

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 21st May, 2009

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

RESCHEDULING OF CEREMONY OF WOMEN ENTERPRISE FUND

Mr. Speaker: Hon. Members, I have the following Communication to make:-

The launch of the Women Enterprise Fund that was scheduled to take place tomorrow, 22nd May, 2009, has been rescheduled, and will now be held on Tuesday 26th May, 2009 at the Kenyatta International Conference Centre (KICC) Grounds beginning from 10.00 a.m. The ceremony will be presided over by His Excellency the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, hon. Mwai Kibaki.

The hon. Minister for Gender, Children and Social Development has kindly extended an invitation to all hon. Members. I, therefore, appeal to Members to attend that important national occasion to launch the Women Enterprise Fund.

Thank you.

QUESTION BY PRIVATE NOTICE

CAUSE OF HEAVY POWER FLUCTUATIONS AT KNH

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

(a) Could the Minister explain the cause of the heavy power supply fluctuations at Kenyatta National Hospital (KNH), which has adversely affected services at the facility over the last 24 hours?

(b) What urgent action is he taking to ensure that there is adequate and smooth supply of electricity to such important facilities and the country at large?

Mr. Speaker, Sir, I have just received communication from hon. Mahamud, who is supposed to respond to this Question, that he is on the way coming. So, he has requested that we give him a bit of time.

Mr. Speaker: Fair enough! Order hon. Members! We shall leave that Question in abeyance and revisit it later on if we have time.

ORAL ANSWERS TO QUESTIONS

Question No.032

SEVERE WATER SHORTAGE IN MACHAKOS TOWN

Dr. Munyaka asked the Minister for Water and Irrigation:

(a) why the normal water supply to Machakos Town is no longer available, thereby causing the residents to experience a severe water shortage; and,

(b) when the construction of Maruba Dam will be completed and what stopgap steps the Ministry has taken to restore the water supply to the residents as they await the completion of the dam.

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

(a) Machakos Town has two sources of water, namely, Nol Turesh Pipeline and the Maruba Dam. The normal water supply to the town was disrupted from 24th February to 10th April, 2009, due to a breakdown of a pumping unit at Kima Pumping Station on the Nol Turesh Pipeline. The pumping unit is a high duty specialized type that is not available locally and had to be imported from France. My Ministry spent Kshs8 million to replace the pumping unit and restore the normal water supply. During the disruption, we availed a water bowser to supply water to the residents as a stopgap measure.

(b) Rehabilitation of Maruba Dam comprises of raising up of the dam embankment to increase storage, rehabilitation of spillway, expansion of the treatment works and rehabilitation of the trunk pipeline. Raising of the dam embankment and the rehabilitation of the spillway are scheduled to be completed within the next Financial Year, 2009/2010, at a cost of an extra Kshs100 million. The project is scheduled, therefore, to be commissioned by the end of October, 2010. The rehabilitation works are being undertaken with minimum disruptions to water supply to Machakos.

Dr. Munyaka: Mr. Speaker, Sir, I really want to thank the Minister for that very good answer, and for minding about the welfare of the residents of Machakos Town. However, since we anticipate a constant supply of water immediately the Maruba Dam is completed, I would like the Minister to tell us whether there are any plans to improve the sewer treatment and the sewer line in Machakos Town.

Mrs. Ngilu: Mr. Speaker, Sir, I am pleased that the hon. Member is happy with the work that we are doing in Machakos. I believe the residents of Machakos Town are also going to be happy very soon. We are going to look for resources to improve the sewerage. We are also going to look for funds to do more works. There is another dam that has to be done in Machakos called Miwongoni, and that requires extra money. We are going to look for resources to do that.

Mr. Ruteere: Mr. Speaker, Sir, I want to ask the Minister what she is doing in other places like Nairobi, especially in Nairobi Dam Estate, where water has been missing. The Nairobi Water Company has said that it is rationing water. There has not been any water rationing in Nairobi for quite sometime.

Mrs. Ngilu: Mr. Speaker, Sir, I am aware that there is water rationing. We will continue to ration water. That is because we have had very poor rains this year. In fact,

time may come when there will be no water to ration. We may be forced to deliver water to people's homes because the rains have been extremely poor. The supply of water from the two dams, namely, Sasumua and Ndakaini, has not been adequate. So, we are looking for ways of ensuring that the residents of Nairobi can get, at least, some water.

Mr. Affey: Mr. Speaker, Sir, I would like to find out from the Minister whether, indeed, she is aware that the entire North Eastern Province is currently going through a serious crisis of water. What might have happened of the funds that were released by the Treasury to mitigate that particular crisis in the province?

Mrs. Ngilu: Mr. Speaker, Sir, I am aware that North Eastern Province is going through a very difficult time due to the long drought that has affected the whole country. However, recently, I disbursed some water bowsers to North Eastern Province. I know that some areas in the province, for instance Mandera West, now have adequate water. We need to distribute the water that we have been able to drill to some of the places. I am aware and I am putting more resources in those areas.

Mr. Mungatana: Mr. Speaker, Sir, the Ministry of Water and Irrigation, sometimes, does have a genuine shortage of funding. I want to ask the Minister whether she could consider, in small towns like Garsen, mapping out plans, so that those of us who are able to source for extra funding, can drill dams in those places and put up sewerage systems. Is she able to do that for us?

Mrs. Ngilu: Mr. Speaker, Sir, over the years, we have never had a serious water masterplan in the country. It is the first time that we are putting up a national water strategic plan, including looking at the proposals that hon. Members are making. In fact, this time, we have factored in some money to do just that. We need to check on the areas where such proposals can work.

Dr. Munyaka: Mr. Speaker, Sir, I would like the Minister to tell us whether she is aware that there exist some cartels in Machakos Town where people fetch water from the pipeline and vend it to the consumers.

Mrs. Ngilu: Mr. Speaker, Sir, yes, I am aware. Indeed, I personally visited some of those people who have put up huge water storage tanks. Indeed, instead of water going to the residents, they divert it into their huge storage tanks. Then they sell it to the residents at very exorbitant prices. I stopped that and withdrew the licences that they had been given.

I want to ask the hon. Member that if he knows somebody who is doing that, he should bring that person to our attention and we are going to deal with him or her.

Mr. Speaker: Next Question!

Question No.087

DEATH OF LIONS IN KENYAN PARKS

Mr. Mututho asked the Minister for Environment and Mineral Resources: -

(a) whether he is aware of the airing of a damaging documentary on Kenya in international media on 14th April 2009 by CBS, a television network in USA, regarding death of lions in a Kenyan park;

(b) whether he can confirm that the pride of seven lions found dead in the parks were as a result of Furadan poisoning; and,

(c) when he will, through NEMA, effect immediate ban of Furadan chemical, pending further investigations.

The Minister for Environment and Mineral Resources (Mr. Michuki): Mr. Speaker, Sir, let me first of all apologise for yesterday morning. This Question was on the Order Paper but, as I have subsequently explained to the Chair, this Question has three elements. It has the issue of animals. There is the allegation about animals having died. It also has an element of a chemical that is alleged to have killed lions. It also raises the question of the image of the country.

Mr. Speaker, Sir, none of these issues is in my docket. I have written to the Chair this morning and he knows that I have had discussions with the Minister in charge of animals. I have also given a copy of the letter to the Member. The Minister has agreed to deal with the Question.

However, I do not know how he will deal with the second and third elements. Chemicals fall under the Ministry of Agriculture. There is a Board in the Ministry of Agriculture that controls pest products. There we are. I am sure the Question will be answered accordingly.

Mr. Mututho: Mr. Speaker, Sir, would I be in order to refer this Question to the Prime Minister so that he can answer it?

Mr. Speaker: You will be out of order!

Mr. Mututho: Mr. Speaker, Sir, ---

Mr. Speaker: Order, Mr. Mututho! What you are supposed to do is so simple! Just indicate if the Chair has your concurrence that this Question be referred to the relevant Ministry! Do you concur?

Mr. Mututho: Mr. Speaker, Sir, I concur that---

Mr. Speaker: John! Order, Mr. Mututho! Do not make issues out of non-events! You want an answer and this Question has been referred to the relevant Ministry. So, wait for the answer! If for any reason the answer is not satisfactory and you think it should be referred to some other office, including that of the Prime Minister, then you will say so at the opportune time. Let us use our time optimally!

Mr. Mututho: Much obliged, Mr. Speaker, Sir.

Mr. Speaker: Thank you John!

I want to urge Members of the Cabinet to emulate the good example set by the Minister for Environment and Mineral Resources, Mr. John Michuki!

(Applause)

When he was not able to be present timeously to answer a question yesterday, the Minister took it upon himself to immediately communicate with the Speaker as to why he was not able. He then followed it up in writing. If we can all be as dutiful as that, we would be moving in the right direction.

This Question is deferred to Thursday next week! We will expect the Minister in charge of wildlife to deal with it then.

(Question deferred)

Next Question!

Question No.127

PROCEDURE OF CONVERTING PUBLIC DAY
SCHOOLS TO BOARDING SCHOOLS

Mr. Yakub asked the Minister for Education: -

(a) what the requirements and procedure for a public day school to convert to a boarding school are; and,

(b) what action he is taking against former day schools that have converted into boarding schools without following the correct procedures.

Mr. Speaker, Sir, I have, however, not received the written reply.

Mr. Speaker: The Minister for Education! The Minister is not here? Is there anybody holding brief for him?

(Mrs. Ngilu stood up in her place)

Mrs. Charity Ngilu, you will convey the information to the Minister that he was not here to answer this Question and that, in accordance with our Standing Orders, that conduct is disorderly. So, we will not allow the Minister to transact any business in this House until an explanation, to the satisfaction of this House, is offered.

(Question deferred)

Question No.129

MEASURES TO MITIGATE
DROUGHT CRISIS

Mr. M.H. Ali asked the Minister of State for Special Programmes:

(a) what measures she has put in place to mitigate the crisis resulting in the poor long rains and inadequate short rains that have caused severe drought; and,

(b) whether she could outline the plans she has to increase relief food allocation in the area.

Mr. Speaker, Sir, I have also not got the written reply.

Mr. Speaker: The Minister of State for Special Programmes! Is it business as usual once again?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Speaker, Sir, I will let her know.

Mr. Speaker: The same sentiments as I have conveyed on behalf of the House with respect to the Minister for Education shall apply to the Minister of State for Special Programmes. Please, let her know!

Next Question!

Question No.141

NON-ISSUANCE OF TITLE DEEDS TO
CHEBYUK SETTLEMENT SCHEME LANDOWNERS

Mr. Kapondi asked the Minister for Lands: -

(a) why the Government has not issued Title Deeds to landowners in Chebyuk Settlement Scheme (Phase I and II) who have occupied the land for 24 years; and,

(b) when he plans to issue the document.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Speaker, Sir, I beg the indulgence of the House because the answer I have is not satisfactory. I have discussed with the Member and we have agreed that I go and bring the right answer.

Mr. Speaker: When?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Speaker, Sir, Thursday next week.

Mr. Speaker: Mr. Kapondi, are you in agreement?

Mr. Kapondi: Mr. Speaker, Sir, I totally concur with the Assistant Minister that he should come with a proper answer.

Mr. Speaker: The Question is, therefore, deferred to Thursday next week!

(Question deferred)

Question No.144

UPGRADING OF SIGOR HEALTH
CENTER TO DISTRICT HOSPITAL

Mr. Speaker: Mr. Litole is not here? He did not give any explanation and, therefore, the Question is dropped!

(Question dropped)

Question No.153

TARMACKING OF ROADS IN
THARAKA DISTRICT

Mr. Mwiru asked the Minister for Roads what urgent affirmative action he plans for Tharaka District in terms of road network, considering that it is the only district in the larger Meru region without any tarmacked road.

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

Mr. Speaker, Sir, my Ministry is currently preparing 20-year Road Sector Investment Plan (RSIP) for the country. The plan is expected to identify priorities in road maintenance, rehabilitation and upgrading to bitumen standards in all parts of this country, including Tharaka District. However, the Government is currently upgrading to bitumen standards Ena - Ishiara - Chiakariga Road, otherwise referred to as C92 and part of this road is in Tharaka District. To be precise, 20 kilometers of this Road are in Tharaka District. The entire road project length is 61 kilometers and will cost Kshs2,98,626,782.

Mr. Mwiru: Mr. Speaker, Sir, may I thank the Assistant Minister for the answer. However, Road C92, commonly called the Mate Road, serves quite a number of districts in that particular region. Only six kilometres of the road he has talked about as being to bitumen standard, serves the district called Tharaka.

Could the Assistant Minister consider upgrading the whole road, which is an equivalent of 100 kilometres, from Ena where it starts, to the nerve centre of the region, which is Meru Town? This road can, at least, alleviate the problem of transport in that area.

Dr. Machage: Mr. Speaker, Sir, I have taken cognizance of the fact that Tharaka has a poor road network system. I may not be able to cover the 100 kilometres so desired by the Member, but I will do my best to make sure that he is well catered for in road maintenance and building.

Mr. Mbugua: Mr. Speaker, Sir, you will realize that all the *miraa* from Tharaka comes to Kamukunji, yet the road network in Kamukunji has been neglected for the last 15 years. What is the Assistant Minister doing to ensure that the road network in Kamukunji is fully developed?

Dr. Machage: Mr. Speaker, Sir, whereas that is a completely different Question, let me assure the hon. Member that I have not forgotten him.

Mr. Yakub: Mr. Speaker, Sir, the Mombasa-Nairobi Road, at Mariakani, has become a black spot for Kenyans. Only last week two Kenyans were killed by lorries. Could the Assistant Minister arrange to erect permanent bumps or strips at the said site?

Dr. Machage: Mr. Speaker, Sir, I have always said that construction of bumps is not a policy in my Ministry, but I will look into the request and deal with it if it requires that. My only appeal is for Kenyans to be aware of accident spots. We are building good roads now, but not death traps. We intend to have safety on our roads, and that is why we are constructing them. Mariakani is one of the places where I have done a very good job, and I expect Kenyans to observe law and order while driving.

Mr. Mwiru: Mr. Speaker, Sir, I am happy with the attempt the Assistant Minister is making for this particular district. As you will realize, Tharaka is completely cut off from the rest of the larger Meru. I would like to hear from him whether he could consider the 19 kilometres from Ciakariga to Tharaka Headquarters at Marimanti. It is only 19 kilometres!

Dr. Machage: Mr. Speaker, Sir, whereas that is not in my current plan, I want the hon. Member to know that I have allocated, this financial year, Kshs51 million to routinely maintain the roads in his constituency. I am happy that he has very good roads and although not bitumenized, they are good roads for access to the area he is talking about.

Mr. Speaker: *Mhe. Mbunge wa Isiolo Kusini.*

*Question No.156*PROVISION OF SERVICEABLE VEHICLES TO
GARBA TULLA/SERICHO POLICE STATIONS

Mr. Speaker: *Mbunge wa Isiolo Kusini hayuko; kwa hivyo Swali litatupwa!*

(Question dropped)

Question No.163

FINANCIAL STATUS OF KENYA INDUSTRIAL ESTATES

Mr. J.M. Kamau asked the Minister for Industrialization:-

(a) whether he could explain what became of the Kenya Industrial Estates and table the audited accounts since its inception; (b) whether he could provide an update on all the projects undertaken by the corporation to date; and

(c) whether he could state what steps he is taking to return the corporation to optimal operation.

Mr. Speaker, Sir, I was approached by the Assistant Minister who requested that we give him more time because he does not have a substantive answer. I have no problem with that for as long as he keeps his promise, and brings the answer next week on Wednesday.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): On a point of order, Mr. Speaker, Sir. You have realized that the Chair reprimands Ministers who do not come on time to answer Questions. I thought that you would also extend the same to hon. Members who do not report here in time to ask their Questions.

Mr. Speaker: Yes, we are extending the same treatment to both sides. I do not envisage a greater punishment than dropping a Question. That is punishment more than, perhaps, the punishment that is meted out to the Cabinet.

Mr. Affey: On a point of order, Mr. Speaker, Sir. It is realized that when hon. Members go on official engagements, particularly when the Speaker himself clears hon. Members to attend matters that concern Parliamentary work, Mr. Speaker would be well informed. In the case of Mr. Bahari, he has gone to attend the Pan African Parliament Session.

Mr. Speaker: Order, Mr. Affey! If you have an explanation as to why Mr. Bahari was not here to ask his Question, then you are guilty of a concept known as *laches*. You have come up too late to draw the attention of the Chair to the fact that Mr. Bahari has been assigned to attend to some duty which you ought to have done a lot earlier.

Mr. Affey: Mr. Speaker, Sir, I imagined that the Chair is always aware!

Mr. Speaker: Order, Mr. Affey! The Chair does not hear; the Chair does not see until its attention is drawn to the fact. At any rate, Mr. Affey, you should not even persist! You should not go beyond where you are because you are gravely out of order. We are

now dealing with Question No.163, and you are taking us back to Question No.156! That, obviously, is disorderly conduct. Do not persist!

Mr. Affey: Mr. Speaker, Sir, I do not want to persist. I only stood up after the Assistant Minister complained about the absence of hon. Members who to ask Questions.

Mr. Speaker: Order! Even if you did that, the explanation you are offering relates to whose absence?

Mr. Affey: Mr. Bahari!

Mr. Speaker: So?

(Laughter)

That is why I cautioned you! Do not persist! We will accommodate and forgive you for the moment but, please, in future, bear in mind what the Chair may be saying.

Question No.163 is deferred to Tuesday next week, and so is Question No.127.

(Question deferred)

Question No.127

PROCEDURE OF CONVERTING PUBLIC DAY
SCHOOLS TO BOARDING SCHOOLS

(Question deferred)

Mr. Speaker: We will now go back to the Question by Private Notice!

QUESTION BY PRIVATE NOTICE

CAUSE OF HEAVY POWER FLUCTUATIONS AT KNH

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

(a) Could the Minister could explain the cause of the heavy power supply fluctuations at Kenyatta National Hospital (KNH), which have adversely affected services at the facility over the last 24 hours?

(b) What urgent action is he taking to ensure that there is adequate and smooth supply of electricity to such important facilities and the country at large?

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

(a) I am not aware of any power supply fluctuations at the KNH. This is because the hospital is supplied with power primarily through Ngong Road feeder from Nairobi West Sub-Station and Hill II feeder from Cathedral Sub-Station. In the event of power failure from one sub-station, there is instantaneous auto changeover to the other feeder through a switch based at the hospital, and this is not noticeable at the user end.

In the rare event that the two feeders mentioned above are not available, power to the hospital is also provided through a second feeder from Nairobi West Sub-Station.

This second feeder is, however, manually operated and, therefore, noticeable for a few minutes at the user end. The hon. Member may wish to note that no manual changeover has taken place in the recent past and, therefore, the power fluctuations referred to in the Question must have been an internal power disruption issue within the hospital. In this regard, the Kenya Power and Lighting Company (KPLC) engineers have since been directed to work with the hospital engineers with a view to providing any assistance required.

(b) To ensure there is adequate and smooth supply of electricity to the hospital and its environs, the Ngong Road Sub-Station was recently commissioned, and this will free the Ngong Road feeder for exclusive use by the hospital. Thorough maintenance of the feeder is also in progress and this will cover replacement of rotten poles, jumper rehabilitation and trace maintenance to rid trees encroachment on the power lines. This exercise will be completed by June, 2009.

Mr. Chanzu: Mr. Speaker, Sir, I would like to state that I received the information about the problem at the Kenyatta National Hospital (KNH) from the Director. The issue of power surges and outages is a very common phenomenon. I am happy to hear from the Assistant Minister that he has now instructed the Kenya Power and Lighting Company (KPLC) engineers to look at the problem. However, I would like him to make a follow up, because it appears as if no action has been taken. Could the Assistant Minister give this House that assurance?

Eng. M.M Mahamud: Mr. Speaker, Sir, in fact, we were in touch with the hospital this morning. We were informed that the only disturbances at the hospital occurred on 3rd April, 2009, which lasted between 6.30 p.m. and 8.00 p.m. During the two incidents, the interruptions were caused by the supply of power through the Single-Phase instead of the normal Three-Phase connection. Since the KNH is a very important institution, I would like to assure the Member that we will follow up the issue with both the KPLC engineers and those at the KNH, to ensure that power supply is not interrupted.

Dr. Khalwale: Mr. Speaker, Sir, fluctuations of power at the KNH, just like all other hospitals in the country, is very risky because most of the machines in those hospitals are life-saving. Could the Assistant Minister tell this House the plans he has to end the monopoly enjoyed by the KPLC in the supply of electricity in the country?

Eng. M.M. Mahamud: Mr. Speaker, Sir, there are no plans to have another power utility company in Kenya.

Mr. Speaker: Last question, Mr. Chanzu!

Mr. Chanzu: Mr. Speaker, Sir, these power outages and disruptions more often than not damage equipment before the standby generators automatically switch on. Could the Assistant Minister assure this House that they will take responsibility for any damage caused to any equipment like computers?

Eng. M.M. Mahamud: Mr. Speaker, Sir, I will not take responsibility for any damage caused to equipment, but I assure the hon. Member that we will work with the KPLC and the KNH staff to ensure that the interruptions are minimised.

Mr. Speaker: Question No.129 pertaining to the Minister of State for Special Programmes is deferred to Wednesday, next week! The Chair is aware that the Minister eventually came in before we came to the end of Question Time. However, the directions given still stand. Madam Minister, we will be expecting an explanation next week or earlier, before you transact any other business in the House.

(Resumption of Oral Answers to Question)

Question No.129

MEASURES TO MITIGATE THE DROUGHT CRISIS

(Question deferred)

MINISTERIAL STATEMENTS

CLARIFICATION ON THE 2009 KENYA POPULATION AND HOUSING CENSUS

The Minister of State for Planning, National Development and Vision 2030

(Mr. Oparanya): Thank you, Mr. Speaker, Sir. I would like to make a Ministerial Statement about the 2009 Kenya Population and Housing Census. I am doing this because a number of Members of Parliament have come to my office to ask about the Census. So, I would like to make the Ministerial Statement to clarify some of these issues.

Mr. Speaker, Sir, the Government will conduct the next population and housing census from the night of 24th and 25th August, 2009. Implementation of the 2009 Census preparatory activities started in November, 2006 and are about to be completed. Results of the Census will provide a detailed account of the population at the administrative and political level. The census results will also give information on the demographic and social characteristics for the different administrative and political units. The information from the Census will provide baseline data for the Vision 2030 and the monitoring of the global initiatives such as the Millennium Development Goals and the International Conference on Population and Development.

Mr. Speaker, Sir, the census is being undertaken in phases and a number of activities have been implemented while others are on-going. Cartographic marking is an integral part of the census process and has been going on since November 2006 to align administrative units into counting units called "enumeration areas". The cartographic fieldwork is expected to be completed by 5th June, 2009. Sensitization of the District Commissioners (DCs), District Officers (DOs), chiefs and assistant chiefs on cartographic marking census process and their role has been completed in all provinces. The census committees have been constituted at the national and district levels. The committees constituted include the National Census Steering Committee, under the chairmanship of the Permanent Secretary in the Ministry of State for Planning, National Development and Vision 2030, the Census Secretariat, technical working committees and the district census committees. The committees are to provide avenues to appraise various stakeholders on progress towards implementation of the census activities at different levels. Membership of the committees include Government departments, Members of Parliament, Non-Governmental Organizations (NGOs), faith-based organizations, learning institutions and special groups. To ensure transparency and accountability of the census resources, district census finance sub-committees have been constituted to take charge of all census resources at the district level.

All hon. Members of Parliament are members of the district census committees and are, therefore, expected to actively participate in the deliberations of the committees. Being opinion leaders, they should undertake publicly activities in their constituencies on the need for everybody to participate in the census. Development of census instruments have been finalised and approved by the National Census Steering Committee. The instruments include the main census questionnaire, institutional population questionnaire, travellers and outdoor slip questionnaire and immigrant questionnaire to capture information about Kenyans in the diaspora.

Mr. Speaker, Sir, the enumeration phase will require a large number of staff who will include enumerators, supervisors, senior supervisors, drivers, village elders, security personnel and administrators. About 100,000 enumerators, 22,000 supervisors and 6,000 senior supervisors will be engaged for census enumeration for about Kshs4.54 billion. Finalisation of the ongoing cartographic marking should confirm the exact number of personnel to be engaged. For social accessibility, census personnel will be engaged in areas they reside and employment will be through district census committees that will follow the guidelines to be given by the National Census Steering Committee.

Mr. Speaker, Sir, it is expected that the census will cost about Kshs7.36 billion. The cost of personnel, during the census, will be about 55 per cent of that amount. Census preparatory activities are being implemented. Several challenges have been faced. These include the following, as I finalize.

One is the post-election crisis. The preparatory census activities were hampered by post-election violence witnessed in early 2008. Boundary disputes; a number of districts are still experiencing boundary disputes, which should be resolved to allow the finalization of mapping. The number of districts and administration units have increased tremendously in the previous past. Districts that have been subdivided may have to be revisited which will affect the verification process and hence final printing of the map. This will require extra resources. My Ministry has, therefore, decided to work with 158 districts. Boundaries for other districts will be determined after the census enumeration.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: There may be hon. Members who want to seek clarifications on this Statement on the census. Mr. Minister, please take notes. We will allow three hon. Members to seek clarifications.

Yes, Dr. Kwalwale!

Dr. Khalwale: Mr. Speaker, Sir, my experience in this House has been that, for example, in the crucial area of the CDF, the Minister has been using the statistics of the population census of 1999. Therefore, in the process, he has not been able to capture the different trends of population growth. We have certain parts of this country where the population growth is faster. Therefore, when we use the old figures of 1999 in factoring CDF, we end up shortchanging those areas. Could he clarify whether, upon completion of this exercise, there will be a special team that will do a continuous exercise that will inform us, so that, in future, the CDF does not use the figures of this year, but will also capture the changing trends?

The last clarification has to do with special groups in this country. I have in mind the disabled and the squatters. Has he designed the census exercise such that it will be very clear on the squatters and the disabled? We want to know specifically how many squatters we have in this country. This is important because some people have become

professional squatters. If you ask me, I do not think we have many squatters in this country. Everybody has a home where he came from. However, since people want to benefit from free goodies or land from the Government, they pretend to be squatters. Will he specifically tell us how many squatters we have in the country?

Mr. Abdirahman: Mr. Speaker, Sir, the Minister has just acknowledged that there exists boundary problems, both administrative and electoral in a number of areas in this country. While in the planning stage, could he consider alerting both enumerators and supervisors, who will be recruited, on the actual problems that exist on the ground, so that people can be allowed to register where they come from?

Ms. Noor: Thank you, Mr. Speaker, Sir. The Planning stage in development issues is very key and important. What methodology or criteria has the Minister put in place to reach out to the pastoral communities of this country?

Mr. Mwiru: Mr. Speaker, Sir, recently, there has been a creation of several districts in this country. I want to know whether he will consider carrying out the census exercise according to those units.

The Minister of State, for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, on the first issue raised by Dr. Khalwale, as we are aware, 25 per cent of the CDF is based on the population trends and poverty. We have been using the 1999 figures. From next year, we will be using the figures of 2009. However, we will carry out a special survey on poverty, which cannot be covered within the census. This is because the poverty survey takes a whole 12 months. We are planning to do a poverty survey immediately after the census, so that by August 2010, we can have both the a census figure and the poverty levels in each area. That is a very different survey. However, we cannot be carrying out census exercise every year. We have to use the estimates of the previous year. We have been estimating the growth of population by 2.5 per cent each year.

On the issue of disabilities, this has been covered in the questionnaire. However, the issue of squatters has not been covered because the census exercise cannot incorporate everything.

On the issue raised by Ms. Noor on pastoralists, I would like to say that all enumerators will be recruited from their home areas, so that they identify everybody. That is why I am informing hon. Members that they are members of the District Census Committees (DCCs). I urge them to be involved in the recruitment exercise of all the enumerators in their constituencies, so that they do not complain of “foreigners” being recruited.

On the last question, we are carrying out the census exercise up to the sub-area level. After we have resolved the boundary disputes, it will be easier for us to know which sub-area belongs to which district. We have done cartographic mapping. We have mapped every household in every area. So, we know how many households there are in a particular constituency. If you come to see me next week, I will tell you how many households you have in your area. I can also trace your home.

Mr. Abdirahman: On a point of order, Mr. Speaker, Sir, I know that we have a problem with our boundaries, both administrative and electoral. However, I asked the Minister whether he could allow people to be counted wherever they are, instead of them going to their home districts?

The Minister of State, for Planning, National Development and Vision 2030

(Mr. Oparanya): Mr. Speaker, Sir, when we carry out census, we do not restrict movement of people. Even those who will be traveling on that particular day, there is a provision for them to be counted where they are. If the hon. Member requires his own people to be in a particular place on that day, they will be counted there. He should sensitize his own people to be where he wants them to be that night.

Mr. Mbugua: On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead this House by telling us that the cartographic maps are taken by people while we know that they are taken by a satellite and in Kenya we do not have a satellite to be able to take those maps?

The Minister of State for Planning, National Development and Vision 2030

(Mr. Oparanya): Mr. Speaker, Sir, I think the hon. Member is misleading the House. He has decided to go to an area in which he is not a specialist. I wish he talked to Dr. Otichilo because he would have informed him! They are there and we have done it.

Mr. Letimalo: Mr. Speaker, Sir, considering that some areas are not accessible due to poor road network, could the Minister consider giving provision of using camels and donkeys as a mode of transport in those areas?

Mr. Speaker: Order, Mr. Letimalo! That is not a point of order! All the same, I will allow the Minister to respond.

The Minister of State for Planning, National Development and Vision 2030

(Mr. Oparanya): Mr. Speaker, Sir, this is not the first time that we are carrying out a census. We have done it before and, in fact, this is the fifth time. So, we shall take care of that, depending on the geography of the area. We shall make sure that everybody is counted.

Mr. Speaker: Mr. Minister, please proceed to the next Ministerial Statement.

The Minister of State for Planning, National Development and Vision 2030

(Mr. Oparanya): Mr. Speaker, Sir, I wanted to make a comment on the sensitization workshop that will be held tomorrow.

Mr. Mwiru: On a point of order, Mr. Speaker, Sir. I had sought a clarification from the Minister on the earlier Ministerial Statement that he had made on whether he could consider doing census in line with the new districts that have been created.

Mr. Speaker: Mr. Mwiru, you have raised that point of order too late because I have already asked the Minister to issue the next Ministerial Statement. Ensure that when you have a point of order, you raise it on time. You are already overtaken.

Mr. Linturi: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Linturi! We must make progress!

MEMBERS' SENSITIZATION WORKSHOP
ON MILLENNIUM DEVELOPMENT GOALS

The Minister of State for Planning, National Development and Vision 2030

(Mr. Oparanya): Mr. Speaker, Sir, I wanted to make a Ministerial Statement on the sensitization workshop on Millennium Development Goals (MDGs) that will start tomorrow in Mombasa.

As you are aware, Kenya is a member of the United Nations (UN) and, therefore, being a member it is a signatory to the UN Millennium Declaration of 2000. Kenya pays

subscription for being a member of the UN. There was the MDGs declaration and Kenya being a member is bound by that declaration which is supposed to run from 2000 to 2015. We are going to have a major review of the progress. We usually make annual reports but we have detailed reports every five years. So, we will be having a final report for the second five years next year in September. So, we are going to report to the UN in September next year.

Since we are a signatory of that Declaration, an MDG unit was set up within the Ministry of Planning, National Development and Vision 2030 which is supported by the Government of Kenya and development partners including United National Development Programme (UNDP). So, UNDP gets some funding from the UN headquarters to support capacity building. Since we signed the Declaration in 2008, we have not undertaken capacity building workshop for Members of Parliament. That is why I decided that this is the appropriate time before we prepare a full report for the ten years next year. So, hon. Members have a chance to contribute to the ten years report. That is why we have organized the workshop that will be there tomorrow.

The Government of Kenya is not spending any money. This money is coming from the UNDP for capacity building and that is why I am requesting all hon. Members, if they want to understand in detail what is involved in MDGs, to attend that workshop tomorrow.

Mr. Linturi: On a point of order, Mr. Speaker, Sir. This regards the ruling that you made last week on what constitutes proper dressing in this House. My friend, the Assistant Minister for Foreign Affairs, Mr. Onyonka, in my view, is not dressed in conformity with the ruling that you made to this House last week. So, I seek your guidance on that matter.

An hon. Member: He is dressed like a clown!

Mr. Speaker: Order! Mr. Onyonka, do you have any reaction to that?

(Laughter)

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, I interpreted your ruling to mean that this is reasonably accepted in the House. I am not sure whether I have broken the rules.

Mr. Speaker: Mr. Onyonka, my ruling was clear on what constitutes decent dressing for both hon. Members who are male and those who are female. Among other things, we even cited the example of Mr. Shikuku who wore a top that had short sleeves and yours is similar. So, you are not properly dressed. I am afraid you will have to withdraw from the Chamber for the rest of this sitting. You can only return if you dress properly.

(Mr. Onyonka withdrew from the Chamber)

Mr. Chanzu: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: If it is relating to the matter of dressing, no! If it is relating to the Ministerial Statement by Mr. Oparanya, yes but which one?

Mr. Chanzu: Regarding the other matter!

Mr. Speaker: We have dealt with that and I have given my direction.

Mr. Chanzu: On a point of order, Mr. Speaker, Sir. I just wanted to say that I had sought a Ministerial Statement---

Mr. Speaker: Order, Mr. Chanzu! We have given the Minister time to issue a Ministerial Statement. So, wait for your time.

Proceed, Mr. Minister!

The Minister of State for Planning, National Development and Vision 2030
(Mr. Oparanya): Mr. Speaker, Sir, I have clarified that it has nothing to do with politics or parties.

Mr. Speaker: Do hon. Members want to seek any clarifications on that matter?

Mr. Midiwo: Mr. Speaker, Sir, the issue raised by the Minister is very grave because it touches on the integrity of this House. I want to ask the Chair to make a ruling or institute some sanctions because there was an insinuation that Parliament was going to spend money in Mombasa to do nothing without the simple knowledge--- The notice where hon. Members were signing stated: "Workshop Sponsored by UNDP"

So, for an hon. Member to play "holier-than-thou"--- We need to put this matter to rest! The hon. Member who is notorious for disparaging the Chair and this Parliament while he himself has a lot of things in his closet! So, we need your ruling and guidance because he is dishonest and he is not doing the right thing regarding the reputation of this House. He is Mr. Muthama!

Mr. Speaker: Order, hon. Members! Indeed, the comments that were made by the hon. Member for Kang'undo are in the public domain. It is the view of the Chair that those comments were most unfortunate because all Kenyans and, indeed, all right thinking Members of Parliament are aware that Kenya belongs to the family of the United Nations (UN). We subscribe and contribute to the UN. If the UN offers to sponsor a program that will entail improving the capacity of Parliament, I thought we will receive that with joy and pleasure because we are only getting part of our share that is with the UN!

(Applause)

It is, therefore, surprising that the hon. Member should find reasons to disparage that very noble gesture on the part of the UN. The hon. Member should, therefore, note that if he had any concerns with respect to the workshop, then the best place to raise those concerns would have been in this House immediately after the communication was made. But that, notwithstanding, I am sure that the hon. Member will take note of those very strong sentiments that have been expressed by the Chair on behalf of the House and refrain from issuing statements that are not warranted; that have no justification; that have no anchoring in law, fact or otherwise.

(Applause)

As for hon. Midiwo, you have an office, as a joint Chief Whip. If you wish, you may want to refer this matter to the Parliamentary Powers and Privileges Committee.

(Applause)

(Mr. Midiwo stood up in his place)

There is a procedure by which you will do so, but not now!

Mr. Midiwo: I am much obliged, Mr. Speaker, Sir.

Mr. Speaker: Proceed, Mr. Mbugua!

Mr. Mbugua: Thank you, Mr. Speaker, Sir. I wish to---

Mr. Speaker: Is that going to be a request for a Ministerial Statement?

Mr. Mbugua: Yes, Mr. Speaker, Sir.

Mr. Speaker: Then we will have to wait and take a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security.

PRESENCE OF OROMO LIBERATION
FRONT IN KENYA

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Thank you very much, Mr. Speaker, Sir. On 12th May, 2009, hon. Letimalo, the hon. Member for Samburu East, rose on a point of order and requested a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security with regard to the alleged presence of the Oromo Liberation Front (OLF) in our own country.

Mr. Speaker, Sir, just as an important preamble, I want to make this Statement because it is extremely important because it touches on the relationship between our country and the neighbouring country of Ethiopia. Since Independence, our country has followed the policy of non-interference in the affairs of other countries, and that is manifested in our membership in the Non-Aligned Movement during the Cold War period. Indeed, Kenya has also had good relationships with our neighboring countries and, to date, we have continued to extend the ideals of that policy.

Mr. Speaker, Sir, regarding the issue of the presence of OLF, which is a separatist Ethiopian underground movement, this has, indeed, featured for a long time on both electronic and print media in both Kenya and in Ethiopia. From time to time, information has reached the Government on the presence of that separatist movement. When such information has been received, the Government has always taken the necessary measures to ensure that the elements of that organization do not use our country as a launching pad against Ethiopia. Therefore, I wish to state clearly that Kenya does not, in any way, support that movement, especially given our good relationship with Ethiopia. For example, the two countries mounted a joint military operation in 2004 to root out the OLF elements following some allegations of their presence in Kenya. While that operation assured the Ethiopian Government that our country does not harbor or support those criminals, it did not result in any arrests. However, we know for sure that if they were there, they may very well have escaped across the border.

Mr. Speaker, Sir, on the particular incident referred to by hon. Letimalo, the Ministry has embarked on serious efforts to determine the actual whereabouts of OLF elements. In this respect, the Ministry has deployed adequate security officers on the ground who are looking for those people in order to monitor the area and expel any OLF elements who may happen to be in the country. While we have also received allegations that some of the people believed to be OLF members may be living amongst the local

people, I do wish to appeal to the local leaders and the people in the area to co-operate with the security officers in apprehending any of the suspects, and not to offer any hospitality to any of them.

Mr. Speaker: Yes, Mr. Letimalo? Just seek two clarifications, please. We have run out of time!

Mr. Letimalo: Mr. Speaker, Sir, from what I am getting from the Minister's Statement, he is actually confirming the presence of OLF rebels in Kenya. So, I would like to get a clarification from the Minister. How did those rebels enter Kenya without the knowledge of the Government?

Secondly, Mr. Speaker, Sir, considering that those OLF rebels are actually approaching the borders of Samburu East, Isiolo North and Laisamis, and that where all the livestock from the three districts has converged to get water and pasture, what assurance is the Minister giving that the livestock, wildlife and the people who are taking their animals there are secure?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, regarding the question of how those OLF rebels come into our country, I said here that, from time to time, the Government has received information on the presence of those elements. When we receive such information, we do our best to carry out the necessary operations. We either apprehend those elements or chase them out of the country.

Mr. Speaker, Sir, it has to be appreciated that we have a very long boundary with Ethiopia, and for a number of years, there have been conflicts in Ethiopia. The OLF elements engage security officers on the other side and we do know that there have been times when they sneak into our country. That is a fact! When that information comes to us, we deal with it. That is precisely what we are doing now, given the allegations that have been made not only by the hon. Member, but even on the ground. We are, therefore, looking for those people wherever they are. We are not only looking for them in Samburu, but also in certain parts of Eastern Province, especially the upper sides. Our intention is to ensure that the areas that have been referred to; that is Samburu, Isiolo and some parts of Eastern Province are secure. We will make sure that they are hunted down wherever they are. We shall apprehend them and chase them out of our country.

Mr. Speaker: The Assistant Minister for Information and Communications!

REPORT ON FINANCIAL STATUS OF KENYA BROADCASTING CORPORATION

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Speaker, Sir, I rise to lay on the Table a comprehensive Report on the management and status of the Kenya Broadcasting Corporation (KBC). However, before I lay the Report on the Table, I would like to seek your indulgence to give the genesis on why I have come up with this Report.

Towards the end of the last Session of Parliament, while I was answering a Question by Mr. Mbadi, the Member for Gwasi Constituency, hon. Members raised very weighty issues on the management of the KBC; issues, I was not privy to as an Assistant Minister. I was taken aback and sought your indulgence to do a forensic audit of the KBC and lay a Report in this House. You ordered me to do this in the first quarter of this year. However, I would like to register my apology that it was not possible for me to do that

because the Report was not ready. I seek your indulgence to table the Report at this particular time.

Mr. Speaker, Sir, I wish to inform the House that given the weak financial base of the KBC, it was not possible to hire an audit firm to carry out a forensic audit of the Corporation as I had promised. Instead, I ordered the Board of the Corporation to appoint an *ad hoc* committee to look into the affairs of the Corporation and submit the status Report, which I will lay on the Table.

The Report is voluminous and I hope hon. Members will find time to scrutinise it. If there are any issues that they would like to seek clarification on, I think they will have an opportune time to do that. However, I would like to highlight one or two things.

The first issue is with regard to the financial situation of the Corporation. The *ad hoc* committee concluded that the Corporation has a very weak financial base because of various factors, which include a huge Japanese loan currently standing at Kshs8.2 billion and inadequate Government annual finance support among other factors. It is estimated that the Corporation requires Kshs845 million annually for its operations. However, it is expected that the Government will increase its funding to the Corporation to meet the public broadcasting obligations. The Government has also initiated discussions with the Japanese Government with a view of writing off the loan currently standing at Kshs10 billion. These two actions will definitely improve the financial situation of the Corporation.

The other aspect that I feel strongly that I should comment on is the issue of K24, Ghetto FM and the KBC ventures. Due to K24 TV's poor performance, the KBC and Regional Reach Limited mutually agreed that the former withdraws from the joint venture effective 1st March, 2009. According to the agreement, the KBC would not shoulder the liabilities or part thereof that the joint venture had incurred between its inception and March, 2009. The Corporation, in consideration thereof, permitted Regional Reach Limited to continue running the business independently. However, Regional Reach Limited undertook to pay the KBC for the use of the spectrum and infrastructure as from 1st March, 2009.

On Ghetto FM, the Corporation is waiting for the Communications Commission of Kenya (CCK) to formulate a legal framework on community broadcasting service before deciding on the way forward. However, Ghetto FM, being a donor-funded project has no cost implications on the Corporation.

On whether the KBC invested the Kshs400 million in K24 as alleged by one hon. Member, I wish to state that the Corporation did not invest any such amount or any part thereof in sessions. The KBC's contribution was in two broadcast frequencies which had hitherto been idle and which the CCK had threatened to repossess for non-use. The joint ventures were intended to widen the revenue base for the Corporation.

Mr. Speaker: Order, Mr. Khaniri! Could you, now move to the end of your Statement?

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Speaker, Sir, it is now my pleasure to table this particular Report. I was unable to make enough copies for all hon. Members, but I will deposit some copies at Room No.8

(Mr. Khaniri laid the Report on the Table)

Mr. Speaker: I will only allow two clarifications. Let us have Mr. Mbadi first because he is the one who led to this Statement being made.

Mr. Mbadi: Mr. Speaker, Sir, given the fact that I have not seen this Report and it is voluminous, I seek for your indulgence that I find time to go through it and, may be, use the correct channel to interrogate the Assistant Minister.

Mr. Speaker: Fair enough. You will be furnished with a copy of the Report immediately this House rises. The Assistant Minister should ensure that this happens!

Mr. Mungatana: Mr. Speaker, Sir, it is very saddening that the KBC is in dire financial status. The Assistant Minister has not told us that in a country such as Britain, the British Broadcasting Corporation (BBC) is heavily supported by the Government because of the important role it plays. What has the Assistant Minister done to ensure that the national broadcaster does not collapse?

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Speaker, Sir, I want to assure Mr. Mbadi that as the Questioner, I have a copy for him in his pigeonhole.

As to hon. Mungatana's question on funding of the KBC, I think that can be better raised with the Ministry of Finance. We submit our proposals to the Ministry, but year in, year out, we do not get adequate resources as we do submit. However, I want to assure the House and the nation that the Corporation will not wind up. Despite the difficulties, we will ensure that we soldier on and provide the services that we are supposed to provide to the country.

Mr. Speaker: Hon. Members, we now move on to requests for Ministerial Statements!

Yes, Mr. Mbugua. Please, be brief.

POINTS OF ORDER

IRREGULAR ALLOCATION OF FIRE STATIONS IN NAIROBI

Mr. Mbugua: Mr. Speaker, Sir, I would like to seek a Ministerial Statement from the Deputy Prime Minister and Minister for Local Government. In that Statement, the Minister should clarify the following issues.

First, why the City Council of Nairobi (NCC) allocated fire stations in Gigiri, Ruaraka and Imara Daima areas and yet those pieces of land had been set aside for public utility. Secondly, he should clarify who the allottees are. He should give us the names of the individuals, companies and the directors of the said companies that were allocated the fire stations.

Thirdly, the Minister should tell us the action he will take against the officers who are being investigated over corruption practices in the City Planning Department of the NCC. This is because these cases have been prevalent and yet no action has been taken against the officers. They are still in office!

Mr. Speaker: Mr. Deputy Prime Minister and Minister for Local Government, when will that Ministerial Statement be available? Is there anybody holding brief for him?

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I undertake to transmit this information. Since the matter raised requires

some research, the Ministerial Statement will, hopefully, be issued on Thursday, next week.

Mr. Speaker: It is so ordered!

IMPLICATIONS OF RENAMING NYAYO NATIONAL
STADIUM “COCA COLA STADIUM”

Mr. Midiwo: On a point of order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Sports and Youth Affairs about the controversy over the naming of former Nyayo Stadium as “Coca Cola Stadium”. I want the Minister to tell the country whether she is aware of the financial and image implications of that development to this country. Since the Minister said that the buying of the rights by Coca Cola was improper, I would wish her to tell us what was improper about it.

We want to know if her officers are represented on the Board that gave that contract. I would like her to tell us which one would be in the best interests of the country, naming the facility Nyayo Stadium or making money from Coca Cola as a corporate sponsor? Which one would the Minister rather do? The financial and image implications for our country are severe on this issue. I want the Minister to tell us, for example, what is the legal status of that agreement that she is trying to abrogate.

I want the Minister to tell us what would be the implications for Kenyan teams like Harambee Stars, which is trying to go to the World Cup? The youth team is sponsored by Coca Cola. I want the Minister to tell us what this country stands to gain and what we stand to lose.

Lastly, I want the Minister to tell us why it is not possible for her Ministry to negotiate with Coca Cola Company, which is a multinational company? Everybody is talking about this issue. Go to the internet and everywhere. What will it do to the international and multinational investors in our country?

(Mr. Thuo Stood up in his place)

Mr. Speaker: What is it, Mr. Thuo?

Mr. Thuo: Mr. Speaker, Sir, I want to add to the request by Mr. Midiwo. As the Minister responds to the question as to how much it will cost to repudiate the contract with Coca Cola Company, let her tell us how much the Government has spent, not only on Nyayo Stadium but also on the Kenya Stadia Board in the last three years. I would also like to know what plans the Ministry is putting in place to ensure that they position Kenya as a sporting and training destination in the run up to the 2010 World Cup?

On the issue of Kenya Stadia Board, I would also like to know whether the State Corporations Act was adhered to in the recruitment of the new CEO of that Board.

Mr. Speaker: Is the Minister for Sports and Youth Affairs here?

An hon. Member: No!

Mr. Speaker: Is there anybody holding her brief? The matters raised are weighty and urgent.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, indeed, they are weighty matters. I know, as a matter of fact, that the Minister was in a seminar, but I can see her coming in.

Mr. Speaker: We will give her a little time, just to settle down and indicate when she will avail that Ministerial Statement.

SNUBBING OF KENYA BY US PRESIDENT DURING TOUR OF AFRICA

Mr. Mungatana: On a point of order, Mr. Speaker, Sir. I rise to demand a Ministerial Statement from the Ministry of Foreign Affairs. There have been reports in the public domain attributed to the Ambassador of the United States of America (USA) stationed in Kenya to the effect that the USA President will be visiting Africa in July, and that in his visit he will not visit our country, Kenya. I would like the Minister for Foreign Affairs to clarify the following:

(a) the reasons as to why the USA President, whose late father was of Kenyan origin, and who, indeed, has been celebrated as one of their own by Kenyans despite his American citizenship – is not coming to Kenya;

(b) whether the corruption allegations bedeviling this Government and the lack of reform could be the reason for the rebuff that we have suffered;

(c) whether he is aware that this snub has further battered the international image that Kenya is already suffering in terms of its reputation, and what the Foreign Affairs Minister is doing to correct that image.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Minister for Foreign Affairs? I thought he was here a little while ago! Is anybody holding his brief?

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, the Assistant Minister was ordered to withdraw from the House. I know that the Minister has come from Somalia, but I will transmit the information to him.

Mr. Thuo: On a point of order, Mr. Speaker, Sir. I beg the indulgence of this House. I wonder whether I would be in order if I question this. I listened to the Ministerial Statement sought. It is requesting the Kenya Foreign Affairs Minister to explain why the President of the USA will not come to Kenya. Is that possible? Would it be within the knowledge of our Minister for Foreign Affairs as to why President Obama would chose not to come to Kenya, and as to whether or not it is due to corruption? Are we not being frivolous? I am seeking guidance.

Mr. Speaker: The guidance I will give is that Mr. Thuo, who is also the Government Joint Chief Whip, does not have capacity to know whether or not the Minister has that knowledge.

(Laughter)

Mr. Githae, please, indicate when the Ministerial Statement will be issued.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, we will issue the Ministerial Statement on Tuesday, next week.

Mr. Speaker: It is so ordered!

USE OF HARMFUL SUBSTANCES IN
MANUFACTURE OF PLASTIC CONTAINERS

Dr. Eseli: On a point of order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Public Health and Sanitation regarding the fact that there is concern that the risk of cancer in the country is on the rise. While there are many other causative reasons for cancer, it is also known that the causes could partly be attributed to substances such as lead and cadmium. These substances have been used in preparation of plastic containers, which eventually end up containing edible oils and magarines that are consumed by Kenyans.

Eventually, these containers end up in the rural areas, where everybody uses them to store water for their personal household use. This lead and cadmium can leak into the food and into the water and, therefore, result in the cause of cancer.

I would like the Minister to tell this House the manufacturers who are using lead and cadmium in the manufacture of plastics. Once these plastics are put through treatment with lead and cadmium, can turn yellow and, therefore opaque, and be used as containers for carrying edible oils. I would like the Minister to clarify who these manufactures are and who use lead and cadmium in producing plastic containers and also those using them to package their food products in Kenya. What is the Ministry doing to end this dangerous practice that is being carried on by businessmen to the detriment of the health of Kenyans?

The Assistant Minister for Public Health (Dr. Gesami): Mr. Speaker, Sir, indeed, this is a matter of grave concern and we shall give this Statement on Wednesday, next week.

Mr. Speaker: Wednesday, next week! It is so ordered!

Mr. Issac Ruto!

DELAYED MINISTERIAL STATEMENT

Mr. Ruto: Mr. Speaker, Sir, I rise to bring your attention to the fact that the Ministry of Foreign Affairs has yet again failed to issue a Ministerial Statement which I have requested continuously since last week; in spite of you believing that he has capacity to do so, he failed.

Mr. Speaker: Was that scheduled to be delivered today?

Mr. Ruto: Mr. Speaker, Sir, you ordered that he brings the Statement today. In fact, the Government side undertook to ensure that it is done. Yesterday, the Assistant Minister for Foreign Affairs was here. The Chair did order he delivers it today.

Mr. Speaker: As a matter of fact the Chair did see the substantive Minister for Foreign Affairs in the House this afternoon; but maybe, as he realized that we are getting close to this business, left.

In those circumstances, hon. Members, I order that the Minister proffers an explanation to this House, not later than Tuesday, next week. Otherwise, he will not transact any business in this House until that is complied with.

DELAYED MINISTERIAL STATEMENT ON KAPSABET PLANE CRASH

Mr. Chanzu: Mr. Speaker, Sir, on Thursday, 14th May, I sought a Ministerial Statement from the Minister of State for Internal Security and Provincial Administration on circumstances surrounding the aircraft crash in Kapsabet on Monday, 11th May, 2009.

The Assistant Minister, Mr. Ojode was here. He made an undertaking that the Statement would be issued today. I can see the substantive Minister is here. So, I would like him to oblige.

Thank you.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I think the hon. Member was specific that he had addressed that matter to my Assistant Minister. I had talked to my Assistant Minister before and he was not anticipating any Statement today. I believe that is the position.

Mr. Speaker: Could you kindly give an indication as to when that Statement would be available?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I would be quite happy to ensure that, that Statement is brought to this House on Thursday, next week.

Mr. Speaker: By Thursday, next week!

The Minister of State for Internal Security and Provincial Administration (Prof. Saitoti): Precisely so, Mr. Speaker, Sir.

Mr. Speaker: Thursday, next week. It is so ordered!

(Mr. Ruto stood up in his place)

Order, Mr. Ruto! We have already run short of time. I think the Minister has taken cognizance of the concerns of the House.

Member for Nyatike, Mr. Anyanga!

Mr. Anyanga: Mr. Speaker, Sir, last week, I requested for a Ministerial Statement from the Minister for East Community. He promised to bring it here today, but I cannot see him. I need your guidance on that.

Mr. Speaker: What is the position, Mr. Githae?

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I think the Minister was here when he said that he will be back on 30th. He said that he would issue the Statement when he comes back.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. If I can recollect very well, the Ministerial Statement that the hon. Member for Nyatike sought was on Mgingo Island. We also had a similar Motion on Mgingo, which was interrupted because the House was adjourned. I expected it to resume yesterday. To me, it appears this issue of Mgingo Island is disappearing from the Order Paper. I would seek for your indulgence on what is really happening with this debate on Mgingo Island.

Mr. Speaker: As far as I know, the debate on Mgingo Island is likely to come next week. At the earliest opportunity next week. That is the indication we have. It has been allotted time by the House Business Committee. So, it is not about to disappear from the Order Paper.

With respect to the Ministerial Statement, I will have to acquaint myself with what is on the HANSARD before I can give directions. So, I will give those directions on Tuesday, next week.

(Mr. Mungatana stood up in his place)

What is it, Mr. Mungatana.

DELAYED STATEMENT ON COLLAPSE GTV COMPANY

Mr. Mungatana: Mr. Speaker, Sir, again, on a similar note, last week I had sought a Ministerial Statement from the Deputy Prime Minister and Minister for Finance on the questions of Kenyans who are making advance payments and then companies disappearing and folding off, leaving Kenyans exposed. I gave a specific example of the GTV Company. The Chair ordered that we should have a response today. However, the Minister is not here. There is no indication as to what is happening.

Mr. Speaker: Hon. Attorney General, you are the Advisor to the Government. What is happening to your Ministers!

You are the Principal Legal Advisor to the Government. Your Ministers are not complying with the undertakings that they make to the House.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I agree that this is a serious issue that Ministers ought to make their Statements as and when they undertake to make them in the House. I am quite sure that the issue will be addressed. Hopefully, facilitated by having the Leader of Government Business.

Mr. Speaker: I order that the Statement sought by hon. Mungatana be availed on Wednesday, next week!

Mr. Pesa: Mr. Speaker, Sir, while you order that the Statement be delivered on Tuesday, next week, I also stood up here last week and sought a Ministerial Statement from the Ministry of State for Internal Security and Provincial Administration. I actually talked to the Minister himself who assured me that he would give this Statement this week. So, maybe, he can tell us something about that.

The Assistant Minister, Ministry of Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I am aware that the hon. Member had requested for a Ministerial Statement. However, at the same time, he had filed a Question by Private Notice on the same matter. I elaborately answered that Question and he accepted it under your Chairmanship.

Mr. Speaker: Order, Mr. Pesa! If that was the position, the Chair would want to acquaint itself with the records on the HANSARD. Obviously, Mr. Pesa, if that were so, which we will establish, we will give direction on Tuesday, next week. But you cannot eat your cake and have it.

Minister for Youth Affairs and Sports, could you give us an indication as to when you will make that Statement available. It is on an urgent matter!

The Minister for Youth Affairs and Sports (Prof. Sambili): Thank you, Mr. Speaker, Sir. I was going to a conference, which we opened today for the youth, but I was alerted about this matter. I will give the Ministerial Statement on Thursday, next week. But I would like to say right here that---

Mr. Speaker: Order, Minister. Do not be anticipatory, neither should you pre-empt your Statement.

So, Thursday, next week!

The Minister for Youth Affairs and Sports (Prof. Sambili): Yes, Mr. Speaker, Sir.

Mr. Speaker: It is so ordered, Thursday, next week at 2.30 p.m.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I am just getting a little bit concerned and I would wish to seek your guidance and direction on the number of Ministerial Statements being sought by Members of Parliament rather than asking Questions. I do not know what should be the right mix of Ministerial Statement and Questions. At every sitting, we are having more than seven or six Ministerial Statements being sought. This is one of the reasons we find Ministers are not being able to meet the undertakings. I was seeking your direction on whether we can have the right mix of Questions and Ministerial Statements to give Ministers time to prepare, so that they can meet their undertakings.

Mr. Speaker: Order, Mr. Githae! As I see it, there is nothing wrong with the mix so far. You will notice that the mix is fairly homogenous. This is in the sense that no one Minister has stood up and responded to more than one request at any given time. You will see that there has been quite a variety. Today, we have requests which have not been complied with, to the Minister in charge of Provincial Administration and Internal Security, the Minister for Youth and Sports, the Minister for Foreign Affairs; the list is endless! I do not see anything wrong with the trend as at where we are.

The Chair has properly exercised its discretion in deciding what matters should be addressed by way of a Ministerial Statement, what matters should be addressed by way of Questions by Private Notice, what matters should be addressed by way of Ordinary Questions and what matters should be addressed by Motions. I think up to where we are, we are quite in order.

Maybe, that is to say that the Cabinet should pull up its socks!

(Applause)

The Assistant Minister, Ministry of State for Planning, National Development and Vision 2030 (Mr. Kenneth): On a point of order, Mr. Speaker, Sir. I am seeking clarification on an earlier ruling that you made on a Question by Mr. Mungatana on the issue of GTV. I was just wondering because this issue cuts across various Ministries. It is not just an issue for the Ministry of Finance. It also involves the Ministry of Trade and the Ministry of Information and Communications. Could that Statement be directed to the Office of the Prime Minister because he is the person who should answer if an issue cuts across Ministries?

Mr. Speaker: Is that the best way for you, being a Member of the Cabinet to deal with that matter? I thought through collective responsibility you would deal with that internally, in the Executive! And I direct so accordingly!

(Laughter)

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. I want to comment on what you have said about the good mix of Questions. I remember that in the last Parliament, Ministers did not necessarily have to keep us waiting for a week. One could rise here, demand for a Ministerial Statement and the Ministers had the responses at the tip of their fingers.

Mr. Speaker, Sir, I remember Dr. Kituyi used to do this. A simple thing like the one on why a decision was made on the stadium, surely the Minister is the one who made

that decision. She could stand here now and give the Statement without keeping us waiting.

(Applause)

This is what is causing this backlog. You could urge the Ministers to know their work so that they can respond immediately.

Mr. Speaker: Time is up! I am sure those sentiments are taken by the Cabinet and that they will rise to the challenge so that we reduce these number of Ministerial Statements that are pending. We want to move away from backlog in any more institutions than they already are.

So, hon. Members of the Front Bench, let us move away from it.
Next Order!

BILL

First Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

*(Order for First Reading read - Read the First
Time and ordered to be referred to the relevant
Departmental Committee)*

Mr. Speaker: Next Order!

PROCEDURAL MOTION

EXEMPTION OF BILLS FROM PROVISIONS OF STANDING ORDER NO.111 (2)

Mr. Thuo: Mr. Speaker, Sir, pursuant to the provisions of Standing Order No.48, I wish to move the Procedural Motion in an amended form by deleting the words, "and the Competition Bill (Bill No.3)".

I beg to move: -

THAT, notwithstanding the provisions of Standing Order No.111 (2), this House orders that the Arbitration (Amendment) Bill (Bill No.2) be read a second time.

Mr. Speaker, Sir, the reason for the amendment is that Members would be aware that historically, at about this point in time, we would be on recess. This recess would allow the Ministry for Finance and its technocrats some time to prepare for the Budget.

Mr. Speaker, Sir, because of the new Standing Orders, this year, this will not be possible. We shall continue sitting up to the Budget Day. For this reason, the amendment is to put off the Competition Bill to allow time for the Minister for Finance and his team to prepare adequately for the Budget.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, secondly, Standing Order No.111 (2) is to allow us to pass the Arbitration (Amendment) Bill (Bill No.2) which is very urgent. Members should be aware of the huge backlog of commercial cases in our courts. This Bill hopes to facilitate the process of clearing them. Therefore, it is felt that we need to move with a bit of speed on these matters.

I beg to move.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I rise to second this Procedural Motion. It is to enable us to discuss the two Bills which have not matured. The Joint Chief Whip has adequately stated the reasons. He has said that at such a time, the Minister for Finance normally writes the Budget. I am sure he is hiding somewhere so that he can finalise the Budget.

Mr. Temporary Deputy Speaker, Sir, the Arbitration Bill is very urgent. It should have come yesterday. We have a big backlog of court cases. The intention of the Government is that before cases are taken to the courts, litigants should make use of arbitrators so as to reduce the backlog.

With those few remarks, I beg to second.

(Question proposed)

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, the particular Standing Order under which this Motion has been moved by Mr. Thuo, is the one that requires that every Bill must go to a Departmental Committee so that we, as Members of Parliament, can scrutinize it. The reasons they have advanced are very noble; they have said because of the greater problem of backlog of cases, we need to fast track this process. For that reason, I will support the Motion.

However, we would not want this to be a habit. Sincerely, we would want the Government to do the First Reading and commit the Bill to the Departmental Committee so that we can scrutinize it and make amendments. This is because maybe, one clause might cause us to repeat the whole process. We are hoping that by doing this, the Government is also undertaking that they have really looked at all those clauses so that we do not have to re-do this work. I pray that the Attorney-General will give us that assurance, because we do not want to come back and redo the work.

Mr. Temporary Deputy Speaker, Sir, for the bigger reasons that have been advanced, we will also support.

(Question put and agreed to)

BILL

Second reading

THE ARBITRATION (AMENDMENT) BILL

(By leave of the House)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Arbitration (Amendment) Bill, 2009, Bill No.2, be read a Second Time.

I want, first of all, to thank hon. Members, in particular for the support to do away with the Standing Order which requires automatic reference to the Departmental Committee. I have been asked to give an undertaking and I want from the very outset to give the undertaking, that in this Bill everything has been properly scrutinized, and that which is technical in nature--- All the clauses that we are proposing for amendment are valid.

Mr. Temporary Deputy Speaker, Sir, if I may just explain, this Bill is about amending the 1995 Arbitration Act. The 1995 Arbitration Act it self that I brought to this House was to make this country compliant to the international standards regarding arbitration as at that time. The law that was there at that time was a law which existed, or which was enacted during the colonial times. It is now 14 years and the international standards, on which that Bill was based, have now been considerably improved, hence the need to also improve by proposing amendments to this Arbitration Act, which are consistent with those international standards.

I want to pay particular tribute to the Chartered Institute of Arbitrators of Kenya (CIAK), the Kenya Branch, which is part of the International Chartered Institute of Arbitrators (ICIA), for having observed the international trends and the standards required, particularly by the United Nations Conference on International Trade Law, and the amendments that had been brought to what is commonly known as the Unistral? Model Legislation on Arbitration and coming up with these proposals. So, these proposals are not just proposals which have come from the head or brain, of the Attorney-General. They are proposals which have emanated from a professional institute, which has the responsibility in arbitration. I am glad today that whereas before we had very few properly trained and qualified arbitrators, ever since the CIAK was instituted, we now have 343 professionally trained arbitrators, a number of whom are fellows of the Chartered Institute of Arbitrators. I count myself as one of the first fellows of the Chartered Institute of Arbitrators, the international branch; although I had a Masters of Law Degree, I was forced to study and sit examinations in order to become a fellow of the Chartered Institute of Arbitrators, London.

Since that time, and we were very few, we now have 343 arbitrators, most of whom, of course, are ordinary members; they are not necessarily fellows. Of these 343, we have 171 advocates, 57 quantity surveyors, including the hon. Member here, who is also an arbitrator. We have nine architects, 48 engineers, 47 people from the insurance industry, 14 accountants and eight administrators. So, in the membership of this Chartered institute, we have the people properly qualified to do arbitration. It is this institute, and credit is due to it, which has brought the amendments, which I also went through. The Kenya Law Reform Commission and the Law Society of Kenya also went through them with a tooth comb, and they are now before you for enactment.

Mr. Temporary Deputy Speaker, Sir, arbitration is a very important process of settling disputes. As you can see from the nature of qualified arbitrators, they can

arbitrate on any type of dispute; all the professionals are in it; whether it is a dispute involving engineering, valuation, pure law, insurance, they are there and are qualified. As has been stated by the people who moved the Motion suspending that particular Standing Order, and is commonly known in this country, we have a very big backlog of civil cases pending in courts. In fact, the Chief Justice the other day mentioned that there are 853,000 civil cases pending in court. Kenya has one of the biggest backlog of cases. Kenya has one of the biggest backlog of cases, because of active economic and social development that is taking place in the country. Where you have a high level of business interactions going on, then you expect the number of disputes to be big. But we must have a way of dealing with this. At Milimani Commercial Courts, and here I commend the Chief Justice because he constituted a Commercial Division to be listening to commercial cases; that division is at Milimani Commercial Courts. At Milimani Commercial Courts alone, we have an average of 90,000 civil cases filed. This is what we are now confronting.

In many of the developed countries now, say the UK, which I am more familiar with, before a court can hear you on a case, you must satisfy the court that you have undertaken mediation, or arbitration, and that you have failed to agree. That is the only time when the court can say it can hear you. A number of these cases are about agreements, and in most of the commercial agreements, there is always an arbitration clause. Therefore, a number of these cases ought properly to be referred to arbitration, because of that arbitration clause, which is in a number of commercial agreements, and in connection with which disputes arise. Therefore, we are talking about dealing with those types of cases.

At the recent conference, which was held here and where we had judges and magistrates from the entire East Africa, Kenya, Uganda, Tanzania, Rwanda and Burundi-- In fact, all their chief justices, judges of appeal, judges of the High Courts and magistrates were here. They were considering this one issue. One issue that they were considering is how the courts can drive the economy, and what the role is of the commercial court in driving that economy. It has been stated a number of times that you will only attract investments in any country or the business community will only feel comfortable if there is a system in which their disputes can be handled expeditiously and impartially by an independent tribunal or court. Therefore, it is no wonder that this meeting recommended that arbitration should be encouraged in the region. At the East African level, the East African Treaty establishes under Article 32, that arbitration can take place between the East African Community institutions, business partners or individuals. So, we have a framework for that.

Mr. Temporary Deputy Speaker, Sir, one of the reasons why the Chartered Institute of Arbitrators brought these amendments is not only to deal with the national courts but also to ensure that Kenya becomes a centre where regional and international arbitrations can be heard and determined. To become a centre, you must have an enabling legal environment to attract international commercial arbitrations. To be able to do that, you must have a law, which insulates the arbitration being heard here from the processes of the courts. The purpose of arbitration, as you know, is to deal with a dispute in a cost-effective manner and expeditiously as opposed to the courts where the procedures can be cumbersome and the dispute can go on for years. This morning I received a complaint from somebody who has been going to court for 16 years over a land case.

The arbitration is to leave the complicated procedures of the court and come to a more effective system, so that a dispute is handled quickly. However, if the arbitration law is such that the courts can interfere at will or at any stage in the arbitration proceedings, then the whole purpose of arbitration is completely defeated. We have noticed that although the Arbitration Act tries to minimise that, the amendments that have been proposed here further strengthens and insulates the procedure from the courts. The courts can only intervene in a very serious matter or allegation rather than just a litigant who sees that he is losing before arbitration, goes to court to have the arbitration proceedings stayed. Because of that application, the arbitration proceedings are stayed for many years. The amendments that we are proposing have to further strengthen and insulate the arbitration procedures, both national but more specifically, the international arbitration from constant interferences and misuse of applicants by resulting to court on a matter which ought to be heard through the arbitration proceedings.

The other amendment that we have proposed here is the enforcement of the awards. This is because it is useless to have an arbitral award, which cannot be enforced. Therefore, a more refinement system is what is being proposed here. In order to attract international arbitration, we are also bringing in the New York Convention on Arbitration where all the countries have ratified on issues of enforcement of arbitral awards. If you have an international arbitration here and an award is given here, that award – because of the regional conventions – can be enforced in the United States of America (USA and the courts there will have to respect that award. This is what we are proposing here.

Nairobi, and I am glad to report, has already been identified as an ideal centre for a regional and international commercial arbitration. The Asian/African legal consultative organisations, where I was privileged to be the President for about two or three years ago-- During my presidency, they agreed that Nairobi should become the centre for arbitration for the entire COMESA and SADC region. In other words, from Egypt to South Africa, they said that Nairobi would be the ideal centre, because of its central position, easy communication and high calibre of advocates.

In today's newspapers, I read that some of our advocates have been recognised as some of the best advocates in the world. If we can have such a centre here, it will be useful not only for the arbitrators--- They will be able to hear not only local arbitration, but also international arbitration. This will help the centre which will be located in this City. By attracting international arbitration, people will know that Kenya is a place where you can safely invest because the system of expeditiously handling arbitration is there and it meets the international standards.

Mr. Temporary Deputy Speaker, Sir, my undertaking is that I was asked for the amendments being proposed. Obviously, as things develop we shall be carrying out further amendments in this House.

Mr. Temporary Deputy Speaker, Sir, I would like to go through some of the amendments. If you look at page 49, you will find that a clear distinction has been made between domestic arbitration and international arbitration. This has been done by a clear definition, so that when the arbitration is being heard, you will know that it is domestic or international. That distinction is important.

It is very clear on page 51 that if a matter is before court and it is shown that it ought to have been before arbitration – and, in fact, is before arbitration – the proceedings before the court shall not be continued.

Mr. Temporary Deputy Speaker, Sir, on page 53, you will note that one of the things that has caused delays in arbitration is the issue of appointment of an arbitrator. First of all, where one arbitrator has to be appointed, both sides must agree. If both sides do not agree, then the arbitration cannot go on. The arbitration can direct that each side appoints an arbitrator and leave it like that in some agreements. If one side appoints an arbitrator and the other side does not, the arbitration cannot continue. The other problem is that where the two sides have appointed arbitrators, if there is a division then it is one, one. This Bill makes it clear that wherever two arbitrators are appointed, one from each side, the two will appoint their chairman. We have tried to make that issue very clear.

Mr. Speaker, Sir, still on that issue, it provides a system where if the other side refuses to appoint an arbitrator, then the person who has appointed the arbitrator, can give notice to the other side, that unless they appoint an arbitrator within a specified time, then the single arbitrator will carry on with the arbitration and conclude the matter.

The procedure before was that where the other side refused to appoint an arbitrator, then the one who had appointed an arbitrator, was forced to go to court, file an application in court, for the court to appoint an arbitrator for that person. As soon as the court comes in, the other side, can, in its own way, delay the decision of that issue for as long as it can. In this case, the arbitration will go on. The other side may be at liberty to apply to the court and request the court that the arbitration should not go on and that he wants to appoint an arbitrator. However, a court may refuse to do so, because it must be satisfied that there is good cause for the failure to appoint an arbitrator. This is to make things move.

Mr. Speaker, Sir, there was also a procedure whereby the Attorney-General had a role, even in the private arbitration when there was a dispute, to decide. We are now substituting the Attorney-General with the High Court, so that the whole thing becomes more judicial rather than me being involved in all these types of disputes.

There are also instances where the mandate of the arbitrator has to be terminated. That is where he has failed to act without undue delay. There have been a number of decisions by the courts, both nationally and internationally, where without undue delay, it is a bit unclear and can also work in justice. We are substituting the words “without undue delay” with the words; “the arbitrator must conduct the proceedings properly and with reasonable dispatch.” You may conduct arbitration proceedings without undue delay, but without doing it properly. So, it has been felt that the word “properly” must be included in the legislation, so that the judge can know that he cannot just rush without undue delay. But again, he is not doing it properly. So, the word “properly” has been introduced.

Mr. Speaker, Sir, the other introduction that runs through all these amendments is that these panels will now be called Tribunals. Whereas before we did not have the name “tribunal”. You are just an arbitrator, you sit down and arbitrate. So, you do not really appear to have the authority to decide on things. Once an arbitrator has been appointed, that becomes a tribunal for the purposes of that case. I think when I was answering a Question yesterday on the Anglo Leasing scandal; I said that it is now before the International Tribunal. That tribunal is made up of arbitrators appointed by the Permanent Court of Arbitration. So, the word “tribunal” is already being used internationally. We also want it to apply here. Once you are appointed, you are sitting as a tribunal. So, you must behave as a tribunal with the authority, aura and everything that goes with it.

Mr. Speaker, Sir, we are also making it clear that the authority of an arbitrator is personal and ceases on his death. This is very important. As I said, there are a number of advocates. You may appoint an advocate from ABC and Company Advocates and the "A" may die. There have been instances where his partners "B" or "C" have now assumed that they take over because they think that particular job belongs to the partnership. These are very personal things. When he is here as an arbitrator, he is acting in his personal capacity. If his shares cease with his firm, that is a private matter between him and his fellow partners in the firm. However, as far as this arbitration is concerned, it is him who is the arbitrator. If he dies, that is the end of it. Unless, of course, whoever appointed him thinks that his partner "B" can now also be appointed as an arbitrator. I just wanted to make that clear in the law.

Mr. Speaker, Sir, the other problem we had under the current law was the problem of being an arbitrator and you do not want to continue being an arbitrator. So, you give a notice that you want to stop being an arbitrator. A number of people have been sued for resignation or withdrawal. People have sued arbitrators for that. As I have just stated, arbitrators are here like judges and magistrates. Therefore, they must be immune from proceedings of that nature. On page 59, where an arbitrator withdraws and feels that there may be a problem, he can now go to the court. The court will hear him and everybody else and then he will be granted relief from any liability after he has been heard.

In that sense, he can go to court and ask for immunity because he was really acting as a judge in that case. But he has to be heard. He has to apply. Let all the other parties come there, so that the court can grant him relief from that. These amendments are dealing with situations, which have been identified; situations which normally lead to delays in arbitration, so that arbitration now becomes just like the normal courts where there can be delay in the hearing and disposing of cases. We have heard of situations where arbitration starts and someone goes to court challenging, for example, the arbitration clause. That is a nullity. Since he has gone to court, that means the arbitration cannot proceed because that issue has to be determined by the court. Of course, one also makes sure that the court does not determine that issue for quite sometime. That has been one of the added frustrations of this issue. Just like in other countries, we have a proposal that once you commence the arbitration, it has to continue and even be finalized.

Mr. Temporary Deputy Speaker, Sir, no award in such proceedings shall take effect until that application in the High Court is determined. If such an award has been awarded and the court has ruled that the Clause was a nullity, then the award automatically becomes a nullity. This is to keep things moving. Then it is imposing a new obligation on all the parties involved in the arbitration at page 61. It is a New Clause 19(a). It states:-

"All the parties in arbitration now have a duty to do all things necessary for the proper and expeditious conduct of the arbitral proceedings".

They have a duty to proceed expeditiously with the arbitration to the final conclusion. Then there are other Clauses which deal with those types of issues. Then we have the effect of the award which is final. We also have issues such as when the costs may be paid, withheld or assessed. It is all provided. We have the issue of interest. The arbitration can order interest whether simple or compound.

The only ground that can cause the court to set aside the award is set out at page 68. As I have said, the awards are final and binding and implausible. If one can go to

court and prove that the making of the award was induced or affected by fraud, bribery, undue influence or corruption, then if the court is satisfied, it can set aside the award. This is one of the very limited grounds upon which the award can be set aside. In other words, we do not want a system where somebody just goes to the courts on any ground just because, maybe, he directed himself and did not think about it. Then there will be no purpose of having arbitration. He might as well have gone to the court. So, for the court to be able to set aside that award, that is one of the very limited grounds on which it can do so. This also applies to the enforcement of the award. If it is being enforced against you and you can prove these grounds, then it cannot be enforced against you.

Mr. Temporary Deputy Speaker, Sir, I can go on and on but I would just like to comment that this is a very good Bill and it will be good for this country and for our justice system. I appeal to the business community and other people to now make full use of arbitration because we have very many competent and qualified arbitrators in all fields who can handle this work.

With those remarks, I move and ask my learned colleague, who is also a Cabinet colleague and friend, to second.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to second this very important Bill. This Bill should have come like yesterday because of the tremendous increase of cases still pending in our judicial system. In the last count, the Chief Justice said that we have more than 853,000 cases pending in the courts. This is the highest in the East African Community (EAC). The lowest is Rwanda, Burundi, Uganda and Tanzania. I strongly recommend to this House that we pass this Bill. It has been discussed by the Law Society of Kenya (LSK) and the Law Reform Commission of Kenya and they have all agreed on it.

We have more than 7,000 licensed lawyers in this country. As you know, if you take this bottle of water and ask four advocates what colour it is, you will get different reactions. One will say it is blue, another one will say it is colourless and another one will say it is yellow depending on what emphasis they are giving it. In this particular instance, all the lawyers have agreed that this is an important Bill and have agreed on all the amendments without a single exception.

Mr. Temporary Deputy Speaker, Sir, one of the reasons why we have so many pending cases is because of the obsolete and outdated system of recording in the courts. Can you imagine in this Parliament if, as the presiding officer of this august House, you are required to be writing what we are saying. Try to attempt that one day and you will see what the judges and magistrates go through everyday. They have been reduced to mechanical robots. Instead of listening to the evidence, assessing and looking at the credibility of the witnesses, they are busy recording what the advocates say. For those of us who have appeared in the court, you have to speak at the speed of his pen.

There was one Judge, but he is now retired; if you appeared before him and you spoke at a speed faster than what he was writing, he would simply remove his glasses fold his arms and lie back on his chair. It was particularly difficult for advocates to know that the message he was conveying is that you are speaking faster than what he was recording. Our courts have not kept pace with technology. If you go to the martial courts, you will get the proceedings of what transpired yesterday and the first item on the agenda is to go through the proceedings and then make any amendments or corrections which are

then certified and the next day you get a proper certified record of what transpired. That should be the goal of our court system.

Mr. Temporary Deputy Speaker, Sir, there has been further development in technology. The best example is in New Zealand where they have software which even their Parliament is using which recognizes words. In our Parliament, we get our proceedings the following day. But in New Zealand, it is instant. As you speak, the software recognizes the words, it transcribes them into written speech and you can actually follow what the computer is recording. That should be our goal. We now have live coverage of proceedings. So, we should go a step further. The Attorney-General, as the political head of the judicial system, should do all that is necessary to stop making our judges and magistrates mechanical robots. That is not their function. We should have stenographers and other officers who can be able to transcribe what is being recorded.

Mr. Temporary Deputy Speaker, Sir, I said I am recommending this Bill to this House because once we pass it, I would recommend to the Chief Justice, who is the Head of the Judiciary, to prepare rules which will make it mandatory that before you file any case in court, you must go through arbitration. Must! It should not be like the current situation where it has been left to the individuals. We must go through arbitration. It should be mandatory! If you have not gone through arbitration, then the court should not recognize that lawsuit. If we do that, we will be able to reduce the backlog of our cases.

Mr. Temporary Deputy Speaker, Sir, I am saying that because, at the moment, if, for example, you owe me Kshs100,000 and you refuse to pay me and I file that case, you will be lucky if it is heard before five years. If it is a land case, you will be lucky if it will be heard while you are alive! That is how bad it is. Our society has become very vicious--

Mr. Chepkitony: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very important Bill and there is no quorum.

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

(The Chair consulted the Clerk-at-the-Table)

The Minister for Nairobi Metropolitan Development (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Temporary Deputy Speaker, Sir, that situation is forcing business people not to go to court. So, if somebody owes you Kshs100,000, you are better off accepting Kshs20,000 as final and full settlement rather than going to court.

Mr. Temporary Deputy Speaker, Sir, the last time this Act was amended was in 1995 and within that period, somebody would have been born and he would now be a father or mother. So, it has been overtaken by events.

Mr. Temporary Deputy Speaker, Sir, the Chartered Institute of Arbitrators has approved this Bill. It has also approved and agreed on the wording of these amendments. They are clarifying---

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Githae! Mr. Chepkitony, what was your point of order?

Mr. Chepkitony:, Mr. Temporary Deputy Speaker, Sir, I wanted to point out that there was no quorum and yet, this is a very important Bill.

The Temporary Deputy Speaker (Prof. Kaloki): Clerks, could you determine whether we have a quorum?

(The Clerks-at-the-Table counted the number of hon. Members present)

All right. Sergeant-at-Arms, could you ring the Division Bell!

(The Division Bell was rung)

The Temporary Deputy Speaker (Prof. Kaloki): We now have quorum.

You may proceed, Mr. Githae!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, in conclusion, as the Minister for Nairobi Metropolitan Development, we have identified three priorities. They are traffic, security and convenience of the residents of Nairobi. On the issue of convenience, we would like to see the Chief Justice to find out whether we can have a 24-hour court or a mobile court that will go round to sort out these cases.

With those remarks, I beg to second.

(Question proposed)

Ms. Odhiambo: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. In supporting this Bill, I would like to reflect on the sentiments raised by Mr. Mungatana that whenever we are discussing issues that are important, hon. Members need time to interrogate and seek views from members of the public and especially those with expertise in this area. We are denied this opportunity when such a matter is rushed this way

In that relation, and I encourage the Attorney-General to listen, I urge that whenever we have to shorten time, then the Government should provide copies of the parent law so that we can compare and know why we are making certain amendments where they are due. This should not happen only when we are in a hurry but also when we are handling other Bills in the ordinary manner. This is because the cost reverts to hon. Members who have to purchase the parent Bill. It is worse for those of us who do not have access to the CDF money. Although we may want to volunteer, we may be limited.

Mr. Temporary Deputy Speaker, Sir, these amendments are timely, because of the need to clear the backlog in our courts. Recently, there was a report which indicated that in terms of backlog, we are doing very poorly in the region compared to countries that may be distracted with other matters. These countries seem to be doing much better than us.

One of the things I would like to laud the hon. Attorney-General for doing is his keeping with the trend of development in law. This should be maintained. I have seen this in relation to the Sexual Offences Act and other laws. It is not enough just to pass the laws. We must be vigilant that when there is need for amendments we bring them before this House.

Mr. Temporary Deputy Speaker, Sir, arbitration is commercial oriented. I urge the Attorney-General that whenever we move such amendments, we must have a clear gender and age lens. I know that the Attorney-General facilitated a training for some women organizations, including FIDA on mediation. There was an indication that a Bill would be tabled in Parliament to enable organizations and the Government to deal with family-related issues. For instance, I have looked at the draft Bill on marriage laws. One of the things that appear under our current system of divorce is that we must have fault. That, therefore, means that whenever somebody wants to divorce, you must allude to adultery, cruelty, practice of witchcraft and all manner of things and yet under the draft amendments to the marriage laws, we have still carried the same things back. With the current generation, people divorce because they do not like your style of dressing. So, we may not need to find those grounds. However, we may need to encourage young people to go through mediation so that they know that even if you do not like dressing, you might like something else. That is why we need to look at these laws with a gender lens. I urge the Attorney-General to let us know what he will do to give this matter a gender lens.

In relation to age, I urge the Attorney-General to hasten the bringing of amendments to the Children Act so that we have the counterpart relating to children which is called "diversion". This is because many children who go through the justice system are actually in need of care and protection of the law and yet we bring them under the justice system as though they are criminals. However, when we do diversion, which is a system that is practised in developed countries and developing countries like South Africa, we do not have to subject these children to the justice system. Through diversion, which is similar, we can minimise trauma in children. We can do this by amending the Children Act or by bringing a substantive law, which is the Child Justice Law like has been done in South Africa.

As we do these revisions, let us also look concurrently at the need to do comprehensive reforms within the Judiciary. One of the areas that has caused us this backlog is sometimes the calibre of the judges that we appoint. I urge the Attorney-General to take up this issue so that whenever we make further appointments to the Judiciary, we be inclusive and get opinion from professional bodies such as the Law Society of Kenya.

This Bill is timely because it will not only enable us deal with local cases. Although I have not had time to go through the Bill because of the short period I was given but relying on what the Attorney-General has said, it will also enable us to look at arbitration even within the region. Therefore, when we have some wrangling between us and Uganda over islands such as Misingo, Remba and Ringiti, instead of stationing our military there, which we are very reluctant to do, then we can go through arbitration.

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

Mr. Konchella: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this important legislative process. There were admissions by the Attorney-General that we have 53,000 civil cases pending in our courts. We all know, and he knows better than all of us, that justice delayed is justice denied. It is taking eight to 20 years for somebody to get justice. So, the amendment to introduce arbitration in our legal system is something extremely important.

I support this Bill because I come from a community that had its own justice or court system, where people could handle any case, including murder cases. There were punishments meted by that process through leaders. I do not see anything that involves our African traditions and values in this particular amendment. If we have to reduce all the pending cases, which are many, then they had better be dealt with at the community level. This Bill deals with the commercial cases in the Republic and not cases involving the poor who cannot afford justice. Cases involving the poor are not prosecuted because the victims cannot raise money to hire a lawyer.

I would like the Attorney-General to look at the legal fees. If international arbitrators will come to this country, they will raise the cost of arbitration to the level of our courts. If we are introducing a law that will reduce the suffering of Kenyans, then it must be cheap. Should the Attorney-General find a certain level of poverty amongst our people, then the State must meet the cost of arbitration instead of the parties agreeing. This is because the parties cannot agree where one party cannot afford the cost of arbitration.

The other issue I would like to touch on is publishing the names of those enlisted as arbitrators so that people can know who to approach.

Mr. Temporary Deputy Speaker, Sir, I believe they will also be subject to the Public Officer Ethics Act, so that they do not institute corruption. One of the things that the public today is crying about is corruption in our courts. I believe this is one of the ways that might help us reduce corruption in our courts, so that other avenues of settling disputes can be undertaken without resorting to corruption.

So, the issue of fees is extremely important. Let us have a list of who is doing what, who is supposed to be handling what and who is capable of arbitration, so that the people can know them and be able to meet and discuss with them before they appear before them for court processes.

I think there is also need for education. Many people would not know what this new law means. We should be able to educate Kenyans through the print media and radio talk shows, so that they can know that they can actually get justice through this process.

With those words, I beg to support.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, first of all, I would like to take this opportunity to congratulate the Attorney-General for bringing this Bill at this time. There is need for us to, really, look at options other than our law courts, for purposes of dealing with the backlog of cases that exists in our courts of law today.

Before I go to my substantive contribution, I just want to make a quick mention that even though we have a huge backlog of cases, it is not good for the Chief Justice to complain about this backlog. It is important for him to do his part. We want creative means through which those cases can be finalized at the required speed. As a Parliament, we are trying to find a way--- This is why we are supporting this Bill on arbitration with all our hearts.

Mr. Temporary Deputy Speaker, Sir, as you have heard, other hon. Members have also proposed diversion. Ms. Odhiambo has talked about children's cases being handled differently. Mr. Konchella as talked about traditional courts. All this is because of this backlog of cases.

I also want to talk about the small claims courts. I do not know what has happened to them. We have been waiting in this Parliament to see proposals, so that we

can legislate on them, because we are all concerned. So, we just want to send a message to the Chief Justice that we, really, need proper reforms in a way that will help us handle the problems that affect our law courts out there.

Having said that, I really want to support the Attorney-General on this Bill, and all the amendments that he has brought. I particularly want to agree with the fact that for 14 years, since the first arbitration law was passed in this country, there has not been any attempt to make amendments to that law, so that we can keep up with the current trends.

Mr. Temporary Deputy Speaker, Sir, one of the things that I have sincerely liked in this Bill is the fact that the Attorney-General has seen it fit to give us Clause 9, which basically talks about receipt of documents and communication, which has been upgraded from the normal hard copy communication to e-mail and facsimile communication. This is a great move towards accepting technology as part and parcel of the legal system. I am sure that those professionals listening to us today will know that it is going to mean a lot in terms of hastening proceedings. I sincerely support the innovation that the Attorney-General has brought in

Another thing that I have, really, liked is the finality of the arbitral award, which is contained in Clause 36. A lot of times, we have had problems with people who go to arbitration, and just when they are about to be defeated, or to lose the arbitration, they run to the courts and there is that provision of original jurisdiction of the High Court in all matters. I want to speak on that aspect later on.

Mr. Temporary Deputy Speaker, Sir, on that basis, they go to court, obtain injunctions and stop everything from happening. In the meantime, money has been spent. People have agreed to settle a dispute through arbitration, and then, suddenly, someone goes to court and stops everything. This has been abuse an abuse of the court process. For those of us who have been practising in court for the last few years, we have seen this process being abused, and I do not know how the Attorney-General will address that particular provision.

Even with the particular law that we are debating today, the Second Reading, I do not know how the Attorney-General will stop someone from approaching the High Court, under the Constitution, and claiming that the High Court has original jurisdiction in every matter within Kenya, even after entering into a commercial arbitration agreement. So, he needs to speak on this point, because we are worried about it.

Mr. Temporary Deputy Speaker, Sir, I meant to talk about Clause 32A, which I have touched on, on the finality of the arbitration award. I hope that Kenyans will now start accepting that this, indeed, is the way to go for all of us. I also like the fact that with the passing of this law, we are making Kenya, under Clause 36, a place that will be recognized internationally and within the region, where we can have huge arbitration being carried out.

I pray that hon. Members will quickly pass this law; for those of us who come from the Coast region know that there are huge transactions that go on there, because of the sea port there. Some of these transactions are international in nature. The transactions involve billions of Kenya Shillings translated from millions of US Dollars. Many of the people who are affected, in terms of the transport by ships, and the things that happen there--- In the event of problems arising, many of the people in commercial transactions have been forced to attend arbitration proceedings in other countries, hence incurring an extra expense.

Mr. Temporary Deputy Speaker, Sir, making Kenya a centre for arbitration is extremely good. It will not only save our business people the cost of having to travel to New York and other European cities to do arbitration, but it will also help lawyers, who are, in fact, domiciled in Kenya, to access international clients, who will pay good fees. This will have a ripple effect on the economy.

So, without saying so much, I would want to join the hon. Members who have spoken before me and say that we should pass this Bill in the shortest time possible to enable us move the country forward, and make our contribution towards unclogging the myriad of cases that are within the law courts in Kenya. I would urge hon. Members to take this as one of those Bills on which we need to co-operate and pass for the good of all of us, so that the country can move forward.

Mr. Temporary Deputy Speaker, Sir, other the concern about the original jurisdiction of the High Court of Kenya that is grounded in the constitution, which I want the Attorney-General to speak on, this is a good Bill, and I think hon. Members will pass it as soon as possible.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Mwathi! Sorry, Mr. Ngugi.

Mr. Ngugi: Mr. Temporary Deputy Speaker, Sir, I was about to say that anybody who calls me Mwathi is liable for a fine because, Mwathi is my younger brother and represents Limuru. I am David Ngugi and represent Kinangop.

Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. Coming from the insurance industry, I know the number of cases that are pending before the courts. If we were to encourage people to go through the arbitration way, then a lot of cases would be finalized; many people would get their awards and courts would be left to deal with other matters.

The other point is when we did the arbitration exams in the 1980s; the people who conducted them came from the United Kingdom. But with the amendments that are being proposed here and with the intention of making Kenya a real arbitration centre, then we can only strengthen our institutes of arbitration here, so that other countries, even our neighbors, can learn from us

Mr. Temporary Deputy Speaker, Sir, one concern is the cost of arbitration. Arbitration is supposed to be cheaper than the courts. However, this is not necessarily so, because there are no schedule of fees an arbitrator can charge. This is one thing I want to appeal to the Attorney General. There must be some guidelines as to how much arbitrators can charge. Although in effect, it is supposed to be a cheaper process than the court process, sometimes, it is not always so.

Given that we want to pass this Bill as soon as possible, with those few remarks, I beg to support.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I also rise to support this Bill which is actually long overdue.

Mr. Temporary Deputy Speaker, Sir, this is an alternative way of solving disputes. I would want to tell the Attorney-General and the courts that there is lack of awareness among our people. After passing this Bill, there should be information dissemination and sensitization of our people, so that they can know this law. The Attorney-General said we have various categories of professionals in this country. A number of them have their

own personnel dealing with these disputes. If we have a dispute among engineers, it would be easier for such issues to be heard by people who are competent in that profession. If we have something dealing with marine, we have people qualified to solve the dispute. By so doing, arbitration becomes very convenient and cheaper. Of course, the other advantage is that if there are very sensitive issues, which can be heard in camera, we can do so, under arbitration.

Mr. Temporary Deputy Speaker, Sir, the issue of enforcement of the award is something that needs to be addressed. This is because when you take back disputes to court, you will get the same jam that we are trying to avoid.

It was also said that arbitration is supposed to be quasi-judicial. That issue has been raised here. We must really get out of it by ensuring that whatever we do through arbitration is finalized. All professional and technical disputes must be sorted out through arbitration.

With those few remarks, I beg to support.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Temporary Deputy Speaker, Sir, I rise on a point of order to request that the Mover be called to reply.

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

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I really wish to thank the Members for the great support they have given to this Bill. I also want to thank them for accelerating this Bill.

All hon. Members have made very positive contributions. Hon. Odhiambo mentioned that we should have copies of the present law together with these amendments. But if you read the Standing Orders, what is required is that the existing sections of the law being amended should be attached to the Bill. You will find from page 74 onwards of this Bill, the old sections that are being amended. It is presumed that hon. Members can access the entire Bill if they want for clarifications.

This Bill is what we call a generic Bill. But there will be a lot of legislation, which will also provide for arbitrations. We are talking about land tribunals, land matters and so on. They can be taken before arbitration. In fact, I was talking to a judge today who told me that he had referred one such arbitration to the elders of the community to be dealt with in accordance with customary law of that particular community. So, if you are talking about divorce cases, again, you will find provision in the divorce law, which talk about mediation, reconciliation and arbitration. Why? Because people have now moved away from saying that you can only divorce on the grounds of adultery, cruelty or desertion. It will just be one ground that you are irreconcilable. Whatever has caused that irreconciliation is up to you. However, there will be need, before you now go and undertake divorce, to go through mediation, reconciliation and arbitration process. You have to show the courts that that process has failed and we just want a divorce. In a number of other legislation also you will find the need for arbitration. In fact, even I am sure that the High Court and the Chief Justice will bring up the rule saying that for any civil case, you must undertake some reconciliation or arbitration. There would be rules, which will guide you on how you will do it. This would be the substantive law. But there would be the procedural aspect of it.

When it comes to the issue, which has been raised here about the cost of arbitration, particularly commercial arbitration; they can be a bit costly because you have to pay for the arbitrators. You know if you go before the courts, the State pays for the judges. You do not pay the courts. But if you go before arbitration, these are private professionals and so on. So, in addition to your own advocate, or whoever it is, you have also to pay for the arbitrators. But the centre under whose auspice that arbitration is being held, has a scale of fees, which everybody knows with this type of case, would be payable. I have told the Institute of Arbitrators, together with the Law Society of Kenya, to establish the Regional Centre for Commercial Arbitration as a matter of urgency. The Government will put in some money to ensure it begins. However thereafter, it will have to run on a commercial basis. It is that centre, when established that will say: "If you come to us for an arbitration to be done under our auspices these are the charges that will be payable" and so on.

I had talked about the issue raised by Mr. Mungatana. I had forgotten to raise the fact that we are bringing in information Technology (IT) into arbitration by referring to fax and e-mails. I would like to thank Mr. Mungatana for bringing it out.

Mr. Temporary Deputy Speaker, Sir, on the issue of finality, this whole Bill is about how we can insulate the courts from arbitration. As I stated earlier, the mere fact that you have gone to court, under the law, will not stop the arbitration from going on. This is what is being said here. The arbitration will go on to the final conclusion and giving of the award. However, the award will now have to wait for that application to be disposed of. In this case, if the applicant to the High Court succeeds, then the award may be nullified automatically. However, if he does not succeed, the award will be enforced. We will not have the delay; where you delay in hearing arbitration awaiting the court decision. The arbitration will go on, irrespective.

Mr. Temporary Deputy Speaker, Sir, there are only specific grounds on which the courts can interfere. The courts are not an appellate court and the arbitral tribunal a junior court, so that what is decided here can be taken to the higher court of appeal. The arbitral tribunal is independent. However, there are cases in which the courts can interfere. One of the cases I said is, if you can really show the court that there was corruption, fraud and undue influence; you must prove it to the court. The Bill, as it was before, one could go to court on almost anything. However, now the grounds are very limited.

I believe that with the passage of this Bill, any court applying itself to the law will be hard put to interfere with an arbitration that is going on. In fact, the courts as are there today, should welcome with open arms, the arbitrations. This is because the arbitrations are now helping them. They reduce the workload from them. They reduce the heavy responsibilities on their shoulders.

Mr. Temporary Deputy Speaker, Sir, I think I have talked on the issue of guidelines and how much the arbitrators can charge. Mr. Ngugi raised that issue and also Mr. Chanzu. Thank you very much for your contributions. These hon. Members are arbitrators and that is why they were able to talk with competence on these issues. They are among the figures that I mentioned earlier. The other one is my name sake. I think he should become an arbitrator. I thought he is one of the accountants who are arbitrators. I think you should begin thinking about it so that when you leave politics it would be a very good thing to be sitting as an arbitrator and elder, settling disputes from various areas and so on.

With those few remarks, I beg to support.

(Question put and agreed to)

*(The Bill was read a Second Time and Committed
to a Committee of the whole House tomorrow)*

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members that concludes the business on the Order Paper. This House is, therefore, adjourned until Tuesday, 26th May 2009 at 2.30 p.m.

The House rose at 5.55 p.m.