has been trying very hard to increase our market share to enable us to have the critical mass to carry out and achieve the mandate of the NOCK.

In 2004, the NOCK had a market share of one per cent. Now it has got five per cent. So, the Government is trying. The bid was open. We bid, but being an open tender and this being a competitive market, they were---

**Mr. K. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. As I said, this Question is very serious. The Assistant Minister is not addressing the concerns of Members of Parliament. What is the Government doing to ensure that the locals are involved in a level playing field, so that the multinationals do not continue holding the Government and Kenyans at ransom as far as prices are concerned?

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, the hon. Member should be aware that there are quite a number of players in the oil marketing field who are Kenyans. Apart from the multinationals which are Kobil, Total, Caltex and Kenol, we have Kenyan firms which include: Gapco, Haas, National Oil, Fosil, Dalbit, Gulf Oil Company, Pakari and Engen, among others. The percentage share of Total Kenya is about 19 per cent now. Kenol/Kobil is about 15 per cent. So, the greater part is actually owned by Kenyans. It is not true that the Government is not trying to create a level playing field in the sector.

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, if you take the market share of Kenol/Kobil, Total and Shell Kenya, you will have about 70 per cent of the total market share within three companies. This Government must have priorities on what is strategic and what is not. About 75 per cent of the oil industry is in the hands of three players. We cannot have this kind of situation when the Government is sitting there.

In 1981, this Government set up the NOCK whose role was supposed to be price stabilization of the oil market. The Government has watched and the Minister has confirmed that they just sat there as a big tender was floated and they lost it. A whole Government lost in a tender! If today, for whatever reason, our Government has difficulties with these multinationals and they raise the price of fuel, what will they do? How can they sit and surrender our sovereignty to multinationals? What pricing mechanisms do they have? I do not think this Question is being given the necessary attention it deserves.



**Mr. Deputy Speaker:** Hon. Assistant Minister, address the concerns of Members of Parliament. Why is it that majority of the oil market is in the hands of multinationals? What do you intend to do to mitigate that?

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, it did not start yesterday. We are in a different position from where we were some time back. I assure the House that the Government has over the past few years tried to level the playing field. In the past, oil companies here used to import oil left, right and centre and charge any price they wanted. Now, we have the OTS system and a lot is being done. All these small companies I mentioned came to play in this sector. Three years ago, the situation was not the same. I assure the House that we are trying to empower the NOCK. In fact, there is plan to build strategic reserves, so that the NOCK can put up storage facilities and other infrastructure. We need to give it enough finance. Within the limits of what we have in the economy, we are doing our best. We cannot throw out these companies overnight.

**Mr. Mungatana:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister will not get away with this issue. There is the question of pricing mechanisms. It is common knowledge that the Energy Regulatory Commission (ERC) has made its proposals and they are lying in the Ministry. Right now, we have a situation of almost near monopoly by these foreigners, especially after this transaction we are talking about. What has he done with that proposal from the ERC to do some pricing controls within the energy sector? We are being fleeced. I do not know whether he drives the same cars we drive or pays the same fuel prices.

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, I will not get away with it as Mr. Mungatana said. It is true that when the price of oil went out of hand, we came up with a proposal for price control. However, we were stopped by the National Economic Council from implementing it. We have that proposal. If the Government gives us the go ahead, we will do so.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House that the Government is playing a crucial role in the oil sector when they have just sold the oil refinery?

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, we have not sold the oil refinery. We had 50 per cent share before and we maintain the same shares. I do not agree with the Member that we sold the oil refinery.

**Hon. Members:** What did you sell? What did you sell?

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, I said, we have not sold---

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. Did you hear the Assistant Minister say they did not sell the oil refinery? What were they selling?

**Mr. Deputy Speaker:** Mr. Assistant Minister, you realize the sensitivity of the ---

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, I understand. Yes, we sold it. This is nothing new! We had 50 per cent of the shares before and we maintained the 50 per cent. It is only the shareholders that changed.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister should not take the House for a ride. If you sold something, what is that you sold if your 50 per cent holding is intact? Whose shares did you sell and at how much?

**Eng. M.M. Mahamud:** Mr. Deputy Speaker, Sir, that is public knowledge. You know who sold the shares. It is the other shareholders; Shell and Chevron.

**Mr. Deputy Speaker:** Next Question!

*Question No.348*

DELAYED PAYMENT OF DUES TO RETRENCHED  
SWAN INDUSTRIES WORKERS

**Mr. Olago** asked the Minister for Labour:-

(a) whether he could confirm that when M/s Swan Industries Ltd in Kisumu was placed under receivership, the receiver entered into a written agreement with the Bakery, Confectionery, Food Manufacturing and Allied Workers Union, under which redundant workers would be paid all their dues on or before 30th June 2009;

(b) why the receivers have not fully complied with all the terms of the agreement; and,

(c) what action he will take to ensure that the receivers honour the agreement and pay the former workers.

**The Assistant Minister for Labour** (Mr. Ojaamong): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I confirm that Swan Industries Limited in Kisumu was put under a receiver manger and is still under receivership. The receiver entered into an agreement with the Bakery, Confectionery, Food Manufacturing and Allied Workers Union to pay dues by 30<sup>th</sup> June 2009.

(b) The receiver has not complied with all the terms of the agreement because the issue of casuals is still being discussed between the receiver and the Union.

(c) I am awaiting the outcome of the discussions between the receiver and the Union on the issue of casuals to enable me take any further action. My Ministry has however, appointed a conciliator to resolve the issue of under-payment for ten former employees in accordance with Section 65 of the Labour Relations Act.

**Mr. Olago:** Mr. Deputy Speaker, Sir, I find this answer totally unsatisfactory because part "b" of my Question asked why the receivers have not complied with the terms of the agreement. One of the terms of the agreement is that the workers would be paid all their dues on or before 27<sup>th</sup> March 2009. They have, however, not been paid. There is no answer given as to why they have not been paid.

Mr. Deputy Speaker, Sir, with your permission, I wish to Table a copy of the agreement that the receivers entered into with the Union.

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

Why did the receivers not comply on or before 27<sup>th</sup> March, 2009?

**Mr. Ojaamong:** Mr. Deputy Speaker, Sir, I want to confirm that all the permanent employees have been paid all their dues except for the ten who have a small dispute. The casual workers have, however, not been paid because there is a trade dispute. The Union brought in some issues which were not binding with the agreement as

per the Labour Relations Act. There was a dispute, therefore, which was reported to the Ministry and we are handling it. We have already appointed a conciliator who is the Labour Officer for Kisumu Town. So, the matter is being handled.

**Mr. Mbugua:** Mr. Deputy Speaker, Sir, KENATCO has been in receivership for the last 15 years. What is the Ministry doing to ensure that it goes back to its original form as a parastatal? Most of the workers in KENATCO have been suffering as a result of low remuneration.

**Mr. Ojaamong:** Mr. Deputy Speaker, Sir, I think that is a very different Question. I had not researched on KENATCO.

**Mr. Deputy Speaker:** Indeed, yes!

Last question, Mr. Olago!

**Mr. Olago:** Mr. Deputy Speaker, Sir, in view of the answer in part “c” relating to the appointment of the conciliator, could the Assistant Minister be candid enough to tell the House when he can report on the conciliator’s findings within a week or a fortnight, at the very most?

**Mr. Ojaamong:** Mr. Deputy Speaker, Sir, the Labour Officer, Kisumu, started acting on this matter on 21<sup>st</sup> April 2009. Personally, I am going to follow it up and in a fortnight, I should be able to give this House the outcome.

**Mr. Deputy Speaker:** Next Question by Mr. C. Kilonzo!

*Question No.372*

CLEANING OF RIVERS IN NAIROBI

**Mr. C. Kilonzo** asked the Minister for Environment and Mineral Resources:-

(a) how he was able to attain the clean and pleasant looking state of most rivers in Nairobi city;

(b) if he could give an assurance that, come the rainy season, the rivers in

Nairobi and other major towns will not be polluted; and,

(c) what action he is also taking to clean Thika River and Athi River in order to ensure that farmers have good water for irrigation and for their livestock.

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

(a) Allow me to briefly inform the House on the status of Nairobi City at the time I was appointed to lead my current Ministry. I noticed that the rivers within the city had become depository of all effluent discharges and solid waste from the city dwellers and its enterprises. In addition, most estates especially those located in Eastlands, had several illegal dumpsites which were in most cases swept into the city’s rivers by storm waters.

Mr. Deputy Speaker, Sir, my immediate reaction of the same was immediately to prepare a programme document on rehabilitation of all rivers within the Nairobi River Basin. The document focused on major interventions to restore the former status of the rivers. They include:-

(i) Stopping illegal affluent discharges from flowing into the rivers,

- (ii) Removal of all solid waste from illegal dumping sites within the estates;
- (iii) Stopping further dumping of solid waste into the rivers;
- (iv) Creating awareness among the city residents on the need to preserve the cleanliness of the rivers and the general environment;
- (v) Rehabilitating infrastructure with specific emphasis to the sewer lines;
- (vi) Physical cleaning of the rivers by removing solid waste and clearing bushes;
- (vii) Landscaping and beautification of the riparian areas of the city's rivers;

**Mr. Deputy Speaker:** Could you table your answer if it is very long?

**The Assistant Minister for Environment and Mineral Resources** (Mr. Kajembe) Mr. Deputy Speaker, Sir, I will be very brief. Allow me to finish.

- (viii) Planting of trees on rehabilitated areas along the rivers.

Mr. Deputy Speaker, Sir, this programme was immensely facilitated by the *Kazi kwa Vijana* Initiative. Over 8,000 youths in Nairobi were engaged to undertake various interventions that I have just enumerated.

(b) I wish to assure this House that come next rainy season, the rivers within Nairobi City will not be polluted because the programme is scheduled to run for the next three years. However, my Ministry is currently working on a plan to roll out a similar programme in other similar towns subject to availability of funds.

(c) Finally, I wish to inform this House that all the rivers in the city pour their waters into the Athi River. My Ministry will ensure cleanliness of those rivers to guarantee there is clean water in Athi River for farmers to do irrigation and give to their livestock. I further wish to inform this House that plans are at an advanced stage to clean rivers in Thika.

Mr. Deputy Speaker, Sir, I wish to congratulate hon. C. Kilonzo for bringing this serious Question. My Ministry has prepared a very comprehensive report that has very detailed information. I wish to lay this report on the Table.

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

**Mr. C. Kilonzo:** Mr. Deputy Sir, for many years, all the dirt and sewer discharge end up in Athi River, which is in my constituency. Looking at this answer, what the Assistant Minister is doing is a good job. There is no question about it. However, I am curious because that is the work of the Ministry of Local Government and, in particular, the Nairobi City Council. I want to get a confirmation from the Assistant Minister that the Ministry of Local Government has failed in its duties to a level where another Ministry has taken over its duties and done a very good job.

**Mr. Kajembe:** Mr. Speaker, Sir, it is true that some local authorities have failed to render services to the people in their respective towns. My Ministry has already written to seven local authorities in this country to do their work of collecting garbage. If they do not do it, my Ministry will have to flex its muscles and do the work on its own.

*Question No.384*EXCLUSION OF KAMARA DIVISION CANDIDATES  
FROM NYS RECRUITMENT EXERCISE

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

(a) whether he is aware that potential National Youth Service recruits from Kamara Division, Kuresoi District were turned away and referred to Molo District at the recently concluded National Youth Service (NYS) recruitment;

(b) the basis of the decision made by NYS officers;

(c) whether any youths from Kamara Division were eventually recruited and, if so state the number; and,

(d) if the exercise in both Molo and Kuresoi districts could be repeated in view of the above anomalies.

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

It is true that some potential NYS recruits from Kamara Division of Kuresoi District were referred to Molo District during the recently concluded NYS recruitment exercise, since it was established that Kamara Division falls on the two sides of the two districts. The decision to refer the candidates from Kamara Division to Molo was arrived at after considering the fact that Kamara Division falls on the boundary between Kuresoi and Molo districts. In order to give the candidates from both sides of the division equal opportunities, it was resolved that all candidates from the said division should be interviewed centrally at one venue, and Molo District Headquarters was considered to be the most convenient centre for the exercise. Out of the 14 candidates recruited from the three divisions of Molo District; namely, Molo Central, Kamara and Elburgon, four were from Kamara Division. The request for a repeat exercise in both Molo and Kuresoi districts is not practical for the following reasons.

There was no better way of handling the situation fairer than what was done and, until such a time when Kamara Division will be confined to either side of the two districts that problem is likely to recur during future recruitment exercises. The candidates recruited from the two districts have since reported to NYS College in Gilgil, and have already begun their basic training course.

**Mr. Cheruiyot:** Mr. Deputy Speaker, Sir, that answer is ambiguous. The Assistant Minister keeps on referring to Kamara Division in Kuresoi District. For her information, Kamara Division is composed of Sirikwa, Koige and Kamara locations, which clearly fall under Kuresoi District. That is a problem facing the Coalition Government. We have two answers and two columns within the same Government. I am not satisfied with this answer. I will refer the question to the Ombudsman.

*(Laughter)*

**Mr. Deputy Speaker:** How does the Ministry make a mistake?

**Ms. Ndeti:** Mr. Deputy Speaker, Sir, the Ministry does not make a mistake. We are not the ones who create boundaries. Until that problem is resolved, we will continue to have it. Kamara Division will have to fall under one district. That is the work of the Office of the President and the Commission on Boundaries. It is not under the Ministry of Youth Affairs and Sports.

**Mr. Deputy Speaker:** Does your office still maintain that you do not know where Kamara Division falls under? What is your position? Where does Kamara Division fall?

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

**Ms. Ndeti:** Mr. Deputy Speaker, Sir, Kamara Division---

**Mr. Kiuna:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** The hon. Member for Molo wants to give you information. Are you willing to be informed?

**Ms. Ndeti:** Yes.

**Mr. Deputy Speaker:** Proceed!

**Mr. Kiuna:** Mr. Deputy Speaker, Sir, let me advise the Assistant Minister and the hon. Member for Kuresoi. We are creating those districts so that *wananchi* can have easy access to services. Right now, Kamara Division is, in fact, in Molo District.

*(Laughter)*

**Ms. Ndeti:** Mr. Deputy Speaker, Sir, I think you can now see the confusion. One hon. Member is claiming something else. However, the records show that Kamara Division falls on both sides of the two districts. That is something that needs to be looked into in the future. That is the work of the Commission on Boundaries.

**Mr. Cheruiyot:** Mr. Deputy Speaker, Sir, it is public knowledge that I am an expert on matters of administrative units. I know for a fact that Kamara Division falls under Kuresoi District and recently, when the handing over was being done between Molo and Kuresoi, it was clearly indicated that Kamara Division falls under Kuresoi District. I know that because I am an expert on the subject.

**Ms. Ndeti:** Mr. Deputy Speaker, Sir, the Member for Molo is claiming otherwise. But I think we need to refer that matter to the Commission on Boundaries.

**Mr. Deputy Speaker:** Order! The Commission on Boundaries has got its own mandate. There is a Government. For God's sake, a Government cannot be confused on where a division falls.

**Ms. Ndeti:** Mr. Deputy Speaker, Sir, I have said that it falls under both districts.

**Mr. Deputy Speaker:** Order, hon. Assistant Minister! A division cannot fall under two districts, unless you are saying that part of the division is in Molo and part is in Kuresoi. Is that your position?

**Ms. Ndeti:** Yes, Mr. Deputy Speaker, Sir!

**Mr. Deputy Speaker:** How is that possible? You are an Assistant Minister and other Ministers are here.

**Ms. Ndeti:** Mr. Deputy Speaker, Sir, I need to go back to the records and check because that is the information that I have.

**Mr. Deputy Speaker:** There is collective responsibility on the part of the Government. This Question will appear on the Order Paper on Tuesday next week. Proceed with the next Question!

*(Question deferred)*

*Question No.260*

ESTABLISHMENT OF COURT SERVICES IN MBITA/  
SUBA DISTRICT HEADQUARTERS

**Mrs. Odhiambo-Mabona** asked the Minister for Justice, National Cohesion and Constitutional Affairs when the Ministry will establish court services in Mbita and Suba District Headquarters to serve the people who require legal services.

**The Assistant Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Cheptumo): The two districts; Mbita and Suba, are some of the newly created districts. The Government recognizes its responsibility to provide access to justice to Kenyans in order to protect and promote human rights of all Kenyans. However, the Government's efforts to provide access to Justice by constructing law courts have been curtailed by financial constraints. The Government appreciates that Suba and Mbita districts are in need of court services. The Judiciary is currently considering constructing a law court at Mbita Trading Centre, the district headquarters of Mbita district. The judiciary will consider constructing a law court in Suba District Headquarters as soon as land for that purpose is allocated and funding secured.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for that answer. Now that he admits that the Government is committed to protecting human rights, is he aware that the vulnerable, especially children, who are victims of violence especially sexual and gender based violence are actually subject to traditional system of justice which does not respect their human rights? People sort out their issues as per traditional systems especially in the far flung islands. The Assistant Minister is saying that will be done when funds become available. Could he clarify if this is not the reason why we are having problems with Uganda since Kenyans run to Uganda to seek justice?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, as I said, we are committed, as a Government and as a Ministry, to ensure that the court services are availed to our Kenyan

people. We have taken stock of all the new districts, Suba being one of them so that we can be able to assess the financial requirements, and allocate funding.

**Mrs. Odhiambo-Mabona:** On a point of order. Mr. Deputy Speaker, Sir. When I raised this Question, the districts were two and Suba District was in existence. What basically it means is that it was an old district called Suba. Is the Assistant Minister in order to mislead us by saying that they are new districts and we have not had courts? We have not had courts not because they are old but because the Government has not made efforts. Could the Assistant Minister please clarify that?

**Mr. Cheptumo:** Mr. Deputy Speaker, Sir, now, we have two districts. Originally, it was one. The basis of my point is that we are not just looking at Mbita or Suba; we are looking at all the districts in the country. This particular district, Mbita, we are already considering it among the districts to be given funding to build the law courts. For Suba District, once land is availed, it will be considered for allocation of funding by the Ministry.

**Mr. Mbadi:** Thank you, Mr. Speaker, Sir. I happen to represent Suba District. From the answer that the Assistant Minister has given what is stopping them from allocating funds for the construction of the courts is unavailability of land. I really do not know what level of consultation the Assistant Minister has done to come to conclusion that land is not available because as far as I am concerned, the district headquarters is going to be at Magunga Trading Centre, and there is adequate land.

**Mr. Deputy Speaker:** What is your question, Mr. Mbadi?

**Mr. Mbadi:** What level of consultation the Ministry has done to come to the conclusion that there is no land yet I am aware there is land for the construction of the court?

**Mr. Cheptumo:** Mr. Speaker, Sir, this is a new district and the consultation to know whether land is available or not is an issue that should rest with the leadership of Suba District. It is true that when a district is created, they have to provide land to build the services either the district headquarters or the law courts or any other departmental heads offices. So, it really follows that when a district is created, land is availed. We are waiting for them to confirm so that we include them in the list of the institutions or the districts to be considered for funding.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, could the Assistant Minister please assure us, as we are waiting for them to avail that court, that the Ministry will provide mobile courts including mobile boat courts to the island?

**Mr. Cheptumo:** This is a good proposal but I do not want to make commitments which I am not able to deliver. We will consider that proposal and be able to consider if it is possible and attainable within this financial year---

**Mr. Deputy Speaker:** Are you sure it is a point of order, Ms. Odhiambo?

**Ms. Odhiambo:** Mr. Deputy Speaker, Sir, the Assistant Minister is saying that he is not able to commit the Government. If we provide him with a boat, could he give us a magistrate?

**Mr. Cheptumo:** We can give them a magistrate when there is a court.

**Mr. Deputy Speaker:** Next Question, Mr. Abdirahman!



*Question No.358*GOVERNMENT ALLOCATION OF BURSARY TO WAJIR  
SOUTH CONSTITUENCY

**Mr. Abdirahman:** asked the Minister for Education:-

- (a) how much money the Government allocated for bursary to Wajir South Constituency in the last financial year (2008/2009); and,  
(b) what informed the decision that caused the disparities.

**The Assistant Minister for Education** (Mr. Mwatela): Thank you, Mr. Deputy Speaker.

(a) The bursary fund allocation for Wajir South Constituency in the Financial Year 2008/2009 was Kshs187,474 being the affirmative component of the minimum of Kshs500,000 allocated to constituencies including Wajir South in the previous financial years. This was withdrawn due to reduction in the constituency bursary fund by the Treasury, and the introduction of free secondary education in 2008.

(b) These two factors mainly explain the disparities in the amount allocated in the Financial Year 2008/2009 compared to the previous years as shown in the table that I have provided here. In 2003/2004, the total allocated was Kshs767.7 million; 2004/2005 Kshs762.4 million; 2005/2006 Kshs800 million and 2006/2007 Kshs800 million but in 2007/2008, it fell to Kshs597.4 million, and 2008/2009 Kshs486 million, a total of Kshs3.6 billion.

**Mr. Abdirahman:** Mr. Deputy Speaker, Sir, I appreciate the Assistant Minister's response, but they seem to have a data that is obsolete, in terms of information, exist. Habaswein or Wajir South district has three secondary schools. They have a total number of 671 students as we speak and I have a copy of a paper initially provided by the Ministry of Education giving us the Kshs187,000 with an enrollment of only 380 students from my constituency. That money has not been distributed to date. I want to ask the Assistant Minister to tell us how we are going to share Kshs187,000 against a population of students totaling 671.

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, bursary money is allocated to the most needy students. So, it is not allocated to the total number of students that appear on the roll.

**Mr. Affey:** Mr. Deputy Speaker, Sir, the Assistant Minister says that Kshs187,000 was allocated for bursary in Wajir South. A figure that is, of course, outrageous in terms of the demand on the ground. The Kshs500,000 was withdrawn from the Treasury without consultation with the Member of Parliament. With that knowledge that this money was withdrawn, could he assure the House that no needy student in Wajir South will be sent away from school on account of lack of fees?

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, I would like to explain again that each of the students in secondary school is allocated a total of Kshs10,625 from the Government kitty on free secondary education. The bursary is an additional amount. So, for those who are in day schools, no child should be sent home because the full amount is catered for. It is only those in boarding schools that we allocate extra money for bursaries.

**Mr. Deputy Speaker:** Last question, hon. Abdirahman!

**Mr. Abdirahman:** Mr. Deputy Speaker, Sir, we need to address the question of disparity even within the same region. As I speak, we have 200 students out of the 600 students who have applied for this bursary. Could the Assistant Minister consider allocating more money? The Kshs187,000 is not enough. Many of our students are not only in Wajir South, but the greater Wajir District which we initially shared. Could he consider increasing the allocation, at least, to something closer to what we used to get, so that we can have the needy students benefiting?

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, I share the concerns of the hon. Member, but may I also advise the Member that the Constituencies Development Fund (CDF) component of 15 per cent should play a big role in helping to educate our students.

**Mr. Abdirahman:** On a point of order, Mr. Deputy Speaker, Sir. We know that the CDF has allocations for bursary. I, personally, use mine for tertiary institutions and universities. We have to benefit from the Ministry. I am asking him to tell us by how much he can increase the allocation he gave us. Is he in order not to address the actual question and somehow divert our attention to CDF, which they constantly do as Ministers?

**Mr. Deputy Speaker:** Hon. Assistant Minister, the question is: What can your Ministry do? That is what the hon. Member is asking. He is not asking you how he should spend his CDF money!

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. As the Chairman of the Committee on CDF, I have the obligation to inform this House and Assistant Minister that, yes, the CDF is being used to allocate bursaries, but it also has limitations just like the Ministry. The limitation is 15 per cent. So, you cannot exceed even if you wish to give more. So, what are you doing as a Ministry?

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, similarly, the Ministry uses a formula and we cannot exceed it.

**Mr. Deputy Speaker:** Order, hon. Assistant Minister! You owe this House an answer that essentially befits the dignity of your own Ministry. You cannot say that there was a formula. What was the formula used when you allocated the same constituency Kshs500,000 and you have another formula now? Is it statutory because the CDF formulas is statutory?

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, of the total amount of money that is allocated for bursaries, we take the figure of the enrolment of the constituency over the national enrolment, multiplied by the constituency's poverty index, over the national poverty index. This is a formula we have used. The only way we can increase bursary, therefore, is for an allocation of extra amount from the Treasury and not by the Ministry itself.

**Mr. Bahari:** On a point of order, Mr. Deputy Speaker, Sir. This Government, through many agreements that they have signed, both national and international, has

undertaken to give every Kenyan student opportunity for free education. However, the same Government is very reluctant to do so. I see the Assistant Minister responding as if he is so reluctant to move forward. Is it in order for him to abdicate his responsibility which he has undertaken to do in very many fora?

**Mr. Deputy Speaker:** Hon. Assistant Minister, you have a formula there. Is it the same formula that you used the previous year when that same constituency got Kshs500,000?

**Mr. Mwatela:** Yes, it is the same, Mr. Deputy Speaker, Sir. May I make it very clear that we are really committed. Personally, I am very committed to ensuring that our children can get education.

**Mr. Deputy Speaker:** Question by Mr. Warugongo!

### QUESTION BY PRIVATE NOTICE

#### STALLING OF MT. KENYA ELECTRIC FENCING PROJECT

**(Mr. Warugongo)** to ask the Minister for Forestry and Wildlife:-

(a) Why did the electric fencing around Mt. Kenya stall even though construction materials are available on the site?

(b) When will the construction commence?

(c) What measures is he taking to keep away wildlife, especially monkeys from farmlands around the Aberdares?

**Mr. Deputy Speaker:** Is Mr. Warugongo still not here?

*(Question dropped)*

Question by Mrs. Noor!

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. After hon. Abdirahman I had a Question that was following.

**Mr. Deputy Speaker:** Order! The Chair determines the priority on the Questions! Yes, hon. Noor!

### ORAL ANSWERS TO QUESTIONS

*Question No.325*

#### BENEFICIARIES OF WEDF IN THE LAST TWO YEARS

**Mrs. Noor** asked the Minister for Gender, Children and Social Development:-

(a) if she could provide a list of individuals and organizations that have benefited from the Women Enterprise Development Fund in the last two years, showing distribution by region;

(b) if she could state how many among the beneficiaries are marginalized women, women with disabilities, female-headed households and pastoralist women; and,

(c) what measures she is putting in place to reach out to the categories mentioned in “b” above.

**The Minister for Gender, Children and Social Development** (Ms. Mathenge):  
Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Women Enterprise Development Fund (WEDF) targets all Kenyan women as individual, registered groups or companies owned by women. The Fund uses two distribution channels to reach the clientele, namely, the Constituency Women Enterprise Scheme, through the constituency, and each constituency has Kshs1 million, and also through the financial beneficiaries, which are twelve micro-financiers.

(b) The financial intermediaries are free to lend money to individual groups or companies owned by women. The various women groups were funded as follows: Nairobi, 152 groups, Kshs7 million; Coast Province, 489 groups; Eastern Province, 615 groups; Western Province, 430 groups; Central Province, 484 groups; Nyanza Province, 663 groups; Rift Valley Province, 914 groups and North Eastern Province, 166 groups. A total of 3,913 groups composed of 91,910 individual women members were funded.

Mr. Deputy Speaker, Sir, under the financial intermediaries we have lent as follows:-

<b>Province</b>	-	<b>No. of Women Beneficiaries</b>
Nairobi	-	6,500
North	-	50
Coast	-	400
Rift Valley	-	1,300
Nyanza	-	850
Eastern	-	500
Central	-	1,400
Western	-	1,000
<b>Total</b>	-	<b>12,000</b>

The geographical coverage of the financial partners is summarized as per the list given. We gave a total of Kshs515 million.

<b>Name of Institution</b>	<b>Areas Covered</b>
Family Bank	- Countrywide
Co-operative Bank	- Countrywide
Kenya Industrial Estates	- Countrywide
Small and Micro Enterprise	

Programme	-	Countrywide except North Eastern Province
Jitegemea Credit Scheme	-	Kikuyu, Ruiru, Ngong and Nairobi
Kenya Women Finance Trust	-	Countrywide
Pamoja Women Developments Programme	-	Nairobi, Central, Eastern, Rift Valley and Western
Business Initiatives and Management Assistant Services	-	Eastern and Central Provinces
Taifa SACCO Society	-	Nyeri and Laikipia
K-Rep Development Agency	-	Countrywide
Wakenya Pamoja SACCO	-	Kisii
Mathira Farmers SACCO	-	Karatina

I would also want to say that the partnership between us and the Kenya Women Finance Trust (KWFT) has now been terminated.

Mr. Deputy Speaker, Sir, the full list of groups and individual beneficiaries through both the Constituency Women Enterprise Fund and the financial intermediaries indicating the respective amounts disbursed are hereby tabled as requested.

*(Ms. Mathenge laid the document on the Table)*

(b) The Women Enterprise Development Fund does not classify women into such categories as marginalized, women with disabilities, female heads of households or pastoralists. But it targets all Kenyan women from 18 years and above. These are women who have an intention to start income generating activities or are already having businesses that need a boost.

(c) The Women Enterprise Development Fund is in the process of recruiting more financial intermediaries so that it can reach all corners of the Republic. We have shortlisted 27 of them and we shall soon be advertising who they are.

Mr. Deputy Speaker, Sir, the persons with disabilities, the old and the disadvantaged, are going to be taken care of under the National Development Fund for Persons with Disabilities and the National Social Protection Fund. Some funds have already been allocated to these two: Kshs200 for National Development Fund for Persons with Disabilities and Kshs461 million for the Social Protection Fund.

**Mrs. Noor:** Mr. Deputy Speaker, Sir, I would like to appreciate the answer given by the Minister with a heavy heart because she is misleading us by giving us some institutions that she says are found countrywide. For instance, she indicated that Family Bank is countrywide while we know that it is not in North Eastern Province, Pokot, Samburu, Turkana and Narok. We also do not have the Co-operative Bank in Pokot, Samburu, Narok, Turkana and the whole of North Eastern Province. K-Rep Development Agency is not in Pokot, Samburu, Turkana and Narok. I also do not know where it is in North Eastern Province.

So, is she in order to mislead the House by telling us there are some institutions that are countrywide while they are not?

**Ms. Mathenge:** Mr. Deputy Speaker, Sir, I think what I have given is what I have and these banks are there. We have now created intermediaries. The problem that we had with North Eastern Province is the Sharia compliance. Out of the 27 intermediaries that we have now included, two of them are now Sharia compliant. We also have the Kshs1 million which is in North Eastern Province which women are allowed to apply for.

**Mrs. Noor:** On a point of order, Mr. Deputy Speaker, Sir. We appreciate the Kshs1 million that is going directly to the constituency. We do not have a problem with that. We have a problem with the issue where the Minister is lying to this House by saying that those banks are countrywide. Is she in order? She did not do her research properly to get the figures right.

**Mr. Deputy Speaker:** Order, Mrs. Noor! The word “lying” is not acceptable Parliamentary language. If you want to say that the Minister does not have the facts you say “misleading”. So, you better apologize.

**Mrs. Noor:** I apologize, Mr. Deputy Speaker, Sir. She is not lying but misleading this House. Is she in order to mislead the House?

**Ms. Mathenge:** Mr. Deputy Speaker, Sir, I do not think that the Minister can create banks where they are not. It is up to *wananchi* of the area and the banks to feel compelled to take banks to those areas.

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. We have no problem with the Minister’s understanding of “countrywide” but we want to tell her that there are some parts of this country that do not belong to a definition of countrywide. Is she in order to insist that those banks are countrywide while I can confirm that Family Bank and K-Rep are not in Lodwar? Give us another country then you can talk of countrywide.

**Ms. Mathenge:** Mr. Deputy Speaker, Sir, it is also the duty of the Members of Parliament to create SACCOs in their relevant areas if they want the women to access that money but not the Minister to create banks in those places.

**Mr. Deputy Speaker:** Last question, Ms. Noor! Hon. Members, it is a Private Members’ Day!

**Mrs. Noor:** Mr. Deputy Speaker, Sir, the Minister says that it is the responsibility of every Member of Parliament to create SACCOs. Yes, we agree, but what is the mandate and the responsibility of the Ministry itself?

**Ms. Mathenge:** Mr. Deputy Speaker, Sir, the responsibility of the Ministry is to create awareness that this money is there. In the region that I come from we have a saying, and with all due respect to women, that you can take the cow to the river but you cannot force it to drink. That is what we are doing.

**Mr. Deputy Speaker:** Order, hon. Members! The Question by Mr. Warugongo, Question by Private Notice is not dropped. I had actually deferred it. It is just a mix up. Question No.317 by ole Lankas is deferred to tomorrow and it should be given priority in tomorrow’s Order Paper. Question No.114 by Mr. Ethuro will also appear on the Order Paper tomorrow afternoon---

**Mr. Ethuro:** Mr. Deputy Speaker, Sir---

**Mr. Deputy Speaker:** Order! Question No.368 by Mr. Mbadi, Question No.205 by Chepkitony and Question No. 410 by Mr. James Maina Kamau will appear on the Order Paper on Tuesday next week.

**QUESTION BY PRIVATE NOTICE**

STALLING OF MT. KENYA ELECTRIC FENCING PROJECT

**(Mr. Warugongo)** to ask the Minister for Forestry and Wildlife:-

(a) Why did electric fencing around Mt. Kenya stall even though construction materials are available at the site?

(b) When will the construction commence?

(c) What measures is he taking to keep away wildlife, especially monkeys, from farmlands around the Aberdares?

*(Question deferred)*

*Question No.317*

NUMBER OF TOURIST CIRCUITS IN KENYA

*(Question deferred)*

*Question No.114*

PROVISION OF HEALTH FACILITIES IN TURKANA REGION

*(Question deferred)*

*Question No.368*

IRREGULAR AWARD OF NORTHERN BYPASS  
CONTRACT TO M/S CHINA ROADS COMPANY

*(Question deferred)*

*Question No.205*

NUMBER OF SENIOR POLICE OFFICERS  
PREMATURELY RETIRED SINCE 2007

*(Question deferred)*

*Question No.410*

RE-LOCATION OF EASTLEIGH AIRBASE FOR SAFETY REASONS

*(Question deferred)*

Next Order!

**STATEMENT**

**Mr. Deputy Speaker:** We note that this is a Private Members's Day so we will only be able to take one Ministerial Statement by Mr. Kosgey.

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): On a point of order, Mr. Deputy Speaker, Sir. I am requesting that Question No.410 which you have deferred to Tuesday be brought forward to tomorrow afternoon.

**Mr. Deputy Speaker:** Tomorrow afternoon? Then there was a miscommunication on that. But I thought your Minister had indicated that you will not be there tomorrow? Will you be there?

**Mr. Deputy Speaker:** Under the circumstances, Question No.410 is deferred to tomorrow afternoon and not Tuesday.

Proceed, Mr. Kosgey!

**POINTS OF ORDER**

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** What is your point of order, Ms. Odhiambo?

## UPSURGE OF CHILD SEXUAL ABUSE/EXPLOITATION

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. I would like to seek your indulgence that the Minister gives direction. I had asked for a Ministerial Statement over a month ago - but I have not been around - from the Minister of State for Provincial Administration and Internal Security on the alleged case of sexual abuse of young boys by Father Kizito. Could you, please, indulge me by giving me directions as to when I can get it?

**Mr. Deputy Speaker:** Indeed, I remember that Ministerial Statement being sought by the hon. Member way back. Mr. Assistant Minister, are you ready with that Ministerial Statement? Much as you are not going to be allowed to do it today, but can you have it on Tuesday next week? It is an old issue!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, can I give it on Wednesday or Thursday next week because I have several of Ministerial Statements to make?

**Mr. Deputy Speaker:** Wednesday afternoon next week!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, yes, or Thursday!

**Mr. Deputy Speaker:** It is so directed! Order, Mr. Ojode! It is so directed that the Statement will be issued on Wednesday next week! When you say Wednesday or Thursday, you have given two options to the Chair and the Chair has decided on Wednesday which you indicated that you have no problem with.

Proceed, Mr. Kosgey!



**MINISTERIAL STATEMENT**

## CURRENT STATE OF PAN AFRICAN PAPER MILLS

**The Minister for Industrialization** (Mr. Kosgey): Mr. Deputy Speaker, Sir, Mr. Sambu, the hon. Member for Webuye asked for a Ministerial Statement on the current state in Pan Paper Mills and when it is going to be opened and why there is delay in re-opening it. I beg to give the following Statement:

Pan African Paper Mills (PPM) in Webuye, under receivership, closed down abruptly on 30<sup>th</sup> January, 2009, due to power disconnection arising from non-payment of bills to the Kenya Power and Lighting Company (KPLC) estimated at Kshs209 million. At the time of the closure of the factory, the company had incurred a huge debt broken down as follows:-

Long-term lenders; IFC, Kshs2,560,000;140; PTA Bank, Kshs622,034,000; EADB, Kshs317,352,000; KCB, Kshs112,148,000; Deutsche Bank, Kshs1,898,000,873; DBK, Kshs52,915,000; Proparco, Kshs380,531,000 making a sub-total of slightly over Kshs6 billion. For short-term lenders; the KCB, Kshs689 million, Barclays Bank, Kshs331 million; Bank of Baroda, Kshs200 million; Eco Bank, Kshs47.5 million; DBK, Kshs67 million, a sub-total of Kshs1.2 billion. Subordinate and loans unsecured; IFC, Kshs212 million; the Management Company itself and the owner, Kshs610 million, sub-total, Kshs823 million making a total outstanding loan of slightly over Kshs8,102,837,000. The total debt owed does not include monies owed to the Government for unpaid royalties estimated at Kshs680 million. Key suppliers such as Kobil which is owed Kshs540 million and the KPLC owed Kshs209 million, as I said, IFC and Proparco agreed to write off their loan amounting to Kshs3.3 billion reducing the indebtedness to Kshs5.2 billion.

The company's performance prior to the closure had deteriorated tremendously and was on the verge of collapsing. The poor performance was blamed on the lack of operating licence, failing plants, inadequate wood supplies, high cost of fuel and power and stiff competition from cheap paper and paper products imported into the country. The prevailing circumstances compelled the management of Pan Paper Mills to seek Government intervention to rescue the company from imminent collapse. In an effort to address PPM's problems, the Government formed a task force of various Ministries. The task force and the PPM management had reached a consensus and were jointly working towards implementation of the turn-around strategy when it closed on 30<sup>th</sup> January, 2009, abruptly as a result of mainly power bills. However, the PPM management who also doubled as directors of Orient Paper Mills (OPIL), the major shareholders in the company, abandoned the company and returned to India on March 2009 without the Government knowledge. The company was, therefore, left at the disposal of long-term and short-term lenders whose debenture holding gives them a right over the company's fixed and floating assets, respectively and possible litigation from unsecured lenders aimed at liquidating the company to redeem their debt. In view of the turn of events and the impact of the closure of the factory to the economy of the country, and in particular to the people of western Kenya, the Government's task force that was working on the turn-around strategy was mandated to work on modalities towards reviving the company since the Government, as a minority shareholder, had no legal rights to commence the revival process directly. The task force had to mobilize all lenders and key suppliers to negotiate

and agree on the revival of the company under a joint receivership. The lenders who were the rightful owners of the company in terms of their debenture holdings in the company fall into two categories, as I have already said; short-term and long-term lenders. Short term lenders whose legal rights in the company are limited to floating stock and book debt placed the company under receivership in March 2009 while the long-term lenders whose legal rights on the company are tied to all the fixed assets are yet to appoint a receiver.

The task force has, therefore, held a series of meeting jointly and separately with the two groups of lenders to work on a strategy of reviving PPM under a joint receivership as directed by the Cabinet. The negotiations were expected to be concluded early---

**Mr. Deputy Speaker:** Order, Mr. Minister! Can you be brief and lay the document on Table? The Statement is so long. It is a very long speech, from the look of things Why do you not lay it on the Table?

**The Minister for Industrialization** (Mr. Kosgey): Mr. Deputy Speaker, Sir, I thought I would give a comprehensive Statement since this matter is very---

**Mr. Deputy Speaker:** Indeed, it is comprehensive but let, it also be concise!

**The Minister for Industrialization** (Mr. Kosgey): Mr. Deputy Speaker, Sir, the long and short of it is that we are still negotiating with the long-term and short-term lenders and they are very difficult. They have given conditions and one of the conditions that the short-term lenders have given is that they be allowed to appoint a receiver of their choice but the Government to underwrite the receivership cost, indemnify them against any future claims, renew the expired insurance cover for the company's assets and pay rent to the landlords of all the premises occupied by the company. Also, that the receivership costs which will be treated as a loan from the Government to the receiver remains subordinate to the lenders' debt when the company starts operating. The KPLC and Kobil, the major suppliers of oil and energy, have said that they want to be paid before they can even think of starting. So, we are still negotiating and the process has been very painful.

One other legal question which we have not been able to answer is that legally this company is still owned 54 per cent by OPIL. If you revive it the way it is by putting a joint receivership and it is revived, they have a legal right to say "Thank you very much, you have revived our company, we have 54 per cent shareholding and anybody who has put in money, we will treat it as a debt!" . We have sought the Attorney-General's opinion on how to treat this shareholder who ran away. I think we are almost reaching a conclusion and I will not read the remaining part of the comprehensive Statement. Even yesterday, as we passed the Vote for the Office of the Deputy Prime Minister and Ministry of Finance, we saw that we had been allocated Kshs800 million. We have already stepped up our current budget for the revival of Pan African Paper Mills in Webuye. Negotiations are on-going and the company will be operational maybe in the next two months. I. Hon. Members can ask supplementary questions because I have a lot of information.

**Dr. Eseli:** Mr. Deputy Speaker, Sir, I would like to thank the Minister for issuing the Ministerial Statement although it was not complete. However, what is the role of Orient Paper Mills in the goings on? Is the Minister aware that as we delay the re-opening of Pan African Paper Mills, the machinery will be exposed to a lot of corrosion because

of the kind of materials used in the manufacture of paper? Is he aware that there will be no major repairs when they eventually re-start the machines? The machines have actually corroded by now.

**Mr. Sambu:** Mr. Deputy Speaker, Sir, this is one of the most useless Ministerial Statements I have ever heard in my life. The Minister warned me last week when he was supposed to issue this Statement. I have now realised the meaning of that warning because he was simply going to give me the history about how the Government will not try to re-open Pan African Paper Mills.

We are wasting time at this juncture. With due respect, I call upon the Chair to invoke Standing Order No.97(f) on false information. I am saying this with deep regret because in April this year, the Minister gave an undertaking that the factory would re-open on 1st June, 2009. All the history he has just read was there and well known. In May this year, the Minister gave us a second undertaking. He gave us the reasons why the factory would not re-opened on 1<sup>st</sup> June, 2009. However, he said that it would be re-open before the end of June, 2009. By undertaking that, it means that the information he has given us now was already understood.

Mr. Deputy Speaker, Sir, last week---

**Mr. Deputy Speaker:** Order, Mr. Sambu! If you are convinced that you have to resort to other provisions of the Standing Orders with other actions, then you proceed on that basis. However, if you want to seek a clarification, then you should do that. Do not make a speech. Do you want to seek a clarification from the Minister?

**Mr. Sambu:** Mr. Deputy Speaker, Sir, I thought I should just clarify a few issues first. May I, in this case, invoke Standing Order No.97. With due respect, I would also like us to involve the Implementation Committee so that the Minister appears before it on this matter. This is because the people of Webuye are suffering and we cannot continue like this.

*(Applause)*

**Mr. Mututho:** Mr. Deputy Speaker, Sir, a Government that is in slumber cannot continue to penalise its citizenry because of those things. We know that the Kenya Power and Lighting Company (KPLC) is now handicapped. The Chair has heard that the KPLC is a hindrance to the negotiations and yet this company has been a subject of rescue by the same Government. How come the same Government could not see this company collapsing? Secondly, how come the Government cannot flex its muscles and force the KPLC to write-off that debt so that the Pan African Paper Mills can resume its operations?

**Mr. Kombo:** Thank you, Mr. Deputy Speaker, Sir. Indeed, the Minister's Statement is laughable. He actually stood up and said; "We are worried what Orient Paper Mill would do if we revived the factory". Orient Paper Mills has run away and yet

we have a Government which shows that it is totally helpless in protecting its people. Could the Minister tell us whether the Government has the muscle to protect its people from criminals? By Orient Paper Mills running away means that they are criminals! They are sacrificing the lives of our people and yet we have a Government which says that it is helpless.

**Mr. Wamalwa:** Thank you, Mr. Deputy Speaker, Sir. They say that where there is a will there is a way. On the issue of Pan African Paper Mills, could the Minister confirm whether, indeed, the Government is willing to re-open the factory? The Prime Minister visited Webuye and promised that, that factory would be re-opened. The President also visited Webuye and promised that, that factory would be re-opened by 1<sup>st</sup> June, 2009. We are approaching September and the factory is still closed. Webuye Town is “dying” now because Pan African Paper Mills is Webuye and Webuye is Pan African Paper Mills. Could the Minister assure this House that, that will is not lacking?

**The Minister for Industrialization (Mr. Kosgey):** Mr. Deputy Speaker, Sir, I will start with the last two questions. I would like to assure Mr. Wamalwa that, that will exists. The Government committed itself to the revival of Pan African Paper Mills. The will still exists and we will revive the factory. Unfortunately, the negotiations between us and the short-term and long-term lenders ran into a hitch. This is because the lenders gave us conditions which are untenable. In the last meeting I had with the officials, and this is part of the answer to Mr. Kombo’s question, I told them that we will now exercise our sovereign right as a Government. We shall seek a court order, in the national interest, to revive the company as the majority shareholders. We will also marshal all the lenders to agree on a revival strategy, which we have worked out, that will see the company sold to an interested party with a condition that the factory is revived. This is the last card that we have. I have already invoked that because the on and off negotiations with the lenders does not yield anything. We have lost nearly three months. I assure Mr. Sambu who is my friend that I am very serious and I want that factory revived. I am committed towards that end.

So we are really committed. As I said, the other shareholders ran away but, legally, they still hold the 54 per cent shareholding of the factory. So, unless we actually sell the factory under a joint receivership arrangement to new owners, they cannot forfeit. They can forfeit after its sale. At the moment, if we just walk in and revive it, they can just say: “This is our asset. Thank you for reviving it.”

So, I would like Mr. Sambu and myself to remain friends and become serious. I want us to work together on the revival programme of the factory. I will do the last bit when I invoke our sovereign right as a country, in the national interest, to almost forcefully revive the factory in the manner I have outlined.

As pointed out by Dr. Eseli, there is corrosion going on. We are aware of that fact. We have been warned by the technical team that we should look into the issue. They pointed out that issue. Incidentally, the technical team wanted Kshs1.6 billion for reviving it. You can see that even Kshs1.6 billion will not revive it; instead of Kshs1.6 million we have provided Kshs500 million. We have the will

Mr. Deputy Speaker, Sir, there is the question of how come we never foresaw this closure. When Pan Paper Factory started running into problems, the Government set up a task force, which worked on a revival or rescue plan. As soon as the rescue plan was agreed upon by the Cabinet, and we started the process of implementing it, the crunch came in. The Kenya Power and Lighting Company disconnected power. The factory could not pay for fuel oil. As we negotiated with the suppliers of the oil and Kenya Power and Lighting Company, these guys just closed shop and left.

**Mr. Deputy Speaker:** Mr. Alfred Sambu, I wish to give a directive on the issue as follows.

Indeed, it is not that easy, given the circumstances, for the invoking of Standing Order No.97, which bars hon. Members from deliberately giving false information to the House. This Standing Order cannot be invoked in the sense that it is not very obvious, and it does not appear that there is false information that was deliberately given to this House by the Minister. Understandably, there is an issue that needs to be addressed. There is need for the Government to act fast and address that issue, which is of national importance.

Whether the Minister's hands are tied, because of other factors, or not, is an issue that essentially can only best be investigated by the relevant Committee. The Chair is directing the Implementation Committee to look into this matter and report back to the House, as a national urgency, in a maximum period of three weeks. If they can do it earlier than that, we will appreciate because the matter is of national importance.

Undoubtedly, there is also an expression of interest and commitment on the part of the Minister, but there is also a situation that needs to be tackled with a lot more zeal than is currently being exhibited by the Government. I am saying "the Government" because there are many arms of the Government involved in this matter. There is the issue of electricity bill and other organisations that are involved in the matter. So, I direct the Implementation Committee to immediately take up the issue and report to the House in not more than three weeks' time.

**Mr. Sambu:** Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Hon. Members, this is a day for Private Members' Motions. We should have stopped issuing of Statements 20 minutes ago. The only reason as to why we have extended the time this far is because of the importance of the issue at hand, and the fact that this matter has been on and off for quite a while now. With regard to all other Ministerial Statements, I do understand that hon. Members have had arrangements with Ministers and they want those Ministerial Statements delivered. So, I direct that the pending Ministerial Statements be issued tomorrow.

**The Assistant Minister for Agriculture** (Mr. Ndambuki): Last week, I was ordered by the Speaker to give some clarification, following an answer I had given to a Question. Dr. Eseli had raised some issues, which he wanted clarified. I have the report. I had it yesterday. I have it today. I do not know whether you are going to allow me to present it.

**Mr. Deputy Speaker:** That matter cannot be addressed today. You will have today. Approach the Chair at your own convenience and it will be able to fix it on another sitting.

Next Order!

## MOTIONS

## LIFTING OF RESTRICTIONS UNDER RBA ON RETIREMENT BENEFITS

THAT, in view of the suffering occasioned by the retirement benefits law to employees by prohibiting them from accessing their contributions and those of their employers upon leaving employment before the mandatory retirement age, and in view of the fact that the Government has now extended the retirement age of its employees to sixty years and those who have left employment before the mandatory retirement age will have to wait for an even longer period before accessing their contributions; this House resolves that the Government lifts the restriction under the Retirement Benefits Act in respect of occupation schemes to enable a member leaving employment after three years of membership to be entitled thereupon to a refund of his or her contribution together with investment income accrued thereon and payment of the employer's contribution together with investment income accrued thereon, and for matters incidental thereto and connected therewith.

*(Mr. Wamalwa on 12.8.2009)*

*(Resumption of Debate interrupted on 12.8.2009)*

**Mr. Wamalwa:** Mr. Deputy Speaker, Sir, before the interruption of business last time, I had indicated that this rule was introduced, restricting access to benefits and contribution by the employer. We have Kenyans who are affected by the global financial crisis. Over 10,000 of them lost their jobs. From records given to this House by the Ministry of Finance, when I raised this issue earlier, in the period between 2006 to date, over 25,000 Kenyans have been affected by this rule, and they are not allowed to access their employers' contribution until they reach the retirement age.

Indeed, this is a matter that has exposed Kenyans to great suffering. Thousands of lives have been affected. We do believe that the reason for any law is really for public good. This law was well intentioned. Indeed, it is meant to encourage the culture of saving in our society. It is also a law that was supposed to protect Kenyans from themselves. With what has been happening in the past, we have had Kenyans being given their retirement package and blowing it up overnight. We have had cases of some Kenyans marrying second wives after being paid their lumpsum retirement benefits.

So, the law as it is, was intended to protect Kenyans from themselves. It was well intentioned. However, we need to look at what has resulted, in terms of suffering by those who have left employment earlier than their retirement age, there are many. There are many cases, but the one that touches me most was the story of a young man called James Gone. His case was touching because he lost his job at the age of 40. He had his employer's contribution in excess of Kshs1.5 million, which he could not access. He had a house mortgage that had a balance of about Kshs750,000, but he could not access his money.

After he lost his job, he was given time to pay the Kshs750,000 or lose his house. He went to his employer and asked to be paid his retirement benefits, but because of the rule that was introduced, he could not get this money. It is sad to say that James Ochieng Gone lost his house for Kshs750,000. Had he been allowed to access the close to Kshs2 million that he had which had been locked up on his behalf as a result of this rule, James Ochieng Ngone would have saved his House. He and his family would not be destitutes today. These are some of the harsh cases that have come to our attention. Some of these have come in form of open letters to the relevant Ministries where Kenyans have talked about their suffering, but the Treasury and the Government has remained insensitive to the suffering of Kenyans.

Mr. Deputy Speaker, Sir, we do urge that though the rule was well intentioned, the Government should re-consider because the time has come when the suffering of Kenyans must be listened to. Something must be done to allow Kenyans not to continue suffering.

We do know that in Kenya today, whereas in 2005/2006 when Mr. Mwiraria introduced this rule, the retirement age was 55 years. Today, that age has been extended to 60 years. So, if you were in Ngone's shoes when you had neared 55years of age, you would be told that the date has now been changed and that you will to wait for another five years before you retires. It is something that we must look against the life expectancy of this nation. We are a nation whose life expectancy is set at about 46 years. Looking at the distance between that and the magical age of 60 years that has been set, not many are able to reach there and have suffered in the process and become destitute as they wait for the magical age when they can actually access their employer's contribution.

Mr. Deputy Speaker, Sir, we have borrowed from other countries in the Commonwealth and from the best practices around the world. We do know that this rule has been applied elsewhere. A country such as Tanzania has had to amend their Pensions Act, so that they were able to remove the restriction and allow anyone to access their employer's contribution at any time upon leaving employment.

Mr. Deputy Speaker, Sir, in Tanzania, they had an amendment to their Pensions Act in 2001. This was an Act to amend the Parastatal Pensions Act of 1978 which was assented to by Parliament of the United Republic of Tanzania in 2001. Article 12 of the proposed amendment reads as follows:

“The Principal Act is hereby amended by deleting Section 44 and substituting it with the following: withdraw Section 44(1)”

Where a member ceases to be employed in circumstances in which he is not eligible for any pension, gratuity or any other benefit under the provisions of this Act, he shall be refunded the amount of his own contribution and that of his employer to the Fund”.

I believe this amendment was brought about by a situation similar to that one of James Ngone. The good people of Tanzania amended their Act, so that they could allow Tanzanians to access the benefits of not just their own contributions, but as well as that of their employers. So, there is no reason we should not listen to James Ngone as a country

and thousands of other Kenyans who are out there suffering in silence, waiting for the magical age of 60 years to access their funds.

Mr. Deputy Speaker, Sir, when you look at South Africa, they have also made amendments to their retirement benefits law. Similarly in 2001, South Africa amended their Pensions Fund Amendment Act No.65 of 2001, where they made a far reaching change to their Pensions Act. They would allow their citizens to actually use their funds to purchase houses and access loans in case of emergencies. This is something we have been asking for, for many years.

We are very glad that in June this year the Ministry of Finance actually responded. We have Legal Notice No.85 where the Ministry for Finance introduced the Retirement Benefits Mortgage Loans Regulation. I want to congratulate the Ministry for being sensitive to the needs of Kenyans because Kenyans can actually now be allowed to have a facility for house ownership through a loan facility by using their contributions.

*[Mr. Deputy Speaker left the Chair]*

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

Madam Temporary Deputy, these are some of the developments that we are proposing because under the Mortgage Loans Regulations 2009, Section 8, it has been proposed that a guarantee under these regulations shall not exceed at the time it is furnished, 60 per cent of the accrued benefit which the hon. Member would be entitled to under the scheme rules. In other words, we are now allowing Kenyans to use up to 60 per cent of their accrued benefits to take a house loan to purchase a house, repair and carry out renovations on property. Years ago when this rule was introduced, when there was clamor for this, it took time until this year. Republic of South Africa did it way back in 2001 to allow their citizens access this facility by using it as a guarantee to purchase homes.

Madam Temporary Deputy Speaker, in Kenya today after asking the Government severally to amend or lift the restriction under the RBA, this Government has not been willing to do so, for reason that they will need to invest this money on behalf of Kenyans. It is a good intention, but if anyone was to take your money and tell you that they will keep it for you because you are not responsible enough; if they gave you this money you will squander it. They will keep it for you and invest it for you until you reach that retirement age, this is not a good image of a country. We are portraying an image of a nation of delinquents who are not able to take charge of their own affairs.

If, indeed, we believe that no one amongst us is capable of governing himself or his affairs, then who among us can be trusted to govern someone else or the affairs of others, say 30 million Kenyans? The time has come when we, as a nation, must have faith



in ourselves. We must trust Kenyans to be responsible enough. Where we think they lack capacity to invest or save this money, it behoves the Government to come up with schemes where you can train retirees or people who are leaving employment without any training on financial management, how they will invest this money and how they will utilize these funds.

The Government can actually do so to ensure that when you are given this money, you will not blow it up. This money will be invested and assure our people dignified retirement.

Madam Temporary Deputy Speaker, we do know that we make laws for the good of society. Where there is a bad law, it must be amended. As Jesus said when he was challenged on why, on the Sabbath day he seemed to be breaking the law by working in the fields, he said in the book of Mark that man was not made for the law, but the law was made for man. This law here was made for the good of Kenyans. If the law itself is hurting Kenyans, we must look at it and see what can be done, so that we fall in step with other nations that have adjusted and amended their laws and come up with a policy on pensions.

Madam Temporary Deputy Speaker, Edmund Burk once said that there can be no greater tyranny than the tyranny of bad laws. If a law is bad enough, and we know that bad laws have existed, it falls upon this august House to relook at this law and see that it is amended for the good of the society. That is why we are urging the Government to relook at the regulations that were introduced to Section 55 of Retirement Benefits Act and to come up with proper regulations that can regulate this very important industry. However, they should also be sensitive to the needs of the times particularly to the suffering of young people who have lost jobs. I am talking of millions of people across the world, according to what was given to us at the International Labour Organisation (ILO) conference in Geneva. In Kenya, we are talking of over 25,000 people who have been affected.

Time has come for the Government to re-look at this issue and ensure that this restriction is lifted, to allow Kenyans access their employer's contributions. We will be urging that as they do so, the Government can put in place regulations similar to those that they have put to allow Kenyans to use this facility to purchase houses. They can regulate and give loans so that whoever has a need, it can be educational or medical--- They have been denied access to this money and this is why I am urging that time has come for the Government to relook into this issue. I urge that it be lifted and we comply with other countries which have done so, so that we can help Kenyans who are suffering.

Madam Temporary Deputy Speaker, I will ask Mr. Mututho to second this Motion.

With those few remarks, I beg to move.

**Mr. Mututho:** Madam Temporary Deputy Speaker, in seconding this Motion I want to thank Mr. Wamalwa for bringing up this issue. He never ceases to amuse me by his feeling for the oppressed. You heard him when he spoke about the Agricultural Finance Corporation (AFC) loans. You have heard him speak about *Mau Mau*.

The story of pensioners is a very sad story. Under the current arrangement, once you have your money stuck in this organization, it is like you are condemned to death.

That money is useless by the time you get it. I want to give an example and thank one media house; Royal Media Services, through *Citizen* Television. They carried a story about a lady. This lady was a very hard worker at the Kenya National Assurance Company, this was a Government owned parastatal at that time. They stayed on the streets for one year, two years and three years but they could not get any money. Her husband was an agent. The agent also lost his job. They, therefore, had nothing. Their children could not go to school. They waited and waited. Eventually, a decision was made as usual by the Government and she was paid Kshs4, 000. This was after years of street battles. You saw them on the streets.

Madam Temporary Deputy Speaker, Sir, I want us to focus on the Kshs4, 000 because according to *Citizen* Television, she took the money and went for a prayer session with the family without removing a coin. With the Kshs4, 000, they prayed and then she decided to go to a place called *Kiamaiko*. *Kiamaiko* is a place in Kariobangi Estate. She bought some meat. This meat was not meant for a party. With the Kshs4, 000 she bought cheap meat and started hawking it. She sold that first batch. Luckily there were no City Council *askaris* in sight. They could have taken her money and meat away. She sold the meat to the neighbours. She was a born again Christian. The Kshs4, 000 was now nearly Kshs6, 000 after she sold the meat. She was able to go to River Road to a place called *Njoguini* and met somebody who was a client a long time ago. She was given an order to supply a whole *mbuzi*.

She carried the whole *mbuzi* on her shoulders. When she was covered by this media house, she had succeeded in saving up to Kshs900, 000 and she now had a pick-up which she could use to transport the meat. The Kshs4, 000 could have sounded little, but if you are given this money at the right time, it helps. When you wait for the thousands that will never come, you suffer a great deal.

Madam Temporary Deputy Speaker, personally I went to buy property sometimes in 1980 at a place called 87 on Nairobi – Nakuru Highway. It was a quarter and acre of land. They gave me a value of Kshs25, 000 which was too expensive for me. I did not want to buy it because I thought they were exploiting me. Somebody bought it and I came back for the same property in 1991 and it was going for Kshs1.2 million. I went back there and it was going for Kshs2.5 million. It was still the same property and had not been developed. By the time I go there, next year, it may be Kshs3.5 million. If I was a pensioner and I had Kshs25, 000 at that time, then my wealth base would now be over Kshs3 million. That is the power of being given money at the right time. There is no rationale in us holding this money from the pensioners unless we are going to compound it in respect to possible interest. Having worked so hard, they have to wait for the future.

In 1983, when most of these hon. Members were working in Government, one US\$ was equivalent to Kshs8. Compared to today, when it is nearly an equivalent of Kshs80, tells you the story. So if you are going to hold somebody's Kshs1 million today, what you are saying is that you want him or her to die before benefitting from what he earned. Remember for all these monies, recovery is compulsory. The Government has the muscle. You do not have a choice not to pay yet you do not have a choice on when to be paid. I do not see the logic and these pensioners should get their funds as soon as possible. I thank Mr. Wamalwa for looking into this issue in depth.

Madam Temporary Deputy Speaker, you do not need to be good in economics to learn that we are still at a stage of growth where we are controlled not only by economic

factors but by other social factors. You cannot pre-determine the future based on the events that we have. It is not like the United Kingdom (UK) or any other place. Even in the UK, we still have thugs and crooks like the ones who caused the problem in the banking industry, share markets and collapsed the industry. You cannot pre-determine the future in Kenya which is under three months. We are extending that generosity of the future to three months and then recommending that we have these pensioners have their money.

Yesterday, I said here that when President Kim - God rest him in eternal peace - was denied a loan by the World Bank he went on to these pensioners fund in Singapore. You know the way the World Bank is; those people in finance know it. When the bridge is halfway over the ocean, they say there is no money. It is supposed to be a monster and you cannot do anything about it just like we saw with most projects here. They used those funds to complete the bridge which turned the economy around. We should allow further amendments so that instead of going to borrow from these very high-headed people, we can borrow from within and cause development.

Madam Temporary Deputy Speaker, I am seconding this Motion because I know right there and across the country, there are pensioners who cannot even afford the cost of batteries for an FM radio today, yet these organizations are holding millions of their monies right now. I know that they are camped somewhere listening to their radios and they are hearing us. This honourable House should be persuaded to pass this Motion. The Committee on Implementation, which is a product of the Tenth Parliament, should move fast and make sure that once we pass this Motion, it is implemented immediately. It is not justifiable for us to look at those old men dying, when we have their money.

My father passed on two years ago. The process of having his pension processed, ever since he worked for Kenya Co-operative Creameries (KCC), had not been completed at the time he was 90 years. It is very complicated. You have no bus fare, you have no energy, your health is failing and yet, the Government sits there and puts some more and more handicaps for you to access your money.

Madam Temporary Deputy Speaker, I am seconding this Motion believing that this Government, at the end of this month, will call all those pensioners and give them good news. The good news should be that the money which is available now, even if it is Kshs10,000, can still be useful if they can invest it the same way as the lady who was described by Royal Media Radio Citizen.

I beg to second.

*(Question proposed)*

**Mr. Midiwo:** Thank you, Madam Temporary Deputy Speaker for giving me this chance. I rise to oppose this Motion. I would like to begin by requesting the Mover of the Motion, my colleague hon. Wamalwa, to re-think. This is not a small matter. This is a matter that needs discussions. I do not think it is a matter that we can address using personal experiences of individuals. It is a good thing to indulge in people's lives after work.

I want to begin by correcting some misinformation. The move by the Government to increase retirement age to 60 years has nothing to do with this. Retirement age still remains at 50 years, but the mandatory retirement age is 60 years. That means that you can retire at 50 years. You can access your retirement benefits at 50 years. However, you can continue working until you are 60 years. It is good to inform our people. Those are important things. It would be sad to open a pandoras box where everyone who is out of work goes to collect---There are many cases which come to us, as hon. Members. Someone will say that he or she left employment at a certain company and has not yet been paid their dues. There are so many such cases which come to our desks. Those kinds of Questions also come to the Floor of this House. The difference is that some people are looking for that Kshs4,000 only. However, that Kshs4,000, can be paid even now. The only thing that cannot happen is that one cannot access the contribution of his or her employer. Why must you not access it? If you know anywhere where that kind of thing cannot collapse an economy, I would be very willing to be informed.

I have been to Singapore. I have seen what happens in Ghana. The infrastructure of Ghana is built using those funds. In fact, this Parliament needs to come up with water-tight rules of investment so that the Kshs300 billion held by Retirement Benefits Authority (RBA) could be invested by in such securities as the Minister attempted to do here last June. The money should be invested in Government securities where people cannot lose their money. We know that the country has gone through some difficult periods with National Social Security Fund (NSSF) and other things. However, that was corruption in the past. Sealing corruption does not mean that you are making your own country corrupt. It would be sad to have people with small investments, spend all their money and die in retirement. Let me inform the House that not all retirees can do business. In fact, the whole idea of saving for retirement is that when you are not strong enough to work, you can earn from your retirement benefits and make a better living. This House can help guide this country to the right direction.

As I said, look at the case of Singapore. The average age of living is about 78 years for men and 80 years for women. That is because they save well. When they are in retirement, they are not expected to go and look for work. They are retirees. They have a way of looking after their senior citizens. We cannot tell people--- For example, if this was to be the case, there will be people like James Ochieng Ogoni who has inspired the hon. Member to do this. However, if everybody who has saved up to Kshs1.5 million said he wanted 10 per cent of it, how much money would you give to people who have no idea of how to invest that money? That is the money that people should draw from when they retire. There is an issue relating to the example that has been given by my colleague, hon. Mututho. Right now, the Government has done better than giving the Kshs4,000. I listened to the Budget Speech very well and I think if we could look at it, the future will be better if we invest well in our economy.

The Government has now said that you can use your contribution through RBA to guarantee a loan to buy a house. You can use it. That is a long-term thing. The Government uses its own money to work on the infrastructure. There are roads that are built in your constituency and my constituency. If there was no corruption in our country, the Government could be borrowing from people's retirement money. That is the case in the countries that my colleagues have mentioned, including Tanzania. You cannot construct roads using taxes because they are not enough. Our people are over taxed. We should be thinking of putting money in the hands of people by lowering taxes, particularly to civil servants who are overtaxed. We should use the same money in that kitty to do investments, but seal corruption. I want to plead with my colleagues that if we did this--- There are so many people who are like James Ochieng who can go directly to the Government and take their Kshs1.5 million or Kshs3 million if it a double contribution. It will, definitely, bankrupt this country and we will not go anywhere. Where will the Government get the money to pay anyone who says he wants to retire because he has saved enough money? That is why there is mandatory age of retirement and also, voluntary age of retirement. We need to look at this. There is room to discuss it. This is an issue, *Waheshimiwa* that we can have a *kamukunji* on and send a few people to look at a few experiences. This is not something that you will do and expect the country to be the same. If you have, let us say, 3,000 Kenyans withdrawing Kshs1 million at will every year, I can you bet we will not have a country.

I beg to oppose.

**Mr. Affey:** Thank you, very much, Madam Temporary Deputy Speaker, for giving me this opportunity to support this very important Motion.

I want, first of all, to thank hon. Wamalwa for truly being very progressive. This Motion is very important because I think we have had an experiment which seems to be failing. Therefore, we need to see whether we can correct it. This is because what we are now addressing is what was introduced just two years ago. It is not something which has been in our statutes and laws for many years. It is fairly new since it was introduced in 2006 and now we are in 2009. So, the starting point is that we need, first of all, to see whether we can give workers an option; whether they really want to maintain that particular law, or in fact, it might be useful for them to be given these dues quite early, so that they can start some businesses.

Madam Temporary Deputy Speaker, the budget is read every year in line with what the members of the East African Community are thinking. There has been a way of harmonizing our laws with Tanzania and Uganda. That is why the Budget on exactly the same day as is read in Tanzania and Uganda. Why is it that after two years we cannot understand the merits of what the Tanzanian and Ugandan people find viable? South Africa, Tanzania and many other countries around us have taken this route. This route gives independence to our workers. It also gives them an opportunity to decide. If I wanted to maintain the amount of money until I reach 60 years--- I do not know whether

I will even reach 60 years. But if it must be there, then let it be option and not by law. If I want to withdraw the money after three years, my contribution can be as little as Kshs4,000, Kshs5,000 or Kshs10,000 in some cases as hon. Mututho has said. Why should we force these people to wait for 40 or 50 years, so that they can access their monies?

Madam Temporary Deputy Speaker, regarding the issue of the retirement age having been pushed to 60 years, we have got ideas ourselves and we do not think it is correct to do so. This is because it saturates the Civil Service and all sectors of the economy that would, otherwise have grown. It is not optional. Initially, when everybody wanted to be maintained by the Government, they used to give it on contractual basis. But now, I can bet that nobody is leaving the Civil Service because even as you reach 55 years, you want to wait until you are 60 years old. If it were an optional aspect, then, perhaps, we could discuss. But it is not optional. It says that you must reach 60 years. Therefore, we clog the system itself. Let us give an opportunity to those who want to leave early and give them their contribution, so that they can start whatever they want to start. Give them the independence. Why must we lock them up until they reach 60 years before they can access their money?

**The Assistant Minister, Office of the Deputy Prime Minister and Minister for Finance** (Dr. Oburu): On a point of order, Madam Temporary Deputy Speaker. As a matter of fact, is the hon. Member in order to allege that everybody is forced by law to retire at 55 years or 60 years, when the actual retirement age in Kenya is 50? The compulsory retirement age was 55 years, but it was pushed to 60 years. The age after which you can retire voluntarily is 50 years.

**The Temporary Deputy Speaker** (Prof. Kamar): Point made! At the point of response also we are expecting you to do more clarification.

**Mr. Affey:** Madam Temporary Deputy Speaker, why then did we have to push it to 60 years in that case? If the Minister could be fair to the country, he would even give us the list of those people who have voluntarily left employment. In this country, people do not leave their jobs easily unless they are forced. Some leave, perhaps, because they had created an alternative. But most of the people do not leave. That is why we have people who are 55 years old and they continue working. Even when they reach 60 years I will not be surprised if the Government comes up with another proposal to move it to 70 years. That is not the point.

This particular issue that hon. Wamalwa is trying to address will help nearly 25,000 Kenyans who have left retirement, but have to wait until they are 55 years or 60 years before they can access their little contribution. It is punitive and not fair. We should give people the freedom to decide what they want to do.

Madam Temporary Deputy Speaker, I beg to support.

**Mr. Mbadi:** Thank you very much, Madam Temporary Deputy Speaker, for giving me this opportunity to also contribute to this Motion. I want to support this Motion and congratulate my friend, hon. Wamalwa, for bringing it.

When the Finance Bill was passed with this particular rule in 2006, I was one of the people who were really very critical about it, only that I could not find a platform to air my opposition to it. Since today I have got that opportunity, I want to support the thinking of the hon. Member for Saboti; that it is not wise for us to lock the funds or contributions made by employers to these schemes, on behalf of an employee, if that employee leaves employment below the age of 50 years.

Madam Temporary Deputy Speaker, I was looking at, probably, the reason this particular rule was put in place. One, it could have been to provide some discipline on the part of an individual leaving employment, with an assumption that if one accesses money before the age of 50, he will be irresponsible. What is the magic of age 50? What if one leaves employment at the age of 50? Does that increase responsibility on the part of that particular individual? To me, the answer is no! An individual is the same, whether he leaves the job at the age of 40 or 50. If one can be irresponsible with something then that person can be more irresponsible with nothing. If you leave employment before the age of 50, you will not access the contributions from your employer. If you have no other job, then it means that you are being confined to poverty until, God willing, you reach the age of 50 years. Suppose you do not reach it because you have no money to take care of yourself. To me, this was not the right rule to introduce.

The other reason which I find more reasonable is that the Government wanted to lock up the funds because, probably, it was struggling to meet the expenditure on pensions. But then, why do we have to punish individuals, so that the Government can stay afloat? The timing of the introduction of this rule is also a bit curious. This rule was introduced when Kenya was just approaching elections. Did the Government want to retain some money to finance elections? I want to believe that was the case. I want to believe that, probably, there was a reason behind this. I want to persuade my colleagues to support this Motion. Most of people now leave employment below the age of 50 years compulsorily because maybe the company or organization is not doing well or the Government is retrenching excess staff. Then that person should be allowed to withdraw the contribution that the employer had made together with the investment income so that the person can have somewhere to lean on or a have a base from which to start. Otherwise if you quit employment and you have nothing to fall back to then you are being confined to poverty and at the same time it is like being forced to your grave because you have nothing. You were used to some income but all of a sudden you have nothing.

Madam Temporary Deputy Speaker, the Mover of the Motion also talked about life expectancy. We all know that life expectancy in Kenya is decreasing yet we are putting more stringent rules even to push accessibility to retirement to a higher age. What the Government needs to do is to allow people to transfer pension to other schemes when,

for example, you join another employer. But a case where a person loses his or her employment, then that person is not supposed to leave behind the contributions that accrued to his or her pension scheme. So, my appeal to my colleagues is that we support this Motion and urge the Government to rethink.

My friend Mr. Midiwo, talked about bringing down this economy if we allow something like this to happen. This rule was just introduced the other day in 2006 and this country did not collapse before. How come that now if we remove it, then the economy will collapse? The other argument is that this money could be used to finance infrastructure development. That is a noble idea but as we talk today, the Government has not made any serious attempts to utilize those funds in issuing infrastructural bonds. There was an attempt but we do not know what happened. Up to now, the Government has not actualized or effected the funding of infrastructure by issuing infrastructural bonds which could be purchased by some of these locked up funds. So, as far as I am concerned, the Government is using the savings that are made on behalf of employees by employers to finance Recurrent Expenditure. If it is so, then that would be very wrong.

With those few remarks, I support this Motion.

**Ms. Noor:** Madam Temporary Deputy Speaker, thank you for giving me this chance to contribute to this important Motion. I want to say that I support the Motion. I want to take this chance to congratulate Mr. Wamalwa for bringing this Motion so that we may think outside the box and not the traditional way of doing things. It shows that he cares for the future of people and particularly the livelihood of the people who serve this nation. Serving the nation is a great honour. I would like to thank all those people who have served this country in one way or the other. To me, they are our national heroes who need to be motivated by improving their conditions of service.

Madam Temporary Deputy Speaker life after work must be enjoyable. It should be a life that you look forward to without indulging yourself in corruption. If you do not know that there are other ways open for you and that you will not easily access your funds after employment, then you could be tempted to steal while in service. Civil servants could abuse their offices if they do not understand how they will be when they retire. Those who work for the Government are supposed to be role models to our children so that they can develop their potential and careers. We do not want to see horrible people in our villages who cannot sustain their own livelihood after they retire.

Madam Temporary Deputy Speaker, most people nowadays change jobs from Government to the private sector and Non-Governmental Organizations (NGOs) because they do not see light at the end of the tunnel in Government service. So, people are looking for other short-cuts where they can be able to live decent lives with their families and be proud of themselves. Government employees are not proud of working for the Government because of the poor working conditions. The officers are usually poorly paid and the little that they save, they cannot access it when they retire.

First, they must bribe before they get the job and when they retire, they also have to bribe so as to get their retirement benefits. This is not a friendly and conducive environment for the retirees. They have problems during employment and even after employment because getting their pension on time is very difficult. I can give you an example. I stopped working 15 years ago and up to today, I have not got my pension. I will not get it until I attain 50 years of age. Who knows whether I will reach 50 years! Nobody knows! We should not allow the Government to use workers' pensions to invest.



Madam Temporary Deputy Speaker, senior citizens of any country are people who are supposed to be respected and honoured because they served the nation in various capacities. In the United States of America (USA) senior citizens are respected and given money, healthcare and housing. But what happens to our senior citizens, even those who fought for Independence? They end up living miserable lives. They are not appreciated for what they did to this country.

I support the Motion because it is going to give confidence to Kenya's civil servants. At retirement, they will be sure of getting their pension. This will benefit any Kenyan civil servant who opts to retire at an early age.

**Mr. Kathuri:** Thank you, Madam Temporary Deputy Speaker, I stand to support this Motion.

From the outset, pension is the most valuable asset any working person can think of on this earth. It is important to note that the Government is the main employer and they are the ones who even started this issue of pension. But it is also worth noting that the very Government plans for five years and anything beyond that period is not sustainable. That is why after every five years, we have to go back for elections. It is also important that every other Government planning at the Ministry level, they always arrange it in such a manner that it expires after every three years. If you check what happens in the cooperative movement, the Government has set directives through the Ministry of Co-operative Development and Marketing. After every three years, you must retire and subject yourself for re-election. In any institution, even in companies, you will always find that after three years, one must be subjected to an election. It is surprising that when we think of pension we also do not look at such employees who would have been in such organizations as people who would also want to merit a bit of pension. It is good to realize that, generally, anybody who has worked for over three has a degree of loyalty. This is an issue which cannot be ignored. If one has worked for three years, for heaven sake, he should enjoy some pension.

When we look at pensions and five years having been the set minimum previously, it is too long a period. Let us stick to three years. This is going to be possible even for those who are on contract of three years so that after their three years term, they can be eligible for pension. But it is also good to mention that when we hear of an employer who is deferring one's pension until he is 55 years old, it is very worrying. How do they expect you to go and utilize your pension when you have been out for the last ten years? You retired at 40 years old, you have been out for the other 15 years, you are expected to go and get your lumpsum or whatever pension they feel that you are entitled to after 55 years. Surely, it is wrong! This pension should be made available immediately after you retire; immediately after you have stopped your employment and preferable if you have served for the three years, you should go home with the pension so that you can utilize it when you are still strong enough, when you can be productive and when you even have other sources of income which you can combine forces and maybe do something worthwhile which can sustain you in the long term. But when you are only told: "Wait until you are 55 years old!" it will be too late. It is good for us to think in terms of how one can start enjoying pension early enough so that you can become productive at an early date.

It is also good to mention that the issue of retirement age cannot be ignored at this stage. When we talk of retirement age being pushed up to 60 years, we understand the

other East African countries are at that age. True, to them, they do not have enough labour force or professionals. They even train them in Kenya and we can understand why they would push the retirement age in their countries to 60 years or even 70 years. But in Kenya we have professionals who are lying idle; graduates who ought to be working but they are not having jobs. Why do they not have jobs? Because those of who are over 55 years old are still in office! For heaven sake, I think while pushing for this, the Ministry should also not push upwards the retirement age to 60 years from 55 years. If anything, they should make it optional. I do not see why we need to have a District Commissioner (DC) who is 60 years old should go to inspect projects when ideally that job can be done by someone who is 40 years old. I do not see why we need to recruit a policeman to stay in office up to 60 years when he cannot chase a small young man who maybe a criminal. We need to look at it from the broader perspective. If it is a professional who deserves to be in office like a doctor or a related career, then we have a shortage of professional staff and those are the people who should stick in employment. But for those who are doing duties which are of a general nature, we do not need to retain them beyond 55 years. We do not need to have a commissioner of police who is 60 years old when we expect him to be waking up at 5.00 a.m. We need to ensure that that person is energetic enough for him to wake up early enough without complaining. For somebody who is 55 years old, it is a tall order to tell him to be waking up at 5.00 a.m. to go and inspect a parade just because he is expected to be on duty. Surely, he should go home! In any case, we have a young generation which is willing to work.

I do not think the issue of three years needs to be overemphasized. Let it be very clear that that is the way we should go. I do not think there is anybody who should even challenge that proposal for anybody to enjoy pension or the employer's contribution after three years. In any case, three years of service is good enough for any employer to accept that when you have been there, three years' service is worth saying thank you to the employee.

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

**Mr. Kigen:** Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity to make a few contributions towards this important Motion which was moved by my brother, Mr. Wamalwa. I start by thanking Mr. Wamalwa for this well thought out Motion in respect to our retirees or senior citizens who have made their contributions to this country in serving so diligently.

As we read the Motion, I wanted initially to propose an amendment to the Motion because looking at the first paragraph where it says that "in view of the suffering occasioned by the Retirement Benefits law to employees by prohibiting them from accessing their contribution and that of their employers---"It is not true that they do not access the contributions they have made. They do not access the contribution made by the employers. For that reason this Motion should be seeking to enable the retiree to access the employers' contribution. So, I am proposing that it should read instead of---

**The Temporary Deputy Speaker** (Prof. Kamar): Order, Mr. Kigen! You need to have given notice!

**Mr. Kigen:** Madam Temporary Deputy Speaker, we have done that.

**The Temporary Deputy Speaker** (Prof. Kamar): Please submit the amendment and continue.

**Mr. Kigen:** Madam Temporary Deputy Speaker, the other amendment, because I made two amendments that I am seeking to be included in this, I have already indicated there--- So what I am saying is that when you look at the lives of the retirees after the 55 years mandatory period, most of those people get wasted almost immediately and they die not because of anything else but because of what they can use to sustain themselves or find something else to depend on. We think that it will only be fair for the employers to allow the retirees access both employers' contribution and their money so that they can use it for whatever reason they would like to use it for. The argument that this money can assist in development or building, for example, infrastructure in the country, is really the Government's responsibility. Even as the Government does this, it should know that the aspect of using the money for infrastructural development and other forms of development in the country may not necessarily assist the retirees. At the time of leaving their jobs, some of the retirees still have small children and dependants. So, we do not do any service to the retirees and their families by denying them access to this money. This only makes them destitute. It would only be wise if this money is availed to the retirees so that they can invest it.

Madam Temporary Deputy Speaker, Sir, there has been an argument that it is because of the irresponsibility of the retirees that the Government feels that it should withhold this money until they are past the retirement age. Surely, that argument is not valid. This is because if a man is not responsible at the productive age of between 25 years and 50 years, it is a far-fetched thought to think that he will be responsible when he retires. This is not being truthful. This is totally unfair to the retiree.

The best thing we should do is to encourage the workforce of this country by allowing it access to this money the moment it needs it. That is the time the employees have left employment. They should access the money so that they can also create jobs. I am saying this because there are some retirees who have invested their little money in businesses that have done well. Some of the businesses are vibrant today and have created employment to young people. So, we are being one-sided by arguing that it is better for the law to restrict these people to their contributions and not the employer's. I support the amendment of this Motion in order to allow these people access this money. By so doing, we will encourage the contributors who join the workforce.

Madam Temporary Deputy Speaker, it is not useful for the country to raise the retirement age to 60 years. This is because the life expectancy of our people today--- Even the Bible talks about 60 years as being the ceiling for a man. Anything beyond that is considered as a bonus. So, to take our people to the bonus time is being unfair to them because they also want to use the remaining part of their life to do things for themselves. This idea should be thought out well. It should also be discussed and agreed upon. Even the opinion of the employees should be sought.

With those remarks, I beg to move the amendment and request Dr. Eseli to second it.

**Dr. Eseli:** Madam Temporary Deputy Speaker, I would like to second the amended Motion because the Retirement Benefits Funds are very important to both the Government and the retirees. The amended Motion will ensure that both the Government

and the retirees benefit from the same catch. This is because this is the only fund that could help the Government carry out its projects. We need to be careful with the high rate of unemployment in the country because we are not employing many younger people. This means that our workforce is ageing. By increasing our retirement age to 60 years, we will get into a situation where we have an older working age group while younger people will just be at home. This will increase the dependency ratio in the country. If somebody retires early, he or she should be allowed to go home with some of his or her benefits so that that person can invest and create jobs for the many unemployed youths that we have. It is important that we look at it that way so that we can get into a win-win situation. If we insist that a person will only be paid the retirement benefits at 51 years or somebody takes all the benefits as long as he or she has quit employment, we will both be losers. In this case, each one of us can reciprocally have something to take home. Most of all, this will encourage the Government to find a way of creating jobs for younger people. They need to increase the workforce. They need to make sure that we have a younger working age group than the older working age group that we have. I believe that these amendments will find favour with the Ministry of Finance, so that they can actually support this Motion, and allow people retiring early to access a certain amount of their benefits while they are still strong enough to invest and utilise the same economically.

With those few remarks, I beg to second the amendment.

*(Question, that the words to be left out be left out proposed)*

**The Temporary Deputy Speaker:** (Prof. Kamar): Anybody wishing to debate the amendments?

**Mr. Mbadi:** Thank you, Madam Temporary Deputy Speaker, for giving me another opportunity to now contribute to the amendment. I do not have much to say. I only wish to say I think this is a good compromise on the part of the Government, or the Ministry, and the rest of the hon. Members of this House; we now agree to amend this Motion, so that one can access up to a maximum of 50 per cent of the employer's contribution in the event that the person leaves employment before the age of 50 years, and at the same time he has an emergency that one wants to attend to.

Thank you.

**Mr. Midiwo:** Madam Temporary Deputy Speaker, I wish to support the amendment reluctantly, so that I can meet my colleagues halfway. However, I still believe that the country should go a different direction.

I realise that my colleagues are young. They do not see retirement as something that is nearby. The reality is that it shall come, and the Government should invest in the future of senior citizens. I have travelled around the country. Recently, I was in Cuba. My colleague, Mr. Kigen, will be surprised to hear that the average age in that country is 80 years. Everybody has something to eat in retirement.

What we are not doing is that we are not investing in the future of our country. It is interesting that we are calling 40-50-year-olds people *wazee*. *But*, because we do not aspire to anything, I am supporting my colleagues. I can tell you that this is an issue that we shall re-visit in the near future. I would have wished that the Government could hold

this money, invest it in Government securities, so that there will something for people when they reach the age of 50 years.

Maybe we can guarantee each retiree a certain amount of income. Retirement money is meant for retirement life after a certain age. It is not meant for people who are working and going to do business. If that was the case, I think a lot of people would be in business. If this the only scenario, because the employment market is so shrunken, everybody wants to sell something here. It is not the same in other countries.

Madam Temporary Deputy Speaker, as we look at other scenarios, I am sure in the next debate I shall convince you to see in my way. I support.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question of the Motion as amended proposed)*

**The Temporary Deputy Speaker** (Prof. Kamar): Any hon. Member wishing to debate the Motion in the amended form?

If not the Minister can now respond.

**The Assistant Minister, Office of the Deputy Prime Minister and the Ministry of Finance** (Mr. Oburu): Madam Temporary Deputy Speaker, Sir, I rise here to support the Motion in its amended form. It was difficult for us, as a Government; to support it in its original form. First, it was inaccurate in the sense that the employees who leave employment before retirement age access their contributions.

Madam Temporary Deputy Speaker, I want to take this opportunity first to draw the attention of hon. Members to the definition of pension which is a monetary benefit paid regularly by the Government or company to an ex-employee who is officially considered to be too old or too ill to earn money by working.

As defined herein, individuals who leave employment before attaining retirement age and are in good health, therefore, do not qualify to be pensioners. In this regard, such a person is not allowed to enjoy what is preserved for the future as doing so would expose him to poverty at old age.

We do not want our population to die early because they are completely helpless. The points made by hon. Members that people can invest this money and make money and can even treble the amount, is true but with a very few people. A majority of people, who access their money at early age, squander it. Some marry two wives and end up being very poor when they reach the retirement age. This is more of the rule than exception. The people they were talking about are more of exceptions than rules.

Madam Temporary Deputy Speaker, it should also be noted that in countries with low savings like ours, it is important that retirement benefits are accrued and preserved for survival during old age. Whereas vesting endorses entitlement of benefit rights to members, the right to possess or receive the benefits are, however, earned upon attaining retirement age stipulated in the scheme rules and not any earlier. It is also worth noting that scheme members with locked in benefits retain and are entitled to similar rights as other members. Such members are allowed, under the law, to be appointed to serve as trustees, elect trustees and attend to other scheme duties. It is stipulated in the scheme

rules. Preservation of benefits until one has attained retirement age has the following advantages among others---

**Dr. Eseli:** On a point of order, Madam Temporary Deputy Speaker. The Assistant Minister said that people marry two wives and so on and they die poor. However, we are aware that the Assistant Minister has more than one wife and he is not poor!

*(Laughter)*

**The Temporary Deputy Speaker** (Prof. Kamar): Assistant Minister, please, continue!

**The Assistant Minister for Finance** (Dr. Oburu): Madam Temporary Deputy Speaker, I am not retired. I think I am still earning something.

*(Applause)*

The advantages of retaining this money are as follows: It ensures that the original intent of the employer to provide a retirement pension is achieved even if a member transfers the money to another scheme.

This point is important because there are Members who allege that members who retire are not allowed to transfer their benefits to other schemes. The current regulations allow members who leave employment before attaining retirement age to transfer their benefits to the next scheme.

Madam Temporary Deputy Speaker, it also ensures that retirement benefits remain protected from creditors. It ensures a large benefit at retirement due to the power of compounding over a long period. It was alleged here that these benefits are not compounded. That is not true. It is compounded and members enjoy that.

It also reduces old age poverty and caused pressures on the Government programmed for old age income. It also allows schemes to invest in long term assets due to the reduced demand for liquidity. That is true. In the last Budget, the Deputy Prime Minister and Minister for Finance introduced regulations to force the retirement benefits schemes which are funded by public institutions to invest in long-term Government bonds. So, some steps are being taken to that effect. That enhances the long-term mobilization of domestic savings in the economy. That is something which we cannot over-emphasize.

I also want say that, in addition, it is worth to note that the rationale for re-introducing preservation of benefits vide Legal Notice No. 57 of 8<sup>th</sup> June, 2005, was informed by the findings by three consecutive pensioners surveys administered by the Retirement Benefits Authority (RBA). The survey findings showed that many retirees who are members of retirement schemes do not earn adequate benefits in return. The surveys further revealed that the primary cause of low benefits at retirement was frequent access and consumption of saved retirement benefits during working life, following the change of jobs.

Madam Temporary Deputy Speaker, those were the finding of that survey, and it informed the changes which were, therefore, made by the Ministry. We are now supporting this Motion, as amended. I do not want to go into the details. What I had

prepared were all the facts to oppose it but, since we are now supporting it, I do not want to contribute further.

With those few remarks, I wish to support.

**The Temporary Speaker** (Prof. Kamar): The Mover can now respond.

**Mr. Wamalwa:** Thank you Madam Temporary Deputy Speaker. I will start by thanking the Assistant Minister, Dr. Oburu. He is truly a gentleman. The definition of a gentleman is a man who says what he means and means what he says. Indeed, we raised this issue in this House in July and the Assistant Minister had indicated that the Government would look into this issue and bring some amendments that can address the issues that have been raised by many Kenyans. I think we have done that today.

I want to thank all hon. Members who have contributed to this Motion. We did not expect the Treasury to support this Motion easily because is a matter that involves over Kshs300 billion and, indeed, the Treasury has been very sensitive towards dealing with this issue. I would have wanted the Motion to be passed as proposed but, due to the reasons given, I want to thank those who have supported the amendments that will go a long way in ensuring that, apart from the exceptions already existing in our laws, where if one terminally ill, he or she should be allowed to access their employer's contribution--- If one is leaving the country permanently they, he or she is also allowed.

We are expecting the Minister to bring those amendments to the RBA Act and also to introduce regulations to allow for emergency cases. We have had cases like that of James Gone who lost his House. Due to that emergency, if he had been allowed to access up to 50 per cent of his employer's contribution - which would have been Kshs750,000 - he would have saved his house.

It is a little too late but this Motion will give hope to many Kenyans who are affected by the rule that was introduced by hon. Mwiraria in the 2005/2006 Budget.

With those few remarks, I beg to move.

*(Question of the Motion as amended put and agreed to)*

*Resolved accordingly:*

THAT, in view of the suffering occasioned by the retirement benefits law to employees by prohibiting them from accessing their employers contribution upon leaving employment before the mandatory retirement age and in view of the fact that the Government has now extended the retirement age of its employees to sixty years and those who have left employment before the mandatory retirement age will have to wait for an even longer period before accessing their contributions; this House resolves that the Government lifts the restriction under the Retirement Benefits Act in respect of occupational schemes to enable a

member leaving employment after three years of membership to be entitled thereupon to a refund of his or her contribution together with investment income accrued thereon and payment of the employer's contribution up to 50 per cent together with investment income accrued thereon in emergencies and for matters incidental thereto and connected therewith.

**The Temporary Deputy Speaker** (Prof. Kamar): Next Order!

RECOGNITION OF AMANI FORUM KENYA CHAPTER BY PARLIAMENT

**Mr. Ethuro:** Madam Temporary Deputy Speaker, I beg to move the following Motion:-

THAT, appreciating the role played by the Great Lakes Parliamentary Forum (AMANI Forum) in building the capacities of Members of Parliament in peace building and conflict management in Kenya and within the Great Lakes Region and the Horn of Africa; considering that participation of Kenya Members of Parliament in regional and national AMANI Forum activities has Significantly enriched debates in the House, informed committee deliberations, and created strategic linkages between Parliament and other actors in society; convinced on the need to mainstream peace building and conflict management aspects within the National Assembly of Kenya as the country emerges from post-election violence and is undertaking deliberate measures to promote reconciliation and national healing; aware that this is the only legislature in the region that has not given due recognition to this strategic regional organization; this House resolves that AMANI Forum Kenya Chapter be officially recognized as a parliamentary affiliated body of the National Assembly of Kenya.

Madam Temporary Deputy Speaker, this Motion is really more of a procedural Motion for purposes of Parliamentary privileges and functions. But more fundamentally, given the history of our country in terms of post-election violence, there is no better time that this particular forum needed this kind of recognition. I am saying that it is procedure in the sense that AMANI Forum was actually registered in 2000 and it has been enjoying Parliamentary recognition and support. Indeed, all the Speakers, starting with hon. Francis ole Kaparo and more recently our new Speaker, hon. Kenneth Marende, have been very instrumental in each and every activity of AMANI Forum.

However, we need to appreciate what AMANI Forum is all about. This is an initiative by the African Parliamentarians in the Great Lakes Region in 1999, when we felt that we needed African solutions to African problems. So, the mantra of AMANI Forum is "African solutions to African problems." Indeed, the Kenyan Chapter has been able to enjoy the distinguished leadership of Prof. Peter Anyang'-Nyong'o and hon. Paul Muite, who were the first regional executive Members in the year 2003. We have also



had the opportunity of enjoying the good leadership of hon. Gitobu Imanyara, who was our first National Chairman and the man I took over from, hon. Maj-Gen. Nkaisserry. These individuals, in their individual and collective responsibility to this House, have AMANI Forum make tremendous progress in this country and region.

Madam Temporary Deputy Speaker, the AMANI Forum is in seven national Parliaments in the Great Lakes region. It has also a branch in the East African Legislative Assembly, making it eight chapters in the region. All these legislatures have been able to recognize AMANI Forum for what it has been able to do for its parliamentarians and countries. It is only Kenya that has not been able to give the formal recognition apart from the informal links that I have already ascribed to you.

Madam Temporary Deputy Speaker the reason why we are asking this Parliament to resolve that AMANI becomes a body of Parliament is that it requires support like any other committee of the House. It requires facilitation, recognition and more fundamentally, it is an opportunity like many other networks that we have in the House, like Parliamentarians for Global Action. We need to give capacity to Members of Parliament to actually interrogate and train on concept, issues and practices and usage of peace messages.

Members of Parliament have the option to become peace-makers or warlords. Through this Motion, I would like to persuade my honourable colleagues that each one of us has a responsibility to this great Republic to ensure that we are peace-makers. The Holy Book says in Matthew Chapter 5 in the beatitudes that:

“Blessed are the peace-makers for they shall be called children of God”.

Who would not want to associate their filial ties with none other than the Lord Jesus Christ? When you are a peace-maker you are called a child of God. The only child of God that we know is the Lord Jesus. So, the rest of us have the privilege and the opportunity to accelerate ourselves to higher levels by being peace-makers. That is what we would like to achieve in this.

Madam Temporary Deputy Speaker, we would like this House, because the Tenth Parliament in particular, has been placed by history at such a strategic moment in the life of this country, given the outcome of 2007 General Elections and the aftermath of the post-election violence, that we are better placed to help heal this nation through legislatures involved in post-conflict reconciliation. We have experiences in the region; Rwanda and Uganda are countries in our region. For too long, we felt like we are an island of peace and for sure we were. But we forgot to realize that when you are secure, you should be looking harder to ensure that you are more stable. Until we got a rude awakening that this society is actually unequal in terms of distribution of wealth. This society is actually unequal in terms of power distribution, making our people butcher each other.

As Members of Parliament, we need to be the peace-makers. We need to acquire the tools and appreciate each other. We would like the peace messages to start from this House. I am emphasizing this because it is very easy for hon. Members to think that they know peace and practice peace. It is different. We need even the language in which to communicate. If you recall, the Kenya National Human Rights Commission (KNHRC) always used to put out statements by hon. Members who were waging in war-like utterances. We do not want that to come from a third party. As hon. Members in this

House, we should be our brother's keeper. We want to mind our language. We want to speak a language that promotes peace and dialogue. We want the spirit of give and take. That is the only way that we can build a nation that is peaceful, prosperous and can last beyond this generation and many generations to come. We owe not to ourselves but to the future generations. The AMANI Forum will be able to organize this through various activities. One of the proposed activities is to engage hon. Members in regional activities to learn experiences. In the last Parliament, some hon. Members went to Rwanda to see what the impact of post-conflict was where over 300,000 skulls are concentrated in one particular place. That time, I even felt that we did not have to go very far; all we needed is to go to a place known as Lopiding Sub-District in Lokichoggio to see the kind of people without limbs who were being treated by the ICRC in the Lopiding Hospital in Lokichoggio. The effects of war are real. The effects of war are devastating! The effects of war destroy nations! It is not enough to argue that you have to go through some baptism by fire or destruction in order to come and make some faster growth.

Madam Temporary Deputy Speaker, through AMANI Forum, we want to commit ourselves as legislatures that we do not have to go to war in order to grow faster. We can actually grow faster in terms of our economic growth through peaceful means and times. We would like this country to make that distinction that we are the exception to the general rule. Why not? We are Kenyans! We are capable, we have capacity, we have the resilience and we should be able to do it. I would like this House to provide the leadership through the AMANI Forum: That the leadership of this nation; the leadership of reconciling our people is one objective that AMANI Forum would like to realize. You and I are members of our national chapter. We also have Mr. K. Kilonzo, who is the Secretary-General, Mr. Ogindo who is the Vice-Chairman and many other hon. Members across the political divide and the regions.

The second activity that AMANI Forum wishes to engage our parliamentarians is the activity of inter-community dialogue where we have identified specific areas that we believe have always been problematic; that we need to engage more. That will be our modest contribution, as a Parliament, to peaceful co-existence of communities, an agenda that, indeed, the Executive is already helping somewhat but we also need to demonstrate our willingness and resolve, as a Parliament, to ensure that this particular activity can be done very properly. There are no better people to do it than hon. Members because our people trust us. Our people elected us and they have they will crack the whip if we do not play our role at the end of every election. This is why we believe that this particular activity will be able to help our hon. Members in terms of helping our societies and we will be going out. We would like to go to the borderlines within Nyanza Province, North Rift, Upper Rift and Upper Eastern provinces. We would like to go to the Coastal region and the North Eastern Province. In the words of Mahatma Gandhi, when speaking in the Indian Congress in 1946, he said: "We speak so eloquently here but until we go out and reach there, then by the time we come back, when we will humming, then India will sing because we will be speaking of things we know of and not of things that we are imagining." Our nation needs a lot of healing and a lot of reconciliation and AMANI Forum has placed that responsibility rightly and squarely on the shoulders of hon. Members of the Tenth Parliament.

It is important to appreciate that we operate in a region that is called Great Lakes Region. This is a region that is associated with instability. For us, our own neighbours in Somalia---

**The Temporary Deputy Speaker** (Prof. Kamar): Order, Mr. Ethuro! You will have four minutes when we resume next.

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Prof. Kamar): Hon. Members, it is now time for the interruption of the business. The House is, therefore, adjourned until Wednesday, 19<sup>th</sup> August, 2009, at 2.30 p.m.

The House rose at 12.30 p.m.