

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 26<sup>th</sup> May, 2009

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PETITION

#### COMPENSATION TO VICTIMS OF COLLAPSED PYRAMID SCHEMES

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. My point of order is in respect of Standing Order No.210(2), which requires that whenever a petition is committed to the Government, the Minister responsible gives a statement to the Petitioner through this House.

Mr. Speaker, Sir, seven months ago, I petitioned on behalf of the victims of pyramid schemes. This matter was committed to the Ministry of Co-operatives Development.

I am standing on a point of order to request that the Chair may direct the Minister to offer his response on Thursday.

**Mr. Speaker:** Hon. Members, the request by Dr. Khalwale under Standing Order No. 210(3) is genuine. However, you will note that Dr. Khalwale seeks to rely on Standing Order No.210 (2) for authority to compel the Minister to respond to the Petition as was tabled in the House seven months ago. The operative position is that the Standing Orders, as they now are inclusive of the elaborate procedure that is laid out under Standing Order No.210, took effect from the beginning of the Third Session of Parliament. So, the Minister is not bound by the provisions of Standing Order No.210. However, out of national duty, the Minister may, exercising his discretion, respond to that Petition.

This is not by compulsion because this provision was not in effect seven months ago. The Minister concerned is the Minister for what?

**Dr. Khalwale:** Mr. Speaker, Sir, the Minister for Co-operative Development.

**Mr. Speaker:** Will the Minister for Co-operative Development indicate whether or not he is prepared to exercise his discretion in favour of responding to that Petition or does he want to go by the law as it was?

**The Minister for Industrialization** (Mr. Kosgey): Mr. Speaker, Sir, I will undertake to inform the Minister who will reply accordingly.

**Mr. Speaker:** Yes, and let him know that he has a choice. He is not under compulsion to respond!

Next order!

### PAPER LAID

The following Paper was laid on the Table: -

The Economic Survey, 2009

*(By the Minister for Planning, National  
Development and Vision 2030)*

### NOTICE OF MOTION

#### ADOPTION OF 2009 ECONOMIC SURVEY

**The Minister for Planning, National Development and Vision 2030** (Mr. Oparanya): Mr. Speaker, Sir, I beg to give notice of the following Motion: -

THAT, this House adopts Economic Survey, 2009, laid on the Table of the House on Tuesday, 26<sup>th</sup> May 2009.

### QUESTIONS BY PRIVATE NOTICE

#### PROCUREMENT OF INTERTEK INTERNATIONAL SERVICES TO CONDUCT FITNESS TESTS ON MAIZE IMPORTED FROM SOUTH AFRICA

**Mr. Ngugi:** Mr. Speaker, Sir, I beg to ask the Minister for Industrialization the following Question by Private Notice.

(a) What criteria and procedure did the Government use to procure the services of M/s Intertek International Ltd. to conduct fitness test on the maize that was imported from the Republic of South Africa?

(b) How much money did the Government pay for the services rendered?

**The Minister for Industrialization** (Mr. Kosgey): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry of Industrialization was not involved in the hiring of M/s Intertek International Limited to conduct fitness tests on the maize imported from the Republic of South Africa in Mombasa. Intertek International is a company that is contracted by the Kenya Bureau of Standards, a parastatal under my Ministry, to offer conformity assessment services under the pre-verification of conformity to standards programmes by testing products destined for Kenya, at the country of supply. Intertek International Limited does not, therefore, certify products locally and the Ministry is not privy to the engagement of the firm to undertake the aforementioned services.

(b) In view of the answer to part "a" of the Question, I am not, therefore, aware or in a position to give the amount that was involved in engaging that company.

**Mr. Ngugi:** Mr. Speaker, Sir, my Question arose out of a Statement that was made here by the Prime Minister when he stated that, that firm had been engaged to

certify whether the maize was fit or not for human consumption. I thought that, that being under the Ministry of Industrialization, the Minister should know how that firm was engaged, whether the procurement rules were followed and how much was paid.

Now that the Minister has said that, that firm does not certify products locally, I need to get your guidance as to whether I should redirect this Question to the Prime Minister or the relevant Ministry.

**Mr. Kosgey:** Mr. Speaker, Sir, I have said that Intertek International Limited is a company that is contracted by the Kenya Bureau of Standards to do pre-shipment inspection of goods originating from countries outside the East African region. Intertek International Limited has a small laboratory in Mombasa. So, they can carry out tests if they are instructed to do so.

**An hon. Member:** No! No!

**Mr. Kosgey:** Mr. Speaker, Sir, I am answering a Question! The hon. Member who is saying “no” will have an opportunity to answer the Question if he catches your eye.

If the Office of the Prime Minister, or the Ministry of Agriculture, requested the company to carry out tests and gave the results to whoever had commissioned it, there is nothing wrong with that. That has nothing to do with me or the Kenya Bureau of Standards.

**Ms. Karua:** Mr. Speaker, Sir, you will notice that the Minister is using the word “if”. Parliament deserves an unequivocal answer. Since the matter has been dealt with previously by the Prime Minister and, in any event, he is the overall co-ordinator and supervisor of the functions of the Government Departments, including Ministries, is it in order that we seek your indulgence and request you to direct the Question to the Prime Minister’s Office, so that we can get to the bottom of the matter? The Minister is not able to answer the Question and he is not saying so. He is just saying “if”!

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

**Mr. Speaker:** Order, hon. Minister! This Question, as framed--- You earlier on stood up to reply and that means that you had an answer. So, I want you to answer the Question clearly and un equivocally. First, did the Government procure the services of Intertek International Limited to conduct tests on the maize imported from South Africa?

**Mr. Kosgey:** Mr. Speaker, Sir, it was stated here by the Prime Minister that Intertek International conducted tests on the maize. The Question was: Who did it? I have just replied that---

**Mr. Speaker:** Order, Mr. Minister! The Question is not who did it! The Question is straight forward and it says: “Did the Government procure the services of Intertek International Limited to conduct tests?” Did it or not procure those services?

**Mr. Kosgey:** Mr. Speaker, Sir, from the Statement issued by the Prime Minister here, it is obvious that the Government, through the Office of the Prime Minister, procured the services of Intertek International Limited.

**Mr. Speaker:** Order, Mr. Minister! Yes, you have answered that part well. But there is a second part. What criteria and procedure did the Government use?

**Mr. Kosgey:** Mr. Speaker, Sir, there are a number of laboratories in Kenya. Beside the Kenya Bureau of Standards, Government Chemist or the Ministry of Public

Health and Sanitation also conducts the tests, it is in order for anybody who is interested to contact another laboratory seeking a third or a fourth opinion. So, I do not see anything wrong!

**Mr. Abdirahman:** On a point of order, Mr. Speaker, Sir. The main substance of this Question is actually the criteria used to identify Intertek International Limited. I doubt whether the Minister is answering this Question appropriately. He admitted that Intertek International Limited was used, but he went on to talk about other laboratories. Is he in order not to address the main substance or the gist of this matter?

**Mr. Kosgey:** Mr. Speaker, Sir, I have said that there are a number of laboratories in Kenya, and one of them is at the Kenya Bureau of Standards. That body had already conducted tests on that maize. Therefore, a second or a third opinion could only be sourced from elsewhere. Since Intertek International Limited deals with verification for conformity, it is quite natural and obvious that if you are looking for a third opinion---

**Mr. J.M. Kamau:** On a point of order, Mr. Speaker, Sir.

**Mr. Kosgey:** Mr. Speaker, Sir, I have not even finished the sentence!

**Mr. Speaker:** What is it, Mr. J.M. Kamau?

**Mr. J.M. Kamau:** Mr. Speaker, Sir, the Minister is not prepared to tell us the whole story! He can start by telling us who is Intertek International Limited in the first place. What does he know about Intertek International Limited? The Question is: What criteria was used? Why can he not just tell us the truth rather than beating about the bush?

**Mr. Kosgey:** Mr. Speaker, Sir, I have stated that Intertek International Limited is a company that is actually contracted by the Kenya Bureau of Standards to conduct tests on goods destined for Kenya from various countries. It then issues certificates of conformity or otherwise. The company has an office in Kenya. I have also said that the company has a laboratory in Mombasa.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. The Minister has now admitted that, yes, indeed, that company rendered that service. It, therefore, arises that he is, therefore, supposed to answer part "b". He had stated that he could not answer part "b" in view of his answer to part "a". Now that he has admitted, it requires, therefore, that he answers part "b". Given the history of the maize problem, it has become such a big ghost that, maybe, this is the time for us to sort it out completely.

Members of this House know that the Prime Minister was a senior employee at the Kenya Bureau of Standards. Therefore, he was in the best position to have confidence in the standards of the Kenya Bureau of Standards. I, therefore, request that we should not take this matter lightly. The Minister should withdraw and allow the Prime Minister to---

**Mr. Speaker:** Order! It is Question Time! Mr. Minister, are you now able to answer part "b" in the light of your answer?

**Mr. Kosgey:** Mr. Speaker, Sir, I am afraid I do not have an answer to that. As I said, the Prime Minister's Office may have contracted the services of Intertek International Limited as it was stated here.

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

**Mr. Speaker:** The Minister is responding to a point of order!

**Mr. Kosgey:** Mr. Speaker, Sir, I do not have an answer as to how much the company was paid.

**Mr. Kioni:** On a point of order, Mr. Speaker, Sir. Standing Order No.97 provides that if a Minister persistently refuses to answer a Question, he is behaving in a disorderly manner. Am I in order to ask that this Minister be deemed to have been disorderly because he has persistently refused to answer that Question?

**Mr. Speaker:** Order, hon. Members! Hon. Kioni could not be in order to assert that the Minister has acted in a manner that is disorderly because, as we have all witnessed, the Minister has given the answers that he has to the best of his ability.

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. There are two questions which the Minister has failed to answer. One, is on the criteria that was used and the second one is the amount of money that was paid to that company. From the Minister's admission, it is not his Ministry that procured the service. In view of that, would I be in order to ask that this Question be deferred and redirected to the Prime Minister who procured the service?

**Mr. Speaker:** That is a valid point of order. Mr. Minister, that point of order asserts that you have not provided an answer to the Question in two parts:-

(a) The criteria and procedure used.

(b) How much money was paid.

That is a valid point of order! Can you answer those questions now?

**Mr. Kosgey:** Mr. Speaker, Sir, with respect to part "a" on the criteria, I said that Intertek International Limited is a company that is already contracted by the Kenya Bureau of Standards. I also said that the maize was tested by the Kenya Bureau of Standards, the Ministry of Public Health and Sanitation, the Government Chemist and KEPHIS. Therefore, it follows naturally that if you wanted to seek a second or a third opinion on the maize, you would contract or choose a company like Intertek International Limited, which has laboratories in Mombasa, to give you that opinion. Therefore, it is---

*(Several hon. Members stood up in their places)*

Mr. Speaker, Sir, I have not finished responding to the previous point of order!

**Mr. Speaker:** The Minister is responding to a point of order!

**Mr. Kosgey:** Mr. Speaker, Sir, I am responding to the point of order. Let me finish!

I have actually explained the first part of the Question. On part "b" of the Question, I have said that I do not have an answer with regard to how much the Government paid to Intertek for the services rendered. I undertake to bring the answer later on. I had not received the amount that was paid to Intertek International Limited by this afternoon.

**Mr. Ruto:** On a point of order, Mr. Speaker, Sir. On the criteria, the Minister seems to be alluding to the fact that the company was contracted by the Kenya Bureau of Standards (KEBS), probably through their tender. Could we have a clarification as to whether the company was, indeed, contracted by the KEBS? If that is the case, then the public procurement procedures were used and that responsibility rests with the KEBS. Was it a fresh contract given by the Office of the Prime Minister and, therefore, he ought to have used the procurement procedures laid down by the Public Procurement and Disposal Act?

**Mr. Kosgey:** Mr. Speaker, Sir, I have said, and I repeat, that Intertek International Limited is a company that has been contracted through competitive bidding by the KEBS to offer conformity assessment services under the pre-verification of conformity to standards programme. Intertek International Limited, therefore, is a company that is known by the KEBS. It is charged with the responsibility of testing goods that are destined for Kenya.

*(Several hon. Members stood up in their places)*

**Mr. Speaker:** Order, hon. Members! We will take the last question on this from Mr. Ngugi. I will revisit this matter at the end of Question Time. I will give direction on what needs to be done further.

Yes, Mr. Ngugi!

**Mr. Ngugi:** Mr. Speaker, Sir, I do not know what the Minister has been answering. This is because in this answer he said: "Intertek International Limited does not, therefore, certify products locally and the Ministry is not privy to engagement of the firm to undertake the above mentioned tests." On that basis he has admitted that he is not aware and now, he is saying that he is aware.

Mr. Speaker, Sir, when a Minister changes positions; one time he says he is aware and another time he says he is not aware--- The criteria, surely, as a Government Minister, is very shoddy. He should tell us that the criteria is "a,b,c and d" or these are the procedures or rules which were followed or not followed. I think I will need the Chair's guidance on this matter. Either you direct this Question to the right Ministry or you give the Minister time to go and get the facts.

**Mr. Kosgey:** Mr. Speaker, Sir, I have answered the Question from two points of view. One is from what the Ministry does and the other one is from what I know happened. So, when I said that the Ministry was not aware, I did not say that, personally, I was not aware. When I said, "we, as the Ministry of Industrialization," I meant that we did not, as a Ministry, commission Intertek International Limited. However, I know that the Office of the Prime Minister did so and I said that I am aware of that.

**Mr. Speaker:** Hon. Members, I shall revisit this Question at the end of Question Time and give appropriate direction.

Yes, Mr. K. Kilonzo!

GOVERNMENT POSITION ON EXPOSURE OF  
FRAUDULENT ACTIVITIES OF TRACK-IT LTD

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

Could the Minister explain the Government position on the exposure of the fraudulent activities of Track-It Ltd as exposed by the local media?  
What is the Government doing to ensure the security of the journalists who exposed the fraud?

What is the role of security forces in the matter including possible corrupt involvement and cover-up?

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

(a) After the exposure of the fraudulent activities of Track-It Limited, the Government moved swiftly and instituted investigations into the alleged activities of this company. Officers from the Criminal Investigations Department (CID) are currently investigating the scam, with a view to unearthing the truth and arrest any possible suspect involved in the illegal and dangerous activities. An inquiry file No.35/09 was opened following the allegations and investigations are on-going.

(b) The Government is not aware of any threat directed towards the journalists who exposed the alleged fraud as no report has so far been made to any police station. However, I wish to assure all journalists that the Government will always guarantee their security.

(c) The role of the police officers that were temporarily attached to Track-It Company Limited since the year 2005 were to track and recover all stolen motor vehicles fitted with tracking gadgets and arrest all suspected robbers or car thieves found with such stolen motor vehicles.

Mr. Speaker, Sir, there is, therefore, no police involvement in any cover-up or corrupt dealings. The company has since closed its doors and the attached police officers withdrawn from the firm.

**Mr. Midiwo:** On a point of order, Mr. Speaker, Sir. I appreciate the Assistant Minister's answer. However, could the Questioner declare his interest in this matter? Could he also tell us if one of the managers in the media company that has been dealing with this case is not a parallel competitor to the company that they are trying to destroy?

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I have no interest whatsoever in this case other than to ask for the safety of the journalists who have done a good job in exposing scams in this country. Their lives are in danger and that is why we need the Government to tell us whether the journalists who unearthed this scam did not report this matter to the police. What action has the Assistant Minister taken?

**Mr. Ojode:** Mr. Speaker, Sir, an inquiry file has been opened. From the reports which we have received, there is another company known as Car-Track, which is competing with Track-It Limited. On the issue of security, I have elaborately stated that we have already withdrawn our security officers who helped the company to recover stolen vehicles. As far as security is concerned, that is what we have. Otherwise, an inquiry file has been opened. If there is anything which the hon. Member would like the Government to do, we are ready to do it.

**Ms. Karua:** Mr. Speaker, Sir, it is not normal for the Government to attach police, as workers, to assist a private company. In what circumstances were the police attached to that company? Were they on hire as allowed by the Police Act, or in what circumstances were they attached?

**Mr. Ojode:** Mr. Speaker, Sir, it is common knowledge that anybody in this country can hire the services of the police on payment. There is a fee that we normally charge and we gazette those figures. Anybody is allowed to get the services of the police officers upon payment. They were on hire!

**Mr. Langat:** Mr. Speaker, Sir, I want to ask the Assistant Minister to assure Kenyans that other companies that are offering similar services are not going to do the same thing.

**Mr. Ojode:** Mr. Speaker, Sir, let me say that it was very unfortunate that 7,000 vehicles, which were randomly tested, were found to have been fitted with the Track-It gadget. One of the vehicles belonged to my colleague, Mr. Mbugua, and they found those gadgets in his car. So, if there is anything which we think is not correct, I would urge hon. Members to come out openly in order for us to investigate straightaway, so that we can arrest the culprits.

**Mr. Ruto:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to appear to be exonerating Track-It? I can confirm that I was one of the victims! My car did not have that gadget and I had paid for it! The Assistant Minister is now telling us that they sampled the cars and that Track-It fitted them with those gadgets. Is he exonerating Track-It on the Floor of the House?

**Mr. Ojode:** Mr. Speaker, Sir, I said clearly that we are talking about Track-It and not Car-Track. The issue here is Track It! When we were investigating this matter, Track-It randomly checked some of the cars which they had already fitted with the gadget; I said that the car of my colleague here was fitted with the gadget. It was Track-It!

*(Dr. Eseli stood up in his place)*

**Mr. Speaker:** The Assistant Minister is responding to a point of order!

**Mr. Ojode:** Mr. Speaker, Sir, it is quite unfortunate that I do not deal with both companies, and neither am I their customer. However, I want to assure Kenyans that, if anything is found to be wrong, we will definitely investigate and arrest the culprits.

**Mr. Ruto:** Clarification!

**Mr. Speaker:** Order, Mr. Ruto! You are out of order! You can only stand on a point of order, but you cannot stand and shout "clarification!" That is not permitted under our Standing Orders! What is it?

**Mr. Ruto:** On a point of order, Mr. Speaker, Sir. I did not mention Car-Track, and for the Assistant Minister to start dragging in another company--- Is it in order for him to start dragging in another company? We are dealing with what is before the House, and that is Track-It. They neither fitted any gadget in my car nor in Dr. Eseli's, and we are both here!

**Mr. Ojode:** Mr. Speaker, Sir, in order for the hon. Member to assist this Government, I would like him to give us details, so that we can arrest those who are getting money through fraudulent means. I will do it and he knows that!

## ORAL ANSWERS TO QUESTIONS

### *Question No.115*

#### COMPENSATION FOR FARMERS/CO-OPERATIVE SOCIETIES OWED BY DEFUNCT KCC

**Mr. Lessonet** asked the Minister for Co-operative Development and Marketing:-



(a) whether he could confirm that KCC Ltd, prior to its liquidation and conversion to KCC 2000, was indebted to farmers and co-operative societies;

(b) how much KCC Ltd owed respective farmers and co-operative societies before the transfer of its assets to the New KCC 2000; and,

(c) what plans he has to compensate the farmers and societies, such as Sabatia Co-operative Society, which is owed Kshs10 million.

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. I did not ask my last question!

**Mr. Speaker:** Order, Mr. K. Kilonzo! You did not catch the Speaker's eye earlier. I do not have to state "last question" for you to ask the last question. I actually gave you that opportunity and the record in the HANSARD will bear me out.

**Mr. K. Kilonzo:** Mr. Speaker, Sir,---

**Mr. Speaker:** Order, Mr. K. Kilonzo! You cannot! We have moved on to Question No.115.

*(Laughter)*

**The Minister for Co-operative Development and Marketing (Mr. Nyagah):** Mr. Speaker, Sir, I beg to reply.

(a) I confirm that KCC Ltd, prior to its liquidation, was indebted to the tune of Kshs4.371 billion to farmers, co-operative societies and other creditors.

(b) The amounts owed to various creditors may be broken down as follows:-

| <b>Name</b>           | <b>Kshs(Billion)</b> |
|-----------------------|----------------------|
| Farmers (milk intake) | 0.593                |
| Government (loans)    | 0.521                |
| Bank loans            | 0.966                |
| Motor vehicle leases  | 0.25                 |
| Creditors (others)    | 2.266                |
| <b>TOTAL</b>          | <b>4.371</b>         |

(c) There are no plans to compensate the farmers or co-operative societies such as Sabatia, Sotik, Kapsabet, Iten and so on.

**Mr. Lessonet:** Mr. Speaker, Sir, the Minister has indicated that he has no plans to compensate our farmers, while he has paid those guys who plundered the resources of KCC and, therefore, the farmers. You will appreciate that under the Ministry Co-operative Development, there is a Commissioner of Co-operatives, who deals directly with and supervises co-operative societies. I wonder, therefore, what rationale the Minister is using to refuse to compensate the farmers.

**Mr. Nyagah:** Mr. Speaker, Sir, for clarification sake, the Government did not buy the New KCC from the original KCC Ltd. The Government bought all the assets and some liabilities from KCC 2000 and KCC Holdings Limited. Therefore, the company that owed farmers and societies was the original KCC, which has nothing to do with the current New KCC.

**Mr. Chepkitony:** Mr. Speaker, Sir, I would like the Minister to tell this House how much the Government paid to KCC 2000, and what the value of the assets was when it bought it.

**Mr. Nyagah:** Mr. Speaker, Sir, the original KCC was sold to KCC 2000 for a price of Kshs400 million. The Government bought the business assets and took liabilities from KCC 2000 and KCC Holdings at a price of Kshs547 million.

**Mr. Speaker:** Last Question, Mr. Lessonet!

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

**Mr. Speaker:** Order, Mr. Ruto! It had better be a point of order! You have had too many opportunities to raise points of order, but some have not been quite points of order.

**Mr. Ruto:** Mr. Speaker, Sir, considering that KCC issues are very critical, would I be in order to request that we debate them a little more because there are so many farmers who are still owed---

**Mr. Speaker:** Order, Mr. Ruto! The Chair cannot allow you to debate those issues "a little more" because it is Question Time!

**Mr. Ruto:** Mr. Speaker, Sir, could I ask one more Question, considering that---

**Mr. Speaker:** You are out of order, Mr. Ruto! I have already called for the last question!

**Mr. Lessonet:** Mr. Speaker, Sir, I want to ask the Minister the advice he would like to give to farmers considering that there is now a new KCC which is receiving almost half the milk in this country. What advice does he want to give to farmers, especially those who lost over Kshs593 million in the past? What advice would he give them, so that they may trust him and his Commissioner in future?

**Mr. Nyagah:** Mr. Speaker, Sir, I wish to apologize on behalf of the Government for mismanaging the co-operative movements in this country. Many institutions such as Kenya Farmers Association (KFA), KCC, among others, collapsed.

The new KCC is making good progress. We hope that it would be privatized soon. I hope the Government will allow farmers who lost money in the past to buy the new KCC. It should not be sold to rich individuals. It should be sold to co-operatives who suffered the loss. I hope this will happen. This is the advice I would like to give to farmers. They should lobby to buy it.

**Dr. Eseli:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to apologize to dairy farmers who were wronged by the previous Government in which he was a Member? Is he in order to suggest that Kenyans should forgive him?

**Mr. Nyagah:** Mr. Speaker, Sir, I was in that Government! That is why I apologized on behalf of the Government then. I said it was mismanagement during those days which led to the collapse of KCC. I am among the few who can apologize when the Government makes mistake.

**Mr. Speaker:** Next Question, Ms. Karua!

**Ms. Karua:** Mr. Speaker, Sir, although I have not been given a copy of the answer as is the tradition. I will proceed to ask the Question.

*Question No.118*

RESETTLEMENT OF IDPS/  
SQUATTERS IN NYAHURURU

**Ms. Karua** asked the Minister of State for Special Programmes:-

(a) whether the Government is considering to buy land to settle the 15,000 Internally Displaced Persons (IDPs) camping at the 50 acre plot at Mawingo in Nyahururu; and,

(b) what plans the Government has to resettle the landless IDPs and squatters.

**The Minister of State for Special Programmes** (Dr. Shaban): Mr. Speaker, Sir, copies of the written reply were sent to Parliament last week. So, it is unfortunate that the Member has not received a copy.

However, if she does not mind, I beg to reply.

Mr. Speaker, Sir, I beg to reply: -

(a) The Government is not considering buying land to settle the 15,000 IDPs camping at the 50 acre plot at Mawingo in Nyahururu since the plot on which they are currently camping on is their plot.

(b) The landless IDPs, through their own initiative and with the support of the Government, has been forming themselves into groups to purchase land for settlement after receiving the Government of Kenya support of Kshs10,000 each per family. Those groups are then assisted by the Government through provision of free building materials or payment of Kshs25,000 for house construction per household. The Government will, therefore, support such initiatives by IDPs.

**Mr. Mureithi:** On a point of order, Mr. Speaker, Sir. I would like to inform the Minister that Mawingo is not in Nyahururu. Nyahururu is in Laikipia West. It is in Ol Kalou Constituency. So, when the Question is being answered, for the sake of the HANSARD, Nyahururu should be dropped because it is in Laikipia West.

**The Minister of State for Special Programmes** (Dr. Shaban): Thank you, I oblige!

**Mr. Speaker:** Madam Minister, have you completed your answer?

**The Minister of State for Special Programmes** (Dr. Shaban): Yes, I have.

**Ms. Karua:** Mr. Speaker, Sir, I am very dismayed that the Minister says that there are no plans to buy land for these IDPs. It is true that the plot on which they are owned by them, but 50 acres for 15,000 people; 3,389 families cannot eke out a livelihood! Could she confirm to the House that the only way those IDPs have been surviving is because her Ministry has been supplying them with food? Could she tell us how much money she has spent on food for those IDPs since they settled there which I believe will be enough for buying another piece of land?

**Dr. Shaban:** Mr. Speaker, Sir, it is very difficult for me to say how much I specifically spent on that particular group. The Government has spent lot of money on all the IDPs in the country. But, giving them money instead of food is wrong because I will be sending them to the grave very fast. My Ministry has the mandate of feeding Kenyans, not only the IDPs, but also others who are in dire need of food.

**Mr. Pesa:** Mr. Speaker, Sir, the Minister has just said that the Government has given compensation to all the IDPs in this country. Is she in order to mislead this House when I know very well that, in my own constituency, IDPs are yet to get this money?

**Dr. Shaban:** Mr. Speaker, Sir, I never said that the Government has already given compensation to all the IDPs in the country. I know when the hon. Member hears anything to do with money he gets jittery because his name denotes money. He thinks it

is money to all IDPs. We are still getting some more funds from the Treasury and we are distributing it accordingly. We do not keep it in our Ministry.

**Mr. Mureithi:** Mr. Speaker, Sir, I happen to represent this area. When these people came, they were given Kshs10,000 each in order to buy the 50 acres. Is it in order for the Minister to say that these people are comfortably at Mawingo while they have not received the Kshs25,000 they were promised to build their own houses? At the moment, they are living in the cold.

**Dr. Shaban:** Mr. Speaker, Sir, originally the Kshs25,000 was only going to the people who had lost their houses. The Mawingo people did not have any houses which were lost. They were just displaced from where they used to rent their houses or wherever they were squatting. As it is, we had to make special arrangements for them, so that we could give them the Kshs25,000. They were not factored in at the beginning.

**Ms. Karua:** Mr. Speaker, Sir, it is important that the Minister tells this House the amount of money spent on feeding IDPs so far. It would not make sense to spend so much money to support livelihoods when these IDPs could be bought land and in turn be able to look after themselves. Could she tell this House why the Government would not buy land to settle landless IDPs, while it is buying land to settle those in the Mau Complex? Could the Government be consistent with its policies, so that all landless Kenyans know that they have a chance of settling in their own country?

**Dr. Shaban:** Thank you, Mr. Speaker, Sir. I do believe that the landless in Kenya have been settled by the Government in all the cases, through the Ministry of Lands. My Ministry just deals with emergency issues where the landless are concerned.

Thank you, Mr. Speaker, Sir.

*Question No.127*

PROCEDURE OF CONVERTING PUBLIC  
DAY SCHOOLS TO BOARDING SCHOOLS

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

(a) what are 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.

**The Minister for Education** (Prof. Onger): Mr. Speaker, Sir, before I answer this Question, I want to beg your indulgence. Last week, we were touring the whole of Coast Province with, unfortunately, my two Assistant Ministers in order to find out the status of schools there. Therefore, I seek your indulgence for my absence and, therefore, look forward to answering this Question.

**Mr. Speaker:** Yes, Mr. Minister, you may proceed! As a matter of fact, you had notified the Speaker's Office that you would be away in Mombasa. It is just that, that information was not immediately available to the Chair when this Question came up. So, you may proceed!

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

(a) The requirements for converting a public day school into a boarding school are as follows: -

(i) Adequate land which should be, at least, five acres and above, minutes of the School Management Committee (SMC) and parents or stakeholders recommending the conversion of the school into a boarding school, site layout of the school drawn by a physical planner and availability of infrastructure like dormitories, kitchen and dining hall and adequate sanitary facilities.

(ii) The procedure of converting a public day school into a boarding school is as follows:-

Parents and stakeholders discuss and recommend that the school be converted into a boarding school. The SMC and parents source for funds to put up boarding facilities. The SMC makes an application to the District Education Board (DEB) through the District Education Officer (DEO), who is the secretary of the DEB. The school is then assessed by a Quality Assurance and Standards Officer and a public health officer to establish the availability and quality of the facilities. The assessment reports from the two officers are presented to the DEB for discussion and recommendation. Upon recommendation by the DEB, the application form, assessment report and minutes of the DEB are forwarded to the Ministry Headquarters where the documents are then verified. If they meet the necessary requirements, the school is registered.

(b) I am not aware of any public day school that has been un-procedurally converted into a public boarding school. However, if there are some schools that have violated these requirements and procedures, then I will investigate and take the necessary appropriate action.

**Mr. Yakub:** Thank you, Mr. Speaker, Sir. I wish to thank the Minister for Education for the detailed explanation on what is required to convert a public day school into a public boarding school. In his answer to part "a" of the Question, the Minister has said that, at least, five acres of land are required for a boarding school. I wish to inform the Minister that according to the said explanation, there are schools in Mombasa that have been converted into boarding schools and yet, they do have the five acres of land.

Secondly, Mr. Speaker, Sir, even the parents have not agreed. What action will the Minister take against those schools which have not fulfilled the requirement of five acres of land and have not involved the parents in converting those day schools into boarding schools?

**Prof. Onger:** Mr. Speaker, Sir, I would like to state that, normally, we encourage day schools because they are cost-effective. It is only at a time when parents and the stakeholders choose to have a boarding school that they must procedurally follow what I have already outlined in this answer. If they fall short of that, then they cannot qualify to be registered as boarding schools. One of the reasons why we insist that a school must have adequate land for boarding facilities is because we realize that those students need adequate facilities, particularly in the dormitories and in the places where they stay. They must be safe enough to be boarders. Otherwise, it would just turn up to be one of those *Kamukunji* or ordinary bar and restaurants situation. We will not encourage our students to be exposed to those kinds of things.

**Mr. Koeh:** Thank you, Mr. Speaker, Sir. You have heard the Minister enumerate very well the procedures and the requirements to be followed in order to convert a day

school into a boarding school. The Minister has said clearly here that he is not aware of any school which has flouted those rules.

Mr. Speaker, Sir, it is important to ensure that our schools are habitable by our students. What is the Minister doing to ensure that all the boarding schools have the facilities required to facilitate smooth learning and, most importantly, what is he going to do to any school that flouts those rules?

**Prof. Ogeri:** Mr. Speaker, Sir, since we are now dealing with an hypothetical situation, because no such school has been brought to my attention, I have already indicated in my answer that if there is such a school, I would be too happy to conduct thorough investigations and further action will be taken.

Secondly, Mr. Speaker, Sir, in reference to hon. Koech's question, he has asked me what action I will take in order to ensure that the facilities are adequately provided in our schools. He is the Chairman of the Departmental Committee on Education, Research and Technology.

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

**Mr. Speaker:** Order, Mr. Koech! You must hear the Minister!

**Prof. Ogeri:** Mr. Speaker, Sir, Mr. Koech is the Chairman of the Departmental Committee on Education, Research and Technology and he is fully aware--- If he could only care to listen to me, I would be able to give him an answer that he requires. He is fully aware that the Government, through the infrastructure development programme, has selected a number of schools every financial year to benefit from the infrastructure development programme. We are fully aware that not all the schools are up to the mark and it is possible that we may not be able to complete them within any given financial calendar year. Therefore, every financial year, including the one that is ending on 30<sup>th</sup> of June, has infrastructure money. We have sent that money to various schools for the improvement of various infrastructural facilities.

**Mr. Chanzu:** Thank you, Mr. Speaker, Sir. Considering that acreage must be an old requirement for a day school to convert into a boarding school, and in view of the fact that there is massive urbanization with people moving to towns to look for services and so on, could the Minister consider relaxing that rule so that we can be able to put in place either two-storied or multi-storied buildings for schools in urban centres?

**Prof. Ogeri:** Mr. Speaker, Sir, it is my intention, as the Minister for Education, to come to this august House once a Sessional Paper has been prepared; on a number of areas that would require radical changes in policy and legal frameworks. So far, I am processing the Kamunge Report, which is on my desk, to a Sessional Paper. It recommends that more than 167 pieces of Acts be amended. The request that Mr. Chanzu has made will be part of the comprehensive review. I am, therefore, in line with that request.

**Mr. Speaker:** Last question, Mr. Dor!

**Mr. Dor:** Mr. Speaker, Sir, aware that the Ministry has set guidelines on fees structure, could the Minister tell us how many schools they have penalized for flouting the guidelines?

**Prof. Ongeri:** Mr. Speaker, Sir, my answer was very specific. I am not aware. If I am made aware, then it is logical. The next thing to do would be to carry out investigations and, if anybody is found guilty, action would be taken against him.

**Mr. Speaker:** Order, hon. Members! The remaining Questions are deferred to tomorrow. They will take priority over the other Questions that should have appeared on the Order Paper.

*Question No.163*

FINANCIAL STATUS OF KENYA  
INDUSTRIAL ESTATES

*(Question deferred)*

*Question No.162*

REINSTATEMENT OF MS. AGNES OGOLLA  
BY POSTBANK LTD

*(Question deferred)*

*Question No.060*

DELAYS IN DISBURSEMENT OF FREE  
PRIMARY/SECONDARY EDUCATION FUNDS

*(Question deferred)*

*Question No.027*

DISMISSAL OF MR. CHARLES TABUCHE  
FROM KENYA POLICE

*(Question deferred)*

*Question No.098*

ESTABLISHMENT OF FULL DISTRICT  
HEADQUARTERS IN LIMURU TOWN

*(Question deferred)*

**Mr. Speaker:** With respect to the Question by Private Notice by the hon. Member for Kinangop, my determination is that this Question has not been adequately responded to particularly with respect to the criteria and procedure used to procure the services of the company. Secondly, there was no adequate response with respect to the

amount of money paid by the Government for the services rendered. I order that this Question be deferred to Wednesday, next week.

Mr. Minister, please, be prepared to come and provide an answer that is responsive to those aspects of the Question. I also urge the hon. Member for Kinangop to call at the Speaker's Office at the end of today's sitting to get him acquainted with what provisions of the Standing Orders he can invoke if need be.

PROCUREMENT OF INTERTEK INTERNATIONAL  
SERVICES TO CONDUCT FITNESS TESTS  
ON MAIZE IMPORTED FROM  
SOUTH AFRICA

**(Mr. Ngugi)** to ask the Minister for Industrialization:-

(a) What is the criteria and procedure that the Government has used to procure the services of M/s Intertek International Ltd to conduct fitness tests on the maize imported from the Republic of South Africa?

(b) What is the amount of money paid by the Government for the services rendered?

*(Question deferred)*

**Mr. Midiwo:** On a point of order, Mr. Speaker, Sir. I had a Question on the Order Paper, but we have squared it out with the Minister and so it is irrelevant.

My second point of order is on the Question that was earlier on raised by Mr. K. Kilonzo. I want to beseech you to refer this Question to the relevant Departmental Committee to look at the issue. This is because this is a trade war where one company seeks to destroy another one and the media House involved owns the other company.

**Mr. Speaker:** Order, Mr. Midiwo! Order! The practice of this House, which you are well aware of, is that if you have issues pertaining to a matter that is transacted by or before the House, then you ought to rise on a point of order before that matter is concluded or before we move on to the next Question if it is a Question. We shall have to uphold that practice. You, however, have provisions under the Standing Orders which you can invoke if you wish to revisit that matter.

**Mr. Midiwo:** Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Very well!

We have a number of Ministerial Statements that I feel we cannot take all of them today. We will only have those that are of great urgency. The Chair will determine which of these are. So, we will take the first Ministerial Statement that was requested by Mr. Affey.

**The Minister of State for Special Programmes (Dr. Shaban):** Mr. Speaker, Sir, I seek your indulgence on this matter. When our officers were responding to the request for the Ministerial Statement, they realised that there are many details that are required. I, therefore, request that I be given more time so that I can make this Statement next week.

**Mr. Speaker:** Mr. Affey! Hon. Members, I order that, that Ministerial Statement be availed on Wednesday, next week.



We will now proceed to the request by Mr. C. Kilonzo! Where is the Minister of State for Provincial Administration and Internal Security?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I have been approached by Mr. C. Kilonzo to give the Ministerial Statement tomorrow morning. I concur with him.

**Mr. Speaker:** Fair enough. It is so ordered! The Ministerial Statement will be made tomorrow morning.

Next is the request by Mr. Mungatana. Where is the Minister for Foreign Affairs? He will subsequently deal with the request by Mr. Ruto.

### MINISTERIAL STATEMENT

#### SKIPPING OF KENYA DURING PRESIDENT BARACK OBAMA'S TOUR OF AFRICA STATES

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, first I would like to apologise to the Chair and the House. Last week when you ordered my Assistant Minister to leave the Chamber for being inappropriately dressed, I subsequently followed him without knowing that there were requests for Ministerial Statements from my Ministry.

Mr. Speaker, Sir, on 21<sup>st</sup> May, 2009, Mr. Mungatana requested a Statement on the impending visit by the President of the USA to Africa and why he is not coming to Kenya. The President of the USA, Barack Obama is a President of a sovereign State. News reports indicate that he will be visiting Egypt and Ghana. There is no indication that he will visit our country. Kenya has not invited him and, therefore, he has not declined to visit her. I have no doubt that an invitation will subsequently be forthcoming. Therefore, as to where the President of the USA visits and where he does not, is a matter that this Government has no control over.

**Mr. Mungatana:** Mr. Speaker, Sir, I would like to thank the Minister for that brief Statement. It is very important for this country to be concerned about its international reputation. As things stand today, we have suffered a battered reputation. If I remember correctly, one of the questions I asked is whether the Minister could consider the refusal by the USA President to even pass by Kenya as a snub to this country. I also asked whether that could affect our international reputation. What is the Minister doing to correct that image?

**Mr. Speaker:** Order, Mr. Mungatana! The Minister has made the Ministerial Statement. Arising from that Statement, what clarification do you seek? Please, seek that clarification succinctly, precisely and briefly! You have no business taking five minutes to seek a clarification!

**Mr. Mungatana:** Mr. Speaker, Sir, I am saying that the Minister has not answered the questions that I raised within that request for a Ministerial Statement. Again, is the Minister aware that our international reputation has suffered?

**Mr. Speaker:** That is clear! You have done well on that one. It is clear and precise. Do you have one more?

**Mr. Mungatana:** Yes, Mr. Speaker, Sir. What is the Minister doing to correct the situation? Has the snub got something to do with the fact that our country's international image has been battered by allegations of corruption within this Government?

**Mr. Speaker:** You have done well now. Please, stick to that in future!

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, there is absolutely no evidence whatsoever, that the President of the United States of America (USA) has snubbed Kenya. Mr. Mungatana is asking why he will not even pass by Kenya. Heads of State do not just pass by other countries. If the President of the USA visits a country, it has to be properly programmed. From the information available, this time round - because we are not privy to the diary of the President of the USA - he is visiting Egypt to address an Islamic Press conference and then he will visit Ghana. He has not said, to the best of my knowledge, that he has no wish to visit Kenya.

I do understand that given his parentage, certainly, Kenya is a place we would expect him to come to. I have no doubt whatsoever, that in the course of his presidency, he will find time and visit Kenya. I want to urge that, as leaders, we do not read too much into known events. The issue of corruption in this country is something we all know, and which we have all talked about. We know the damage it has done to the country. We know the commitment the Government has in fighting corruption, and the impediments we have along the way.

Mr. Speaker, Sir, I do not believe that the President of any country's visit to Kenya is going to be based on the issues the hon. Member is raising. I want it to lie where it is, because if we invited President Obama and he declined to come, that would be an issue. We have not. If he said he would not come to Kenya, that would be an issue. He has not. So, I do not see where the issue is and I want it to lie there.

**Mr. J.M. Kamau:** On a point of order, Mr. Speaker, Sir. I am not disputing what the Minister is telling us but I know from Press reports that the country has been warned.

**Mr. Speaker:** Order! Order, Mr. J.M. Kamau! You cannot rely on Press reports as your source of authority.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. Could the Minister clarify that, indeed, the reason as to why the President of the USA does not want to come to Kenya is that he is not happy with the slow pace of reform in the country, and that he prefers a younger leadership in this country?

*(Laughter)*

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, those fallacious allegations by Dr. Khalwale have no basis whatsoever. President Obama has not said he does not want to come to Kenya. Neither has he made any mention of the age of the leadership of this country. In any event, President Obama is visiting Egypt, whose President is much older than our President.

**Mr. Speaker:** Minister for Foreign Affairs, can you now issue the second Ministerial Statement, by Mr. Isaac Ruto?

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, the Member of Parliament for Chepalungu, Mr. Isaac Ruto, on 14<sup>th</sup> May, 2009, demanded a Ministerial Statement from my Ministry on the issue of a statement allegedly made by the President of Uganda.

Mr. Speaker, Sir, I want to seek solace under Standing Order No.79(1), which provides that Parliament cannot discuss the conduct of a President of a friendly country. Uganda is Kenya's neighbour. Uganda is Kenya's friend. Uganda is Kenya's number one trading partner. Uganda has an embassy in Nairobi. Kenya has an embassy in Kampala. In fact, the two countries have just finalized the changing of High Commissioners. A new Kenyan High Commissioner has been appointed to Uganda, and Uganda has appointed a new High Commissioner to Kenya.

Through Uganda, Kenya's economic lifeline to the DR Congo, Rwanda, Burundi and Southern Sudan can be attested, as a measure of that friendship. So, I want to seek your protection, that if Mr. Ruto wants to discuss the conduct of the President of the friendly country, which Uganda is, then he can only do so by way of a substantive Motion, and not through a request for a Ministerial Statement.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** I will take three clarifications, beginning with Mr. Isaac Ruto's.

**Mr. Ruto:** Mr. Speaker, Sir, I did not request that we discuss the conduct of the Head of State of Uganda. I sought a Ministerial Statement for the Minister to tell us about the utterances that were aired by the international print media. We heard it live on television, and he actually made slurs. I was asking whether the Minister was aware that he had instruments that he could use. Did he summon the Ugandan High Commissioner and quietly tell him that he was not amused? What is the point of exchanging High Commissioners if they cannot be asked to pass the message that Kenyans were not amused by that slur? We are actually friendly to Uganda. The Kenyan people and the Ugandan people are happy to be together, but what is this statement that the Ugandan Head of State made at the Dar es Salaam University, where there are also Kenyan students? He did make those statements. Did you call him to your office and tell him that we are not happy?

**Mr. Speaker:** Order! Order, Mr. Ruto! Avoid being repetitive. You have said those things already. Why do you want to say them again?

Mr. Mbadi!

**Mr. Mbadi:** Mr. Speaker, Sir, if, indeed, I got the request by Mr. Ruto, it was for the Minister to come and explain to this House the remarks – and not the conduct – of the President of Uganda. We want the Minister to say how the President of Uganda could know that “Wajaluo are mad” - especially the “Wajaluo” in Kenya – and what steps his Ministry has taken to complain officially, because the “Wajaluo” the President of Uganda was referring to are residents of this country. As the Minister for Foreign Affairs, he has the duty and the obligation to protect them at whatever cost.

Thank you, Mr. Speaker, Sir.

**Mr. Mungatana:** Mr. Speaker, Sir, subsequent to the statement and subsequent to Motion Parliament passed here, a very serious statement emanated from the Head of State of Kenya, which said that Kenya is ready to protect itself by whatever means. The clarification I am seeking from the Minister is whether he is confirming that statement, that, in fact, diplomacy between the two countries has actually failed, and that something else is brewing? Could he confirm or deny it?

**Mr. Speaker:** Finally, Ms. Millie Odhiambo!

**Ms. Odhiambo:** Mr. Speaker, Sir, could the Minister, kindly, confirm whether he is aware that following those utterances, the residents of Rhemba and Ringiti islands are

under constant harassment? I want to add that a half of the population on Rhemba and Ringiti islands are Kenyans of Somali origin and the other half are Kikuyus, Luhyas, Subas and “Wajaru”. I would want the Minister to clarify whether he knows that, in fact, one of the islands is now controlled by a Ugandan woman, who is harassing the hell out of the lives of the residents of that island? Could he also clarify whether the President of Uganda is, indeed, another “Jaruo”?

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, to delve into the statements attributed to the President of Uganda, amounts to discussing his conduct. I want to seek your direction on the issue that I raised under Standing Order No.79 (1). I humbly submit that it is a Standing Order that protects friends of this country, including ambassadors and high commissioners accredited to Kenya and Presidents of friendly countries.

Other issues mentioned by Mr. Mungatana, I would like to assure him that the President’s speech must be taken within the context of the pass-out parade of the cadets in Lanet. He was simply directing them that their duty is to protect the integrity of this country, particularly, our borders. Indeed, that is the duty of every Government. It has no relevance to the success or otherwise of our diplomacy. It is through diplomatic engagements that we now have a joint commission to survey our boundary with Uganda from Lake Victoria to the Sudan junction.

Regarding Remba and Ringiti islands and the occupants, I have no information about the alleged harassment. I will check in the records available in the Ministry of State for Provincial Administration and Internal Security and also in the Ministry of Foreign Affairs and furnish the hon. Member with appropriate information once I get it.

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

**Mr. Speaker:** Order, Mr. Ochieng! The Minister is responding to a point of order and I would urge the House to hear him.

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, regarding the issue raised by Mr. Mbadi, again it falls squarely within my request to the Chair that what President Museveni is alleged to have said amounts to his conduct. In any event, those statements were said to have been quoted out of context.

**Mr. Speaker:** Order, hon. Members! The Minister will have the protection of the Chair not to discuss the utterances of the President of Uganda because that is part and parcel of his conduct. The utterances may have been abusive, unfriendly and therefore, inconsistent with the friendship that exists between Uganda and Kenya but they are part of the conduct of the President of Uganda. So, the Minister will have that protection and if hon. Members wish to discuss the conduct of His Excellency President Museveni, they are at liberty to bring a Substantive Motion to do so. There is no better placed person than the Minister for Foreign Affairs to determine which country is friendly and which is not. As long as the Minister retains Uganda in his classification of friendly countries, that will be the position.

**Dr. Eseli:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! I have given adequate direction on this matter. Hon. Members, we would like to avoid a situation where we are repetitive or laborious on matters that we deal with because we have a lot of business to attend to.

**The Minister for Foreign Affairs** (Mr. Wetangula): On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** On what matter? I have given you indulgence.

UTTERANCES BY USA  
AMBASSADOR TO KENYA

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, I seek your direction. I was also told that there was a request for a Ministerial Statement regarding the American Ambassador to Kenya. I want to plead the protection of Standing Order No.79 (1). He is an ambassador of a friendly country and we cannot, therefore, discuss his conduct in this House without a Substantive Motion.

**Mr. Speaker:** That is well founded and that protection is granted. That rests that matter. We now want to take a Ministerial Statement requested by Mr. Mungatana in a bid to clear a backlog of pending Ministerial Statements. The Ministerial Statement is from the Minister for Justice and Constitutional Affairs.

STATE PROTOCOL OF THE  
REPUBLIC OF KENYA

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, before I issue the Ministerial Statement, I would like to apologize to the House and to my learned friend, Mr. Mungatana, for the delay in making the Ministerial Statement.

Mr. Speaker, Sir, I beg to issue a Ministerial Statement that was requested by Mr. Mungatana on the issue of state protocol occasioned by the creation of new offices within the Executive through the Constitution of Kenya (Amendment) Act No.3 of 2008 and the National Accord and Reconciliation Act, No4, 2008. The protocol of Kenya's Executive in relation to the offices of the President, the Vice-President and the Right Hon. Prime Minister is laid down in the Constitution of Kenya, 1963 as amended from time to time and especially by the recent Constitution of Kenya (Amendment) Act, No.3 of 2008 and constitutionally entrenched National Accord and Reconciliation Act. Specifically, part 2 of the Constitution of Kenya describes the key national executive offices. Section 4 of that part creates the Office of the President as the Head of State and Commander-in-Chief of the Armed Forces of the Republic. The next executive is that of the Vice-President and is established sequentially by Section 15. This Section provides that the Vice-President shall be the principal assistant to the President. The new office of the Right Hon. Prime Minister is established by Section 15(a) and so are the offices of the Deputy Prime Ministers. The National Accord inspired constitutional amendment altered Section 17 of the Constitution by inserting the expression, and I quote;

“The Prime Minister, two Deputy Prime Ministers” immediately after the expression, “the Vice-President”.

If the coalition partner negotiators and Parliament so chose, they would have deliberately amended Section 17 to insert the expression, and I quote;

“Prime Minister” immediately after the expression, “the President”. During the negotiations, it was agreed that the Cabinet would consist of and Government would be led by the President, the Vice-President, the Prime Minister, two Deputy Prime Ministers and other Ministers in that order as expressed by Section 17(1).

Mr. Speaker, Sir, Part 2, of the Constitution which describes that above pecking order, simultaneously describes only key function of the President. That function is that of the President as Head of State and Commander-in-Chief of the Armed Forces. The second executive position within this part of the Constitution is that of the Vice-President. When it comes to delegated executive authority then, for matters dealing with state functions, the office of the Vice-President naturally takes precedence over that of the Prime Minister. Regarding therefore, the protocol of honour and I emphasize, the sequencing in Part 2 of the Constitution is the President, the Vice-President, the Prime Minister, the Deputy Prime Ministers and other Ministers. However, for worthy, the Constitution as amended in 2008 and the sequel National Accord and Reconciliation Act, have reconstructed executive authority. As far as the executive authority is concerned, only the offices of the Prime Minister and his deputies were affected, particularly because they were new. Section 23(1) provides, and I quote;

“The executive authority of the Government of Kenya shall vest in the President, and subject to this Constitution, may be exercised by him either directly or through officers subordinate to him.”

The Constitutional of Kenya (Amendment) Act, 2008 did not describe the functions and powers of the Prime Minister, leaving that task to the National Accord and Reconciliation Act. Section 4 of that Act describes the key functions of the Prime Minister as follows:

- (1) He shall have authority to co-ordinate the execution of the functions and affairs of the Government including those of Ministers.
- (2) He shall perform such other duties as may be assigned to him by the President or under any written law.
- (3) He shall, nominate for appointment, persons to become Ministers and Assistant Ministers in the Coalition, other than the nominees of the President's party, taking into account the principal of portfolio balance.
- (4) After the first Cabinet appointment under the National Accord law, the Prime Minister shall be fully consulted by the President on the appointment of all subsequent Ministers.
- (5) The Ministers nominated by the Prime Minister's parliamentary party can only be revoked after prior consultation and concurrence in writing by the leader of that party.

Mr. Speaker, Sir, the Prime Minister has other very important duties. These include:-

- (1) The Standing Orders of the National Assembly, adopted on 10<sup>th</sup> December 2008, have given him a 45 minutes Prime Minister's Time every week in the National Assembly when it is in session.
- (2) The President has delegated to him the responsibility to chair five of the Cabinet's six sub-committees, which draft Government policies before Cabinet deliberations.

Mr. Speaker, Sir, other significant factors in relation to the Prime Minister's status are: -

- (1) The President and the Prime Minister are co-signatories of the National Accord Agreement of 28<sup>th</sup> February 2008 on behalf of the Government and the Party of National Unity (PNU) and the Orange Democratic Movement (ODM), respectively.

- (2) The Prime Minister can only be removed from office by the National Assembly or upon dissolution of Parliament, if the Coalition is dissolved or a new Constitution is enacted, unlike the Vice-President who serves at the pleasure of the President.

Mr. Speaker, Sir, clearly then, when it comes to matters of the administration of Government, the Constitution as amended in 2008, and as per the National Accord and Reconciliation Act, the pecking order is that the President is head of Government as per Sections 22 and 23 of the Constitution. The Prime Minister, due to the aforesaid explanation, therefore, naturally takes precedence over the Vice-President and other Ministers in relation to matters of administration of Government. Thus, regarding the protocol of power, the sequence today is; the President, Prime Minister, Vice-President, Deputy Prime Ministers and other Ministers.

Thank you.

**Mr. Speaker:** Are there any clarifications to be sought?

**Mr. Mungatana:** Mr. Speaker, Sir, I want to thank the hon. Minister for attempting to explain some of the things. However, he has absolutely missed the point. I requested specifically, where is the document of protocol that directs the way the pecking order of the Cabinet is?

Mr. Speaker, Sir, where and how do they sit to avoid embarrassing situations? What should the Prime Minister or Vice-President expect? It is not a theory of Constitution. It is practical! Where is that document? If that document is not here, all these explanations are not going to help us. The people who effect protocol do not have the time to go through all these.

When is the Cabinet office going to reform and put forth documents so that we do not have embarrassing situations that can cause small tensions which can become big tensions between the Vice-President, Prime Minister and the rest of the country? Where is the document?

**Mr. Speaker:** Mr. Minister, you will take two more before you respond!

Dr. Khalwale, please, proceed!

**Dr. Khalwale:** Mr. Speaker, Sir, we are now very clear that the Prime Minister is above the Vice-President. Hon. Members, let us all accept it. We are all men and women of this world; therefore, we are mortal. Could the Minister tell us, in the unlikely event of a sudden vacancy in the Office of the President, who then would act for 90 days? Is it the Prime Minister or the Vice-President?

*(Laughter)*

**Mr. Midiwo:** Mr. Speaker, Sir, I want to seek one clarification from the Minister. About two or three months ago, the Prime Minister and the President agreed at the height of very great controversy to form something called Coalition Management Team. Cabinet Ministers are members of this team. What is the role of that team? How many times has it met? What is the intended goal? What do you want it to achieve if it ever meets?

**Mr. Speaker:** Mr. Minister, we may have to accommodate one more because of the importance of this matter.

Mr. Ethuro, please, proceed!

**Mr. Ethuro:** Thank you Mr. Speaker, Sir, for this opportunity. I would like the Minister to clarify, given that the National Accord provides for the process by which one becomes a Prime Minister, that he commands the largest number of Members in the House. We know, we have two coalition partners; ODM and PNU. However, we also know that those major parties have their own coalitions. What instruments are provided to demonstrate the exact number of Members, considering the inter-party coalitions?

**Mr. Speaker:** Mr. Minister, you may now proceed!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, first of all, I want to acknowledge my learned friend, Mr. Mungatana and assure him that the Government has a very experienced protocol office that knows what to do. I share the concerns he has. All of us have seen media reports, once in a while, of what appears to be confusion. If anybody now wants a document, that document is here. I have actually signed it and it should show them what to do.

Mr. Speaker, Sir, above all, this is a Grand Coalition Government and we are seeking---

**An hon. Member:** Table it!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, with your kind permission, I will table it when I finish.

The fact of the matter is that this is a Grand Coalition Government. The overriding principle is working together for Kenya. Therefore, it is my expectation that these very senior people will understand through the protocol office, that Kenyans do not want to see shenanigans; small disputes over small things that I would not go into.

Mr. Speaker, Sir, the position of the Constitution is very clear. Unfortunately, the document that Mr. Mungatana is asking for would never supercede the Constitution. I want to plead and beg that he recognizes the Constitution as the primary document---

**Mr. Chanzu:** On a point of order, Mr. Speaker, Sir. You have just heard the Minister saying that the document he is going to table is a protocol document for the running of the Government. Is he in order? In what role is he presenting that document? Is he purporting to be the leader of Government and State?

*(Applause)*

**Mr. Speaker:** I did not hear him say so, but he can respond for himself.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo) Mr. Speaker, Sir, it is only if you direct that I table this document. It is a Ministerial Statement but is available and is signed.

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

**Mr. Speaker:** Order, Mr. Chanzu! You have made your point. You do not have to repeat it!

Please, proceed, Mr. Minister!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, I did not use the word "superiority" that Dr. Khalwale has used. Those are his words. My words were very clear; that, if we are dealing with State functions, there is a clear protocol. If we are dealing with Government matters and management of Government, the protocol is also very clear.



To respond to Mr. Midiwo, in Kenya, we are all concerned about the management of the Grand Coalition Government and---

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. The hon. Minister forgets that I am not a lawyer and indeed, many Kenyans are not lawyers, just like me. If you take it that it is obvious to you, it is not obvious to me. It is not obvious to all Kenyans. Can you tell us clearly what it is that would obtain?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, at the risk of repetition, the Cabinet is described by Section 17 of the Constitution and I read it. It comprises the President, Vice-President, the Prime Minister and other Ministers. As far as I am concerned, for purposes of maintaining order in this country, that is sufficient definition of the structure of the State.

On the issue of Government---

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

**Mr. Speaker:** What is it, Mr. Midiwo?

**Mr. Midiwo:** On a point of order, Mr. Speaker, Sir. I think the country is watching. There is no way the Minister for Justice, National Cohesion and Constitutional Affairs can refer to the Kenyan Constitution as it were, without referring to the National Accord. In fact, it is clear that what is in that Accord overrides the sections he is trying to improperly impute. I think the Minister should come up with a better answer to this House. The Chair recently made a ruling here that was clear to the country. We cannot sit back and watch the Minister lie to this country.

**Mr. Speaker:** Order, Mr. Midiwo! The word "lie" is unparliamentary.

**Mr. Midiwo:** I am sorry, Mr. Speaker, Sir. He was misleading the country.

**Mr. Speaker:** Could you withdraw the word "lie" and apologise?

**Mr. Midiwo:** Mr. Speaker, Sir, I withdraw and apologise to Mr. M. Kilonzo. However, let him not mislead the country.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, I humbly beg to put my roots in the Constitution. It is not my fault if it is not understood. I have only been in this Ministry for three weeks. However, the fact of the matter is that I have attempted and succeeded in showing even the sequencing of this particular position.

Much as I appreciate that there is worry in the mind of my good friend, Mr. Midiwo, what I have said is that the Prime Minister, due to the aforesaid explanation, therefore, naturally takes precedence over the Vice-President and other Ministers in relation to matters of administration of the Government. I can repeat that sentence between now and Christmas. If it does not make sense to him now, it will not make sense to him over Christmas.

I have gone on to say that with regard to the protocol of power, the sequence today is: the President, Prime Minister, Vice-President, Deputy Prime Ministers and others. That is protocol of power.

On State matters – and it is important that everybody listens to me – I have stated very clearly that with regard to the protocol of honour, the sequencing in Part II of the Constitution is: The President, Vice-President, Prime Minister, Deputy Prime Ministers and other Ministers. I think I am very clear.

Mr. Speaker, Sir, the Constitution of Kenya covers several sections. Part I deals with the State and how it is structured. It deals with Section 4 where the President is

declared the Head of State. The method of governance of the country is in the other part that starts with Section 23, where he is made the Chief Executive Officer. Then, there is Section 52. I believe that I have made as much clarification as was required.

I wanted to address the issue of the Coalition Management Committee.

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

**Mr. Speaker:** Order, Mr. Linturi! We have had too many points of order today. I will want to be a bit strict on this one. First, cite which Standing Order the Minister is in breach of and then proceed to indicate what is out of order! We will have to go that way. That is what our Standing Orders provide for.

Proceed, Mr. Minister!

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Thank you, Mr. Speaker, Sir. The question that Mr. Midiwo has asked about the Coalition Management Committee is very important. Unfortunately, it did not appear in the request that Mr. Mungatana had made for the Ministerial Statement. However, I can afford to say that the Principals, in their own thinking, decided that we set up this Committee which meets regularly. It has two liaison officers and all of us know them. Their work is to co-ordinate the management of the Coalition. I believe that, that is a matter that ought to be left to that Committee. We are satisfied with the work that they are doing at this time.

**Mr. Linturi:** Mr. Speaker, Sir, I rise on a point of order under Standing Order No.46 on failure to ask or answer a Question by a Minister. The other one is Standing Order No.82 on the responsibility for statement of fact.

**Mr. Speaker:** Order! Can you then proceed to the next link? How is the Minister in breach of the Standing Orders? Which Question has he failed to answer?

**Mr. Linturi:** Mr. Speaker, Sir, hon. Dr. Khalwale raised a very fundamental question, which was very simple, but the Minister has taken us a long journey by trying to explain things that may not be understood by any ordinary Kenyan. Dr. Khalwale asked: "Just in the unfortunate event that there was a vacancy in the Office of the President, who would take over for 90 days?"

**Mr. Speaker:** What are you saying, Mr. Linturi? That is very treacherous ground. Be careful! I want you to move away from that area. Have you acquainted yourself with the provisions of the Penal Code of this country?

**Mr. Linturi:** I have, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Linturi! You are out of order!

**Mr. Linturi:** Mr. Speaker, Sir, I have the immunity of the House. There is nobody who is immortal. That is why I am asking this Question.

**Mr. Speaker:** Mr. Minister, maybe, you could quickly respond to that, but the Member must stand cautioned. That is a treacherous ground!

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Mr. Speaker, Sir, I avoided that issue deliberately and really, I do not want to revisit it. For the time being, I have not failed to answer any question. I made a Ministerial Statement which is well considered. I have worked on it for the three weeks that I have been the Minister for Justice, National Cohesion and Constitutional Affairs and I think it is a very good Statement. I have responded to all the clarifications. I have even gone further to answer questions, which were not raised in the Ministerial Statement, like the question on the Coalition Management Committee.

On the question of what happens if there is a vacancy in any organ in this country, I assure the country that there is sufficient constitutional provision to what would happen. Those who are not familiar with it can ask, given another opportunity.

**Mr. Speaker:** Next Order!

## BILLS

### *First Reading*

#### THE MUTUAL LEGAL ASSISTANCE BILL

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

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

## PROCEDURAL MOTION

#### EXEMPTION OF MISCELLANEOUS AMENDMENTS BILL FROM PROVISIONS OF STANDING ORDER NO.111(2)

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, in my capacity as the Leader of Government Business, I beg to move:-

THAT, notwithstanding the provisions of Standing Order No.111(2), this House orders that the Statute Law (Miscellaneous Amendment) Bill be Read a Second Time.

Mr. Deputy Speaker, Sir, I have also consulted with the Chairman of the Departmental Committee on Justice and Legal Affairs who has assured us that even though the Report is not ready, it shall be here by Tuesday, next week.

**The Attorney-General** (Mr. Wako) seconded.

*(Question proposed)*

**The Attorney-General** (Mr. Wako): **Mr. Deputy Speaker, Sir, I beg to second the Procedural Motion.**

**Mr. Deputy Speaker:** Order, Mr. Attorney-General! We have proceeded to Order No.10 but we have to put the Question first.

*(Question put and agreed to)*

## BILL

*Second Reading*

## THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move THAT, the Statute Law (Miscellaneous Amendments) Bill, Bill No.4, be read a Second Time.

I crave leave to refer extensively to my notes because, as you are aware, the Statute Law (Miscellaneous Amendments) Bill, covers very many different statutes, amendments of which cannot stand on their own, and have to be put together. I will try to be as brief as possible, in view of the time that has gone into each of the proposed amendments.

The first amendment that is being sought is an amendment to the Interpretation and General Provisions Act. This amendment was necessitated by the provisions on the Grand Coalition which, because it has 40 Ministers, a number of Ministries, which traditionally have been single Ministries, were split. Creating those Ministries touched on legislation that was being implemented by certain Ministries. Just to give an example, the Ministry of Health was split into the Ministry of Medical Services and the Ministry of Public Health and Sanitation. It is the Ministry of Health which was administering the Public Health Act. If you look at the definition of who was supposed to implement that Act, you will find that it was the Director of Medical Services. This is reflected in 23 different legislations, which came under the Ministry of Public Health and Sanitation. Therefore, if we do not have these amendments, we will have to bring amendments here to delete the Director of Medical Services and substitute thereto, a new post that has been created of Director of Public Health, and which now is referred to by 23 different legislations. It may very well be that by the time we have carried out amendments to these legislations, again, the Ministries will have been merged into one, as this House has been asking. So, this is an amendment to allow that office to work without necessarily having to amend the different legislations.

The other example is the Export Processing Zones Act, which was to be administered by the Ministry of Industry, but under the organization of Government, the EPZs are under the Ministry of Trade, and there is no Ministry of Industry as such. We have a Ministry of Industrialization, hence the confusion as to who is responsible for the EPZs. So, this amendment deals with those situations, so that in future, you can create and recreate Ministries without necessarily having to amend each and every legislation.

Mr. Deputy Speaker, Sir, the next set of amendments are amendments which touch on the Civil Procedure Act and the Appellate Jurisdiction Act. The amendments to these two legislations are going to revolutionize the way we run our courts. They are not amendments which have just come out of the blues. They are amendments which have been carefully thought by the Rules Committee that was appointed by the Chief Justice to look into the issue of the management of court cases. Only last week, we passed the Arbitration Bill, which addressed part of the problem of the backlog of cases. Now we are going to address the way issues will be dealt with inside the court itself. This Committee went round a number of countries. They visited Uganda, India, Australia, United Kingdom and the USA to find out the modern methods of conducting cases in court; which modern methods are required used before a trial starts. As a result of all that,

they came out with two very important amendments. One is on the actual management of court cases. Normally, particularly under the common law jurisdiction, a judge is a neutral observer, and the two contestants in a civil case are adversaries; the judge just sits there. This, to some extent, explains why there have been a number of delays in the hearing of cases. It also explains why there are so many adjournments in some of the civil cases; these adjournments also lead to delays in the hearing of cases. So, management of cases becomes important. What has happened in other countries is that judges have now begun to be proactive in the management of cases.

That is why the paramount principle set out at page 203, the overriding objective of the Act – here I am talking about the Appellate Jurisdiction Act and the rules made thereunder - is to facilitate the just, expeditious, proportionate and affordable resolution of appeals under this Act. The amendments under the Civil Procedure Act impose an obligation, not just on the court itself, but also on the advocates appearing. They will now be obligated--- They have a statutory duty to ensure that a case proceeds according to the time table that will have been laid down. They will have a duty and if they do not do execute, they will be in breach of it.

The other major amendment is on the introduction of mediation. This House kindly passed the Arbitration Bill last week. As I explained then, an arbitrator is more or less like a judge who hears a dispute and determines it. But under mediation, the procedure is different. The procedure is that the mediator tries to mediate between the two parties, and it is only when the two parties agree by themselves that an agreement is recorded.

As I explained last week, most of the courts in Europe and elsewhere demand that before the hearing of the case, the parties should have undergone a mediation process. This is what is now going on in countries such as South Africa, Nigeria, Rwanda, India, Canada, Australia, New Zealand, United States of America and United Kingdom, to name but a few.

Mr. Deputy Speaker, Sir, there was a bit of resistance when this new novel idea was mentioned at the beginning; a number of years ago, because lawyers thought that they would not get work, but they have now embraced this reform. What is going to happen is that an advocate can also train himself, not just to be an arbitrator - last week I did inform you that we have 361 qualified arbitrators in this country - but he can also train himself to be a mediator. They can mediate disputes, assist and facilitate parties to arrive to an amicable settlement. Therefore, we have a new Part XA which is on page 207. Mediation itself is like a qualification. We have here, the establishment of a Mediation Accreditation Committee and members thereof from the Chairman of the rules Committee, a member nominated by the Attorney-General, two members nominated by the Law Society of Kenya; two other persons nominated by the Chartered Institute of Arbitrators and the Kenya Private Sector Alliance.

I would like to say that in crafting of these proposals, it is not just going all over the world and see what they do in those countries, but also internally, all these organizations; the Law Society of Kenya, Chartered Institute of Arbitrators, Kenya Private Sector Alliance, were involved in crafting of these proposals. The functions of the Committee are laid out, which is to determine the criteria for the certification of a mediator. What will happen is that this Committee will accredit mediators who will then be registered, so that when we have a civil case, it would be referred to a particular

mediator, who will try to mediate. If he fails in the mediation, only then does the case proceed. I had quite a lot to say on this, but in the interest of time, I think I have said enough to make Members realize that these are two very important innovations in our civil proceedings which I know would go a long in ensuring that we expeditiously execute adjudication of commercial and civil disputes.

Mr. Deputy Speaker, Sir, there are also some amendments proposed to the Advocates Act. This amendment is actually to provide an answer in the Advocates Act for the regulations which have already been drafted by the Law Society of Kenya. The answer is that there is a category of persons who will be conferred the title: Senior Counsel through the Chief Justice. As I speak today, I think we are only two senior counsel in this House. There are many advocates, but we are only two senior counsel. The Attorney-General is a senior counsel and Mr. M. Kilonzo who will second this Motion is a Senior Counsel. We really became senior counsel because at one time or another, we were the Chairmen of the Law Society of Kenya. We have very many lawyers in this August Assembly who actually qualify to be senior counsel. We must have regulations, criteria and so on, which if they satisfy, they can now have the honour to be granted the title senior counsel.

Mr. Deputy Speaker, Sir, I can assure you that regulations are already in place. When this section which we are pleading should be enacted by this House, is enacted, we shall immediately publish those regulations. The process of identifying other lawyers to be senior counsel will be embarked upon. By the way, this is very important, even in the implementation of our Constitution which demands as you know, that when you form a tribunal to remove a judge, then one of the members of that tribunal must be a senior counsel. So, unless we have more senior counsel appointed, a time may come when we will not be able to even implement those sections of our Constitution.

Mr. Deputy Speaker, Sir, I then come to page 210; the Film and Stage Plays Act. As hon. Members may be aware, the Kenya Film Censorship Board was established by an Act of Parliament in October, 1963. The object then was to ensure that no film or poster would be allowed for public viewership that tends to prejudice the maintenance of public order or offence, decency or public exhibition or display of which would be, in its opinion, or for any other reason, be undesirable in the public interest. This Board was actually in effect, confined only to films which are exhibited in cinema theatres. That was way back in 1963. The Board did not have any teeth. Its duty was only to certify that this film can be observed or watched by children who are under 16 years of age. This one is not permissible for children under 16 years and so on. But they did not have the teeth, even to enforce those regulations. As we all know, our society has moved very considerably to an extent where the pornographic movies are now exhibited in video theatres, *matatus*, televisions and radios, even during prime time. It has been found that there is a correlation of all these consumption of pornographic materials and correctness of public morality and the increase in sexual offences and defilement of minors, *et cetera*. There has also been correlation of all this with the type of public unrest and violence that we have witnessed in our educational institutions. For example, the report of the Parliamentary Committee into the unrest of schools actually came out and said, the Film Censorship Board should move and be more vigilant in its work in ensuring that only suitable material is displayed. However, they cannot do so, because they do not have the

teeth. Hence, the necessity for the amendments that we are now proposing under this legislation.

Mr. Deputy Speaker, Sir, as I said earlier, this Act is a 1963 Act. Actually, the aim is to have the entire Act repealed. But that takes time. That is why it is necessary to carry out this amendment to hold the port as we carefully look at the repeal of the entire Act.

Mr. Deputy Speaker, Sir, page 230 of the Bill is there; time--- The management structure of the Board is to enable it to respond, monitor, move and be effective. The Board will not just be limited to film examination and rating for cinema theatres. It will also cover what I stated earlier – exhibitions; what is shown on television and all other areas where films can be on display.

Also, Mr. Deputy Speaker, Sir, you will find that the amendment now increases the penalty. For example, the penalty for infringing any of those provisions, under the current legislation, is a fine of Kshs2,000 or a jail term not exceeding two months. But now, the proposed penalty will be Kshs100,000 and a custodial sentence of up to five years.

Mr. Deputy Speaker, Sir, we now come to the next one, which is on the pest control products. Really, the amendment is, first of all, to remove the discretion which is vested in the courts to, more or less, decide what to do with any pest control product which does not meet the standards. But here, we are now making it absolutely clear that, that pest control product must be forfeited to the State and, thereafter, burnt. We are also increasing the penalties under that particular Act which, for now, is Kshs10,000. That is being increased to Kshs250,000. The imprisonment is now six months and it is being increased to two years.

Mr. Deputy Speaker, Sir, we now come to the Constitutional Offices Remuneration. Let me talk a bit on this issue to remove any misunderstandings that may be there in the public mind. The issue of remuneration, particularly in the public sector, is a very sensitive one. Unfortunately, what has arisen in the public sector is lack of harmonization of salaries for those employed in the public sector. Both the Bomas and Wako drafts, because of this problem, had proposed that we must have a constitutional commission called Salaries and Remuneration Commission that will harmonize all the salaries in the public sector. What has tended to happen here is that each person in his own corner, would make a plea and get his or her salaries. Because of that, another body makes a plea and they get their salaries. If it is a new organization like, for example, the Parliamentary Service Commission (PARLSCOM), because it is new, their terms and conditions of service are far much better than the terms and conditions of my staff and, consequently, I have lost four draftsmen from my Legislative Drafting Department to the PARLSCOM. Some of them are earning more than the head of the Legislative Drafting Department in my Chambers. So, we have those grave disparities that are there in the public sector.

Mr. Deputy Speaker, Sir, that is a point that must be borne in mind. We do not have a constitutional commission as was proposed under the Bomas or Wako drafts. But the President did set up the Permanent Public Service Remuneration Review Board, the functions of which, number one, was to continuously review the remuneration of persons in the public service and to make recommendations to the Government on the harmonization of remuneration in the entire public sector. So, the first point I want to make here is that the salaries proposed for constitutional office holders now in this Bill

are salaries that were proposed by the Permanent Public Service Remuneration Review Board. It took them more than two-and-a-half years to come up with these salaries and in the course of it, I know as a fact that, they visited some of the countries in the region. What emerged was very clear that, as far as the Judiciary is concerned, and these are constitutional office holders, in most parts of the world, even in the UK and so on, they are remunerated at a level higher than those employed in the Civil Service, just as a point of principle. But I am going to submit that these ones are not even higher than those employed in the Civil Service. But, really, that should be the principle and, really, constitutional office holders should be getting more than what is proposed. So, they carried out that undertaking.

Mr. Deputy Speaker, Sir, the Board recommended and the Minister for Public Service took those recommendations to the Cabinet Committee, which, again, looked at them and approved them. They were then taken to the Cabinet, which approved them. I am coming to what the Cabinet approved shortly. The point I want to make here is that, the salaries for constitutional office holders have not been reviewed since 2001. Of course, common sense prevails that since 2001, inflation, the value of the shilling and everything else, including the cost of living, has gone up. But that applies to everybody. But the fact is that the salaries have not been reviewed since 2001!

Mr. Deputy Speaker, Sir, what has happened since 2001? What has happened is that, for example, the disciplined services salaries have been reviewed in 2003 and again in 2007. The salaries of the disciplined services have been reviewed twice while the salaries of constitutional office holders have not been reviewed since 2001! That makes an interesting comparison because you find that some of them are earning almost like professional people, which should not be the case!

Mr. Deputy Speaker, Sir, what has happened since 2001? Since 2001, the salaries of the Civil Service have been reviewed three times, while the salaries of constitutional office holders have not been reviewed! What has happened since 2001? The salaries of teachers have been reviewed while those of constitutional office holders have not been reviewed!

Mr. Deputy Speaker, Sir, the Permanent Remuneration Board that I alluded to earlier on considered all the reviews that had taken place within the public sector in some departments. Some had done reviews twice or thrice. Others had done it once. We, the constitutional office holders have just been silent, very patient and working hard. We have not been agitated.

The terms and conditions of Members of Parliament since 2001 have been reviewed while those of constitutional office holders have not. Currently, of course, the Akiwumi Tribunal is going round to collect views to further review the terms of Members of Parliament. The terms of constitutional office holders have not been reviewed.

**Mr. Mungatana:** On a Point of Order, Mr. Deputy Speaker, Sir. The Attorney-General is completely out of order. I am basing my point of order on Standing Order No.81 which states as follows:

“A Member who wishes to speak on any matter which the Member has a personal interest must first declare that interest.”

Mr. Deputy Speaker, Sir, the first beneficiary on the schedule of those whose salaries will be increased is the Attorney-General of the Republic of Kenya. He has not



told us that he will, in fact, benefit himself and by how much. Why is it that he has failed to carry out sensitisation by tabling the Report that he has referred to, that is before the Cabinet; and that they will increase salaries of constitutional office holders? The practice now is that in the case of constitutional office holders, a tribunal has to be set up. No tribunal has been formed or any form of report circulated to Members of Parliament. I am sure that if that had been done, there would be more interest in the Statute Law (Miscellaneous Amendments) Bill that is being debated today.

Is the Attorney-General, therefore, in order to continue speaking on this Bill and on that matter without declaring his interest?

**Mr. Wako:** Mr. Deputy Speaker, Sir, you cannot substantiate the obvious. When it comes to the banks, we shall come to that shortly. There is A1, A2 and A3 that I will speak on.

As far as constitutional office holders are concerned, no tribunal has been appointed.

**Mr. Mungatana:** On a point of order, Mr. Deputy Speaker, Sir. The Attorney-General is really misleading the House. Is he saying that tribunals are not appointed for constitutional office holders? Is he saying that Members of Parliament are not constitutional office holders?

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I am saying that this Bill refers to constitutional office holders who have been specifically mentioned as constitutional office holders under our Constitution. It is there. Give me your Constitution and I will show you---

**Mr. Deputy Speaker:** Order, Mr. Attorney-General! The point of order raised by the hon. Member is very explicit and straightforward. You are moving the Statute Law (Miscellaneous Amendments) Bill, 2008. Part of that is the Constitutional Offices Remuneration. In the schedule therein, the Attorney-General is listed as one of the people who will benefit from the amendments. So, all the hon. Member is saying is that in conformity with Standing Order No.81, you have to be explicit in the first place because you are the one who is moving the Bill. In your absence, somebody else could have moved it. If you chose to move it yourself, you have to indicate that this also includes you. All you need to do is to declare your interest.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I was coming to that. The constitutional office holders are specifically mentioned in the Constitution. This Act has, all the time, related to them. Not everybody who is mentioned in the Constitution is a constitution office holder. I will get the correct Section here. I think it is Section 119.

On harmonising the salary structure, the constitution office holders were harmonised with those of Permanent Secretaries. In fact, there is Band A1. Who enjoys this? It is the Attorney-General and the Chief Justice who are constitutional office holders. However, in the harmonisation, we have the Permanent Secretary, Secretary to the Cabinet and Head of Public Service in Band A1. Since Independence, the Permanent Secretary, Secretary to the Cabinet and Head of Public Service, the Chief Justice and the Attorney-General have always been in the same band. That was, however, harmonised.

In Band A2, we have the Judge of Appeal, the Controller and Auditor-General, the Chairman of the Public Service Commission and the Chairman of the Electoral Commission of Kenya. We also have Permanent Secretaries in this band.

In Band A3, we have members of the Public Service Commission, members of the Electoral Commission of Kenya---

**Ms. Odhiambo:** On a Point of Order, Mr. Deputy Speaker, Sir. The hon. Attorney-General has not declared his interest. He has merely told us that he is the Attorney-General of Kenya which we all know. Could he declare his interest on this matter? How much will he receive?

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, in fact, I am just about to come to that. I will state how much those in Band A1 will get. Just be patient.

**Mr. Deputy Speaker:** Order, Mr. Attorney-General! You are the Principal Legal Advisor to the Government. It is my presumption that you are fairly acquainted to the Standing Orders of this House. Standing Order No.81 reads:

“A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest.”

Are you telling me that you are not supposed to declare your interest in this matter?

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Kilonzo):** On a point of order, Mr. Deputy Speaker, Sir. Could I be in order to say that the Standing Order in question cannot apply to this particular Bill? This is because under our system, the Bill that proposes miscellaneous amendments can only be moved by the Office of the Attorney-General himself. Would I be in order to propose that the declaration of interest envisaged by Standing Order No.81 refers to speaking on debates that are not related to an issue where a Minister and for that matter the Attorney-General, who is moving a matter in which he may be involved, can only do so when he reaches a particular band. I am sure my learned friend, the Attorney-General will say this. This is not a debate about boundaries or cows for example. He is moving a Bill that affects more than himself.

Mr. Deputy Speaker, Sir, with your permission, I propose that the Attorney-General be permitted to continue moving the Bill. He will declare his interest at the right time. Otherwise, we will confuse his personal interest such as it is. I do not think it is because Attorney-Generals come and go. However, he will be in a position to tell us what it is that affects him.

**Mr. Mungatana:** On a point of order, Mr. Deputy Speaker, Sir. I do not know why the Minister for Justice, National Cohesion and Constitutional Affairs wants to take us around on this one. It is very clear that the Attorney-General is going to personally benefit. The Standing Orders are there so that they can, among other things, guide the interest of the House. If hon. Members knew, for example, that there is a report that has been tabled, and that people are going to get an increase of salary, including the person who is initiating this debate, hon. Members in this House would have been more interested. They would have scrutinized more, what is going through this House. So, we should not go round it. Can he say what he is going to get and move on? That is what we want to know.

**Ms. Odhiambo:** Mr. Deputy Speaker, Sir, if you look at page 217, you will see that the first items – items (a)(1) and (b) – are about the Attorney-General. Even though the Office of the Attorney-General is not personal to himself, we know that he has been there for more than 20 years. So, there is nothing that can be more personal than being in

an office for more than 20 years. If you look at the amount of money we are talking about, you will see that it is Kshs399,440-Kshs915,500.

In order for us, as Members of Parliament, to make informed decisions over this, we want to know where he is moving from and to what point he is moving. We also want to know whether there are other perks or other allowances that go with it in order for us to make informed decisions. Therefore, under Standing Order No.81, the Attorney-General needs to declare his interest in this Bill.

**The Minister for Nairobi Metropolis Development (Mr. Githae):** On a point of order, Mr. Deputy Speaker, Sir. I think it is very clear that Standing Order No.81 refers to personal interest. We must make a distinction between personal interest and an office. Today, the Attorney-General is Mr. Amos Wako. Tomorrow, it might be Ms. Milly Odhiambo. So, we must make a distinction between personal interest and the official interest. Here, it is not Mr. Amos Wako as a person that the Bill is referring to, but rather, to the Attorney-General of the Sovereign Republic of Kenya. It could be him today and another person tomorrow.

Mr. Amos Wako is moving debate on this Bill because he is the one in law who can do it. Secondly, he is not doing this only for himself but also for the other constitutional office holders. So, I think there is a distinction between personal interest that Standing Order No.81 refers and where you are doing a job as a public officer.

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, mine is simple. I just want to plead with hon. Members. Since some of the hon. Members raising objections are in the Departmental Committee on Administration of Justice and Legal Affairs, I plead that they go and look at the Bill and do a report for us. For the time being, let the Attorney-General move the Bill, so that we can debate it. I think there are many issues we would want added to the Bill as amendments.

**Mr. Deputy Speaker:** The Attorney-General is, indeed, moving the Bill. He does not have to have somebody's permission to move it. The point is, Standing Order No.81 states as follows:-

“A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest.”

The Standing Order does not make a distinction between talking on a Bill or moving a Bill or contributing to a Bill or speaking on a Private Members' Motion. It gives an impression of a blanket provision on any business that is on the Floor of the House, in which the Member has a personal interest. Now, whether remuneration for constitutional office holders is, indeed, a personal interest, or is outside the so-called “personal interest”, is an issue we are basically looking at now. Mr. Attorney-General, in your own wisdom and judgement, and being literally the leading legal personality we have in here, you are in a position to understand this.

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, I think we are just going round in circles. Mr. Amos Wako has no personal interest in this matter. He may get a benefit, but whether I get it or not, does not matter. I want to make that point very clear. Therefore, this particular Standing Order, I think, is geared to what Mr. Mutula Kilonzo said; it is also, really, geared to those types of situations that are not obvious on the face of it. In other words, a Motion comes up, an hon. Member speaks on, and you may not know whether an hon. Member has an interest in it or not.

However, let me say that, if it is a question of how much, I was coming to that. After saying that the Attorney-General is part of Band “A”---

**Mr. Musyimi:** On a point of order, Mr. Speaker, Sir. I think part of the reason as to why we see the personalization of this discussion is a problem created by Government, especially when it brings issues like this one. The Judiciary brings its recommendations, the Executive brings its recommendations, Parliament deals with its matters in its own way and Parastatals have their own ways of paying their people. In this House, we have had a Government for long enough, which ought to have brought to the Floor of the House, a consolidated approach on how public servants should be paid. Since that has not happened – I am glad that the Minister for Justice, National Cohesion and Constitution Affairs is here – it is my hope that when we come to make the new constitution, there will be one body that will look at all the salaries of public servants.

I suspect that is why we are witnessing the temptation by hon. Members to see personalization in this debate.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Speaker:** Mr. Attorney-General, in declaring your interest here, you do not have to go into the figures. You just have to say: “This is a Bill through which I will also benefit as the Attorney-General.”

That is all you have to say in terms of declaration of interest.

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, I am going to say that, but just want to agree totally with what Mr. Mutava Musyimi has stated. That is why, from the very beginning, I began by outlining the history of this Bill. I do not think Mr. Musyimi was here when I started speaking, but I did mention that in the Bomas Draft Constitution and the Wako Draft Constitution, we have a Salaries Review Commission, which is supposed to harmonise all these salaries within the public sector.

I did refer to the nature that he has very ably, and more eloquently than myself, referred to. That is the disparity within the salaries amongst the various Government and public institutions. I did say that, as a result of that, the President set up a Permanent Salary Review Board to harmonise the salaries. That is why my entire presentation has been that this is part of the harmonization process.

I do not want to repeat it, but I went on to state the fact that this Board was set up in 2001, and that there has been salary reviews for the disciplined forces, civil servants and teachers between then and now. In these salary reviews, the Permanent Salary Review Commission has also been involved. Therefore, ours, coming eight years later, is part of that exercise. I had actually gone into quite some length. I am glad that your contribution has now completely put into context, what has been said.

Mr. Deputy Speaker, Sir, the Constitutional Office holders covered by this Act are those mentioned in Section 104(5) of the Constitution of Kenya. In other words, not any public official mentioned is a Constitutional office holder. It is only those mentioned in Section 104(5). Subsection 1 of that section says:

“There shall be paid to the holders of offices to which this section applies such salaries and such allowances as may be prescribed by or under an Act of Parliament.”

Then Subsection (5) says who those officials are - High Court Judges, Judges of the Court of Appeal, Members of the Public Service Commission, Members of the Electoral Commission, the Attorney-General and the Controller and Auditor-General.

Mr. Deputy Speaker, Sir, I think that is now clear because there were some hon. Members who thought that because somebody is mentioned in the Constitution, he or she becomes a Constitutional office holder or because we as Members of Parliament are mentioned in the Constitution, we are also constitutional office holders. This Bill is brought pursuant to Section 104 of the Constitution of Kenya.

**Mr. Wamalwa:** On a point of order, Mr. Deputy Speaker, Sir. Looking at the offices that the Attorney-General is referring to, we have the offices of the Chairman and Vice-Chairman of the Electoral Commission of Kenya (ECK). I do not know if that office still exists. Could the Attorney-General give guidance under the new Act?

**The Attorney-General (Mr. Wako):** Is it under the new Act or the new Constitution?

**Mr. Deputy Speaker:** It is under the new Act that forms the Interim Independent Electoral Commission (IIE C).

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, the way that is placed under Sub-section five, whether you are the chairman or a vice chairman, you are primarily a member of that commission. Then you subsequently become a chairman or a vice-chairman. So, Sub-section five, just states "member of the Public Service Commission" and "member of the Electoral Commission". It is obvious that as the chairman, you are a member and therefore, you are covered under this section.

**Mr. Wamalwa:** On a point of order, Mr. Deputy Speaker, Sir. Could the Attorney-General be a bit specific? Do we still have the office of the vice-chairman of the ECK? How are you remunerating an office that does not exist? Could you confirm under the Act No.9 of 2008 whether the office still exists?

**Mr. Deputy Speaker:** Mr. Attorney-General, there are issues that essentially you need to give details under IIEC.

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, under the IIEC, I do not think that they have an office of the vice chairman.

**Mr. Deputy Speaker:** The Bill said that "the Constitutional Office Remuneration". Then how do you talk of an office that does not exist?

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, this Bill was drafted before IIEC came into being. Also it is effective from 1<sup>st</sup> July, 2008 when that office existed.

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Attorney-General to mislead the House that the new law does not exist and that he can purport to bring things before the Floor of the House without taking into account the laws that we have already passed and implemented? Is he in order?

**Mr. Deputy Speaker:** Mr. Attorney-General, there is no vacuum in our constitutional dispensation. We do have provisions in the Constitution. Any Statutes that are brought in here must be in conformity with the Constitution of the country. Was there a Constitutional Bill that was passed by the House that defined something called IIEC?

**The Attorney-General (Mr. Wako):** Yes, I agree, Mr. Deputy Speaker.

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

**Mr. Deputy Speaker:** Order, Mr. Mungatana!

Proceed, Mr. Attorney-General.

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, if you look at the effective date, it is from 1<sup>st</sup> of July, 2008 when that Commission existed. Consequently,

by virtue of that Constitutional amendment, the IIEC is a successor to the ECK. Therefore, it automatically succeeds to this because this is effective from 1<sup>st</sup> of July. So, if there is no vice chairman, that provision will only apply up to the time the new Constitution came into force. So, if there is no chairman, there will be no payment. What is the worry?

**Mr. Mungatana:** On a point of order, Mr. Deputy Speaker, Sir. The Government invoked the Standing Order No.111 (2) to hurry up this Bill so that it does not go through the Committee Stage. We passed that Motion with the understanding that things are okay but now we are seeing, particularly, this provision that has to do with remuneration of the Constitutional office holders.

There is a problem because it is providing even for non-existent offices. As a Parliament, looking at the economic situation right now, may I propose to the Attorney-General - so that we do not defeat the other important provisions - that no one is going to die if their salaries are not increased between now and the time that we are going to put in the Salaries Commission. Can you withdraw that particular provisions and bring a proper report before the House? Then, at the time that we shall set up the Salaries Commission, we shall proceed with that understanding.

I urge the Attorney-General to withdraw that section to avoid complicating the rest of the Bill. The Attorney-General, the Chief Justice and others will not die of hunger, if their salaries are not increased between now and the time we will set up the Salaries Commission.

**Mr. Musyimi:** On a point of order, Mr. Deputy Speaker, Sir. I have difficulties with the timings of this particular matter. This issue is being put on the Floor of the House at a time when we are being told that our economy is shrinking. The global economy is also shrinking. There are times we play out as very callous leaders. When we are dealing with such figures in front of the people who brought us here and who live on nothing, is the timing appropriate to discuss this matter? I know that life must go on but there should be sensitivity to the electorate.

**The Attorney-General (Mr. Wako):** The issue of timing is another matter. I had answered successfully on the issue of the vice-chairman of the Electoral Commission because the Act is effective from 1<sup>st</sup> July. When the Constitutional amendment was made---

**Mr. Deputy Speaker:** Order, Mr. Attorney-General! We had a Constitutional Bill that we passed and it has something called IIEC. In the Statute Law (Miscellaneous Amendments) Bill, you have the ECK. Are you sure we are talking about the same thing? You have already owned up and said that this was done before the ECK was superseded. I am trying to see a way out here.

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, first of all, let me talk about the law and state that whatever can be done during the Committee of the whole House can be done. In other words, during that stage, we can amend the correct name but in law, the IIEC is a successor to the ECK, I see no problem. To satisfy hon. Members, during the Committee of the whole House, I will be prepared to bring the appropriate amendment as far as this particular office is concerned.

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

**Mr. Deputy Speaker:** Hon. Members, can you give the Attorney-General some time so that he can explain himself?

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, to answer---

*(Power outage)*

*(Power restored)*

**Mr. Deputy Speaker:** Mr. Attorney-General, please, proceed!

**The Attorney-General** (Mr. Wako): Thank you. Actually, I prayed and that is why the lights have come back.

**Mr. Deputy Speaker:** Mr. Attorney-General, you have only two minutes to complete moving this Motion.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I was at pains to explain that since 2001, everybody else has had a salary review, three times or twice, apart from Constitutional office holders. That is why I believe strongly that in the interest of justice and harmonisation of these salaries, we should go ahead with this.

Mr. Deputy Speaker, Sir, we are looking at a situation where persons who are not even Constitutional office holders, are earning more. This is because they have implemented their bit, which does require the consent of Parliament. For example, the Permanent Secretaries and Provincial Commissioners are now earning more than constitutional office holders are. This is because they have had their schemes reviewed twice or thrice. The Constitutional office holders, whose offices the Constitution thought were important to be included in the Constitution, are earning less. This is because of our patience. We have been taking things slowly for eight years now. I argue very strongly that this should go on as planned.

Mr. Deputy Speaker, Sir, if it is the question of vice-chairman or whatever, these are matters that can be cured during the Committee stage. I admit that the Committee has not had the time to look into this issue. However, they are going to have an opportunity and I will be willing to listen to any amendments that you may bring here.

Mr. Deputy Speaker, Sir, in the interest of harmonisation and considering that the salaries of everybody else have been reviewed three times and now some are earning more than Constitutional office holders, that will be an injustice to Constitutional office holders.

I can see my time is up. What remains comes under the portfolio of the Ministry of Justice, National Cohesion and Constitutional Affairs. I am sure the Ministry will tackle it.

I beg to move.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I beg to second.

Mr. Deputy Speaker, Sir, I wish to approach my support of this Bill from three perspectives. First of all, I would like to address the issue of the amendment to the Appellant Jurisdiction Act and the Civil Procedure Act. I would urge this House to note that these are laws that were created a long time ago. I do not want to use the expression "colonial laws". At the time these laws were passed, the actual objective of the Act was not stated.

Mr. Deputy Speaker, Sir, in an effort to reform, the Government would like everybody; judges, magistrates, lawyers and everybody using these laws to know that the

functions and objectives of these laws is to speed up the hearing of cases. It is also to ensure that proceedings are determined in a just manner.

Mr. Deputy Speaker, Sir, if I may refer to page 204, above all, it is for the use of suitable technology. Hon. Members, particularly those who have practiced law, will be aware that our system even up to this moment is using long hand. As you saw, in this broadly broadcast case of Tom Chomlondley, the judge had to wait for the advocate to speak to him to record. More often than not, the judge cannot capture everything and there are always debates as to whether the record, in fact, reflects what was said. Therefore, at page 204, we are for the first time in the history of this country introducing the concept of the use of suitable technology. At this point, we are not specifying it. Therefore, I would urge the House to accept this dramatic reform that is required of our administration.

Mr. Deputy Speaker, Sir, in addition, we will make sure that judges and lawyers understand the main objective of this law. You also notice another departure from tradition at page 207. You will see that we are introducing a Mediation Accreditation Committee for the first time and in line with the best international practice all over the world. We are introducing the concept of mediation in our civil cases. Friendly countries such as Ghana and Nigeria have been able to use this tool to ensure that the judge can order the dispute in its suitable circumstances to be referred to it. You will notice this at page 207. I hope hon. Members will take this very seriously. This is because one of the challenges of the Judiciary is a huge backlog of cases. This is a dramatic departure from the past.

Mr. Deputy Speaker, Sir, on page 208 we are saying that, the court may, on the request of the party or where it deems it appropriate, direct that any disputes presented before it, be referred to mediation. Therefore, this will be in addition to the office of the *Ombudsman* that this House established recently. It is a very important part of this law. It is timely and I would urge Members to look at it very carefully. As the Attorney-General has said, these are provisions that will be amended at the Committee stage. I would rather we discuss them on principle and understand the focus and interest the county is having in eliminating backlog of cases.

Mr. Deputy Speaker, Sir, you will also notice that the Bill also addresses the Truth, Justice and Reconciliation Act (2008). Again, this is a very important tool. I noticed that the House is very conscious of the delays and amount of time that has been taken in resolving the issues that brought the country to its knees last year. The Truth, Justice and Reconciliation Act was brought on the Floor of this House and was passed for purposes of ensuring that, once and for all, the country has a mechanism for hearing these things. Therefore, one of the purposes of bringing it is, above all, to streamline the provisions of the Act to provide for appointment and removal of citizens and non-citizen members. Above all, it is to make sure that the Commission will not recommend amnesty in respect of genocide and crimes against humanity. That has been put in the Bill. The Bill refers to that issue very well. It is an important aspect.

Mr. Deputy Speaker, Sir, the Constitution of Kenya Review Act has been factored at page 232 of the Bill. For the first time, it defines the core-functions. Under Section 2 it says: -

"Core function means the activities of the Committee of Experts from the date of appointment to the last day of civic education under Section 35".



I want to emphasize and repeat for those who would like to hear again, that this country is committed to a new Constitution. Therefore, the amendment proposed under the Constitution of Kenya Review Act is well thought out. We are even introducing things like misconduct. We are also showing that the actual date will be counted from the date of appointment. This House, in its wisdom, did not pass the laws at a time that we thought it would be passed under the National Reconciliation Act. Therefore, we want to adjust that to make sure that we will not come back to this House to seek for an extension.

Mr. Deputy Speaker, Sir, on page 233, you will see that we are again, putting a formula. We are deleting "15 days" and substituting it with "30 and 21 days" and so on, for all the various organs, like the Interim Independent Electoral Commission (IIEC).

Therefore, this law is timely and I would like to salute the hon. Attorney-General - subject to what I will say on some of the issues raised by Members - for bringing it at this time. That is the reason for seeking to move this Bill away from the normal procedure of Parliament. My fellow Kenyans, time is running out on us. This Bill will enable us to say that we have the IIEC, the Interim Boundaries Commission and the Interim Constitutional Court that are functional.

Mr. Deputy Speaker, Sir, you will find the composition and operations of the court on page 235. We are reinventing Kenya in this process. You will notice that under sub-paragraph 3 on page 235, we have allowed this court to regulate its own procedure.

Again, on page 234, we have reintroduced a section on the proclamation of the Constitution, which is Clause 43(a). It bears repetition and says that the President shall by notice in the gazette promulgate the new Constitution not later than 14 days after the publication of the final results of the Referendum. Again, the referendum has been very well referred to. I would like to inform this House that we will originate a referendum law that we will bring to this House long before the Referendum itself.

Mr. Deputy Speaker, Sir, allow me to talk about the issue that has made Members to rise on their feet. That is the question of salaries. I hope we do not make a mistake. I have a lot of respect for hon. Members, particularly my learned friend, Mr. Mungatana. To say that we withdraw this Bill is to say that Members of the IIEC will not be paid. This is because, rightly or wrongly, they are provided for in the Constitution under Section 105. Therefore, we must find another method of making sure that we spell out how much these Commissioners will be paid. I agree with Members that we have no office of the Vice-Chair, because in the process of recruitment – and I served in that very able Committee – we did not recruit a vice-chair of the IIEC. However, we recruited the Chairman. I plead with this country to accept that. If we postpone this idea of salaries--- Personally, I have my own reservations, because the magistrates, court clerks and support personnel of the Judiciary are not covered here. However, the Attorney-General is also right that these Constitutional office holders' benefits have not been revised since 2001.

Therefore, as we consider it, let us bear in mind that if we do not pass this Bill, we will not have made provision for the members of the IIEC. It must be remembered that when we threw out Mr. Kivuitu and this team, we also threw out the baby, the bath water, the towel and everything else. So, I urge hon. Members to accept the generous and very timely offer by the hon. Attorney-General, that any weaknesses in this law, can be polished during the Committee Stage. We will look at it and amend it in order to ensure that we do not--- This Committee is recognised as a constitutional body and its officers

are recognised under Section 104. Therefore, the provision can only be made by this honourable House.

**Mr. Wamalwa:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Minister to indicate that there are no provisions for the new officers in the IIEC when he has earlier confirmed that this is a successor of the former Electoral Commission of Kenya (ECK), who would succeed both the assets, liabilities and everything? Could he clarify that?

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Mr. Deputy Speaker, Sir, I stand to be corrected. I do not own the law which is there to be read. My learned friend knows it as much as I do. My impression is that we need to spell out those salaries expressly, indeed. This is because when we deleted Section 41 of the outgoing constitutional provisions regarding the ECK, we did not make any transitional provision on anything, including assets and salaries. Please, hear me out and listen to me carefully. Look at it and you might be surprised. I think I am right.

Therefore, it is essential for this country to provide for the benefits of these people, because only Parliament through this particular Bill, can say how much we will pay them. In fact, the Cabinet ended up deciding how much benefits they will get. It was a heated debate. For the time being, the facts of the matter is that, as the Minister for Justice, National Cohesion and Constitutional Affairs – and I stand to be corrected – my impression is that we have no provision for salaries of those people. I would like that expressly passed by this House, so that I can start paying them, to make sure that they give us the new Constitution that we want.

Mr. Deputy Speaker, Sir, the amendments being proposed for the Appellate Jurisdictions Act, Advocates Act, Civil Procedure Act, Films Act, Test Control Act--- The Constitutional Office Holders Remuneration Act, Cap.423, perhaps has a greater challenge, which is relative to what the Government ought to pay these people. I am not quite certain that looking at the Act, we actually left their benefits within the existing Act, which is still in force. However, if I am wrong, I will be happy, indeed. I would prefer, in fact, to be wrong on that particular concept. It is better if we enact this Bill.

Mr. Deputy Speaker, Sir, you will also see that we have brought amendments to the Sexual Offences Act, which the Attorney-General has described, so that we can stop children from being exposed to obscene images or language, with the intention of enabling the children to engage in sexual acts. This is also a very important law that is bringing reforms in the way we manage the affairs pertaining to our children.

Mr. Deputy Speaker, Sir, we have also brought amendments on page 240. You will see the Kenya Information and Communications Act. You will remember some of the disputes that the country has had on the Media law. For the first time, we will assign functions to the Broadcasting Content Advisory Council and also enable the Media Council to appoint the members of the Appeals Tribunal.

Mr. Deputy Speaker, Sir, the Media Act No.3 of 2007 is also there. Again, these are things that have been negotiated and mediated. They are things that I would very sincerely recommend to this House that they be adopted.

Mr. Deputy Speaker, Sir, the other one is the Supplies Practitioners Management Act. This is, again, reform, because we have not had anything like this in this country. It

is a sort of thing that is very urgent, so that people can register as members and have codes of conduct and a council for managing it.

The other one is the Truth, Justice and Reconciliation Act, which I have referred to. For the first time we are introducing the definition of genocide as a crime for which the Commission may not recommend amnesty and so on.

Mr. Deputy Speaker, Sir, I beg to second this Bill and urge hon. Members to support it.

*(Question proposed)*

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, first of all, I would like to start by expressing my great disappointment with the Government for bringing a Statute Law (Miscellaneous Amendments) Bill in a hurried manner. We want the Government to get it from us that this should be the last time that we are going to allow the fast-tracking under Standing Order No.111(2) to avoid a Statute Law (Miscellaneous Amendments) Bill going through the Departmental Committee. I say so because a Statute Law (Miscellaneous Amendments) Bill like this one always covers---

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. I think we ought to be honest. This is not the Bill that is being fast-tracked by the Government, but the fact is that it has been listed. There is another Bill which I would want to fast-track and that is why I am rising on a point of order. This one, I think, was basically listed because there was no business and Parliament had to move on.

**Mr. Deputy Speaker:** Is that the reason why the Departmental Committee report was dispensed with under Standing Order No.111(2)?

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I am not the one who moved but—

**Mr. Deputy Speaker:** There was a Procedural Motion which was moved here---

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, the reason why I am raising this is that there is another Bill, which I really want fast-tracked and I do not want it to colour that other Bill which I want fast-tracked.

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, the House Business Committee (HBC) is essentially a Government body. It is the one that controls business; so, I am in order to say that there has been fast-tracking. Let me not be distracted! We want to send a clear message that if it is a single Bill, and it is negotiated with the Opposition Caucus, we will want to understand that. But where we have a bunch of statutes such as these being fast-tracked, it is dangerous and Parliament should never accept this to happen again.

Having said that, there are, in fact, some very good provisions within here. There are also some which are very dangerous and some which were clearly hurried. For example, we have raised various points of order that the provision that the salaries for Constitutional Office holders are being adjusted upwards. There is a clear provision for a Vice-Chairman, for example, of the Interim Independent Electoral Commission (IIEC) and this Office does not exist. In fact, I sit on the Parliamentary Select Committee (PSC) that has been asked by the IIEC to meet with them, so that some of these things could have been included in this Statute Law (Miscellaneous Amendments) Bill if it was not rushed by the Government in the House. We would have brought in even the ones of the

Boundaries Commission. There are some genuine amendments that are required and we think that this has been hurried.

Still speaking on the same issue of remuneration of Constitutional Office holders, Cap. 423, I wanted to make the point that precedent has been set now for every person, who holds a Constitutional office, or an important or significant office, to have a report of a tribunal that is put before to this House for debate. At least, in the eyes of the public, it should appear to be properly debated and accepted, so that members of the public can be aware of how much the Attorney-General and the other Constitutional officers holders are paid, and whether, in fact, this Parliament should pass proposed amendments. I still stand by my proposal to the Attorney-General. In order for us not to lose on the other important things, we would request him to seriously consider putting this particular amendment aside so that the country can talk about them, accept them and then pass them at another time after we have set up a salaries board.

Mr. Deputy Speaker, Sir, I wanted to also very quickly bring to the attention of the House the proposed amendment to the Media Act, No.3 of 2007. The proposal from the Attorney-General is that the Bill is to amend the Media Act, 2007, to provide for the funding of the Media Council by the Treasury. We have had a lot of talk about independence of the media. I think this is a profession just like the Law Society of Kenya (LSK). The LSK does not get any funding from the State, and where there is State funding, there has to be heavy presence of the State in the board or council, as the case might be. It is not acceptable that on one hand we are fighting for independence and on the other hand we are saying that we need the money from the public to support this independence. I want us to look at it more clearly. Are we going to give money to the Media Council? If the Media Council is going to be given money from the Treasury, then apart from the private component, what is the Government component in that Media Council? We need to agree on this. If it is in the middle then, the Attorney-General has forgotten to bring some other amendments for us to discuss. How is this Council going to be created? What is the composition of the public interest in it? What is the Government component in it? Who is going to sit there? So long as money is given from the Treasury, there has to be that bitter pill to swallow. So, I think something is missing here that needs more discussion.

I would want to particularly support the amendment to the Interpretation and General Provisions Act that has been brought in. The example was given of the conflict between the Ministry of Medical Services and the Ministry of Public Health and Sanitation, where you will find the Director of Medical Services is supposed to administer the Act, yet the actual boss in practice of those public health officers is the Director of Public Health, who has been appointed but there is no provision for his appointment within the Act. I think that is a good provision, so that we can remove the confusion that is in existence right now.

Mr. Deputy Speaker, Sir, the other one that I had hoped would be used by the Chief Justice to really make Kenyans enjoy its benefit is the provision that Mr. M. Kilonzo has delved into regarding introduction of new technology. I watched with amazement the way the presidential constitutional cases were disposed of when Mr. Al Gore and Mr. Bush were fighting over who was supposed to be the president of the USA. You will find very big cases being debated; senior counsel are told they have ten minutes to present their case. They put on the microphones like we do and there is a red light like

we have here in Parliament. After your ten minutes, your microphone is off, whether you have finished or not is your problem. You are supposed to have put in your case. As a result, even a major constitutional case like that one was resolved within a period of less than a week. We want to send a message from this Parliament that the Chief Justice of the Republic of Kenya needs to modernize the courts. It is not enough to say that he does not have facilities. There are things that you can agree on. There are rules that he can set under this particular provision. He should set up clear rules, so that we have a proper and functioning system for disposal of court cases.

Mr. Deputy Speaker, Sir, today, you will find advocates taking two hours to do their submissions in courts. A hearing in court takes a whole day and yet there is the option of written submission and using technology. We find an advocate shouting himself hoarse and yet there is an option of using technology. We want this particular provision to be utilized by the Chief Justice and bring in proper rules, so that the court system can start functioning well in this country. There is absolutely no reason you cannot make your points in ten minutes. Here in Parliament, we are able to move Motions, debate and do certain things within a period of ten minutes. Here we are dealing with national matters. There is no reason why in a case that is dealing with particular individuals in a civil or criminal suit cannot be disposed of in ten or fifteen minutes. We are sending a message from this Parliament that the Chief Justice needs to make serious rules on what needs to be done.

Otherwise, I would want to support most parts of this Bill. I also support some of the amendments which have been proposed. I would beg and urge the Attorney-General to really consider the things that we have raised here, so that we do not fight in the Third Reading Stage. He should really consider removing those parts. He can actually bring back these things at a later stage, so that we do not have to throw out this Bill.

With those few remarks, I beg to support.

**Ms. Odhiambo:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity.

I partially support the provisions of this Bill. There are very good amendments that have been proposed. Unfortunately, they have been laden with other things that are making it difficult to give this Bill a 100 per cent support. There are very good provisions, especially as relates to the justice system. Specifically the amendments that have to do with civil procedure and other Acts are very good because they seek to make the justice system expeditious and just. I want to laud the hon. Attorney-General for that. One of the challenges that we have been having with the judiciary is the backlog of cases. It has been said that justice delayed is actually justice denied.

Mr. Deputy Speaker, Sir, one of the principles that need to be added when the Attorney-General brings the amendments is that we should not turn a blind eye to the issue of the protection of the dignity of court users. Sometimes that is sacrificed at the altar of expediency and what is said to be justice. I would, therefore, urge him to add as one of the principles, the protection of the dignity, especially of vulnerable court users such as indigent users, women, children and persons with disabilities.

Mr. Deputy Speaker, Sir, I laud the hon. Attorney-General for including the issue of affordability as a principle. There are very many indigent Kenyans who are not able to access the justice system. I would want us, to not just stop with the amendments of the law, but to go ahead and actually ensure that, in tandem with that principle, there is

reduction of court fees, especially for the indigents. This is because the court fees have become too high even for persons who have means. In the same vein, we should actually have a simplification of procedures, so that even those who are not able to afford lawyers are able to access the courts.

I would want to add that we should however be very cautious that under the amendments of the Civil Procedure Act, Clause 3, we are careful to visit the cost of the advocates upon the client in a bid to ensure expediency.

Mr. Deputy Speaker, Sir, if you actually look the laws that are being amended, there are several boards and committees that are being set up. Even though the Attorney-General has done a very good job in terms of bringing these amendments, I would want to express my disappointments that this is one of the pieces of legislation that is not in tandem with the spirit of the Tenth Parliament which is actually observing gender parity. If you look at all the boards that are put there, none of them addresses the issue of gender parity. I would want the hon. Attorney-General, for example, to look at the Films Board. I would like to address myself to the provision of the Films Board that seeks to protect women and children from exploitation. I would want Members to retain it.

One of the other things I would want to laud the Attorney-General for is the inclusion of the use of suitable technology in proceedings in our law courts. One time when I was doing my study in the United States of America, I visited a law court where other than the issue of technology which works much faster and easier, every single person had a lawyer that was given by the State. One interesting bit was that we had a case of a child who had three lawyers given by the State. One who was protecting the child's psychological interest; one physical interest and one material interest. But beyond that, one of the things that amazed me was the use of modern technology which reduces the time spent in courts.

Mr. Deputy Speaker, Sir, one of the things that I have a challenge with is the issue of salaries of the constitutional office holders. Having served as an officer of the Government, the hon. Attorney-General was actually my boss. I joined the office of the Attorney-General at a point when the salary was Kshs6,000. Within a few months of joining the judiciary I actually mobilized other State Counsels and sent a memo to the hon. Attorney-General and we got a 100 per cent salary increment. So, I left when my salary was Kshs12,000. It is not long ago. So, I am alive to the challenges that the officers face. I would actually be the first to really support an increment of salaries. However, I think the timing is utterly wrong. Kenyans are crying. That is why this Tenth Parliament has been deemed to be unpopular. Even though we have not added ourselves salaries, every Kenyan is asking us: "Why are you adding yourselves salaries?" We are not adding it, but we are perceived to be adding because our salaries are seen to be high. If you go to Kenyans and tell them that we want to give the hon. Attorney General a salary that goes up to Kshs1 million before we have counted the allowances which he has failed to table before us, the salaries might go to the tune of Kshs2 million or Kshs3 million. We have no way of knowing without those documents. Therefore, I would go back to the same issue that we have raised. Even though we raised it on points of order, the hon. Attorney-General did not indicate. He was very careful to say that there is nothing personal. But I noticed that when he was addressing the issue later, he was very passionate and kept using the word "our salaries" and "our increment and the record would bear witness. There is no word that is more personal than the word "our". I would

really love my former boss to get a decent salary, but I think the time is absolutely wrong. Kenyans are dying of hunger. We will be perceived to be insensitive to the needs of this country, if we propose salary increments for these officers. Therefore, I will not support that section. I would urge that section be deleted before it comes to us.

I would also want to laud the part on the senior counsel, especially the criteria that has been set to be determining who qualifies as a senior counsel. I have been waiting for a long time to be considered a senior counsel in vain. So, perhaps, I would be considered. That is on a light note.

But, Mr. Deputy Speaker, Sir, I want to say that, as an example, there was a time that, actually, a number of people were selected as senior counsels, and what seemed apparent is that most of them were former chairpersons of the Law Society of Kenya (LSK). Only one former chairperson was left in the name of Rachel Omamo.

Mr. Deputy Speaker, Sir, without a clear criteria, it may be used against women. So, we want clear criteria that include women!

*(Applause)*

Mr. Deputy Speaker, Sir, in finalizing, in relation to the Interpretations and General Provisions Act, if you actually look at part 3(a), I know that my colleague, hon. Mungatana has lauded this part. This is why I was very hesitant about the sort of hurry that we are going through. I want the Attorney-General to assure this House that we are not legislating Mr. Muthaura under this part.

*(Applause)*

Mr. Deputy Speaker, Sir, this country is tired of theatrics. This country wants to move forward! We want the President and the Prime Minister to move this country forward. It can only be moved forward through consultations. I am, therefore, urging the Attorney-General to re-read this so that we are not in any way legislating Mr. Muthaura through this part. I am not saying that, that is what it is. You are my senior and, perhaps, with more experience and you might have a better interpretation. But I want us to look at that.

Finally, Mr. Deputy Speaker, Sir, I was very concerned when the Attorney-General indicated that we are rushing because there is no business. If there is no business, that is why we should actually go slowly because we have all the time to look at this. So, I really do not see why we should be rushing!

*(Applause)*

But, other than that, private hon. Members have actually brought many Bills, including mine. I have actually brought two. We can deal with them when we are correcting this Bill.

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

**Mr. Deputy Speaker:** It is the business of the Government to generate business for the House, and Government business for that matter. So, hon. Attorney-General, you cannot be dispensed with collective responsibility!

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, what is the objective here? I think it is an issue of the transition between all the new rules, the calendar and, for the first time, Parliament sat in January for quite some time. So, it is this whole issue that has caused the fact that we do not have much legislative work for Parliament. Therefore, the few that I have drafted, just debate them. But the most important thing, really, as far as I know, especially on this one, is that there should be enough time for the Departmental Committee to look into it and come up with appropriate amendments during the Committee Stage, particularly on this Statute Law (Miscellaneous Amendments) Bill, which I know has so many legislations. My view, really, was that we should have time to read and so on. But we should also be usefully engaged and I am glad that we are usefully engaged. The comments that are coming out of this debate will be possessed by the Departmental Committee. We shall discuss them and during the Committee Stage, we shall be able to deal with it.

**Mr. Midiwo:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance. I will be brief because I notice that there are many people interested.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, he is on the Opposition Side!

**Mr. Deputy Speaker:** Order! Whichever side hon. Midiwo is, he is on the Government side!

Proceed!

**Mr. Midiwo:** Yes, Mr. Deputy Speaker, Sir. I am the Leader of Government Business.

**Mr. Deputy Speaker:** He is actually the acting Leader of Government Business, along with hon. Thuo!

Proceed!

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, although I am on the Government side, there are few things that I disagree with about the Statute Law (Miscellaneous Amendment) Bill. The first one is Section 3(a) which reads, just in case you have forgotten:-

“A reference in a written law in relation to any matter to a Minister or an official described by designation, which by reason or any change in the organization of any Ministry or department, whether or not by transfer of functions from one Ministry or department to another or others is no longer appropriate, shall be construed in relation to that matter as a reference to the Minister or other official for that time being charged with the responsibility of that matter”.

It is ambiguous, but the intentions are clear. I do not want to say, like my colleague, Ms. Odhiambo has said, she is not sure. I can read what it means and it must be deleted! It does not belong here. We are trying to amend our laws miscellaneously where there are ambiguities; where there are redundancies. So, we cannot introduce ambiguous things in law again! I think the country must move forward. This was intended to do exactly what Ms. Odhiambo was suggesting! Personally, I will spearhead and be on the side of hon. Members who will make them to understand it. If you mean something else, kindly, hon. Attorney-General, make it clear, but not what I think that means.

**Mr. Deputy Speaker,** Sir, I want to support the section that says we should repeal Section 88 of the Media Law. We all agreed that, that section should be repealed. So, I



want to commend you for suggesting that. I want to say that the Media Council must not be funded by public funds if the Government has no stake in it!

*(Applause)*

That is the Fourth Estate. We need not fund the Media Council, but we need to repeal the repugnant laws that gag the media. I think we all agree with that. I disagree with the part that seeks to fund them. I will personally not defend it.

Mr. Deputy Speaker, Sir, I want to say that we have passed laws here that have been brought by the Government, some of which are very anti-economy, anti-social and anti-our people! I am referring to the Copyright Law by the Attorney-General. I want you to bring an amendment here to redirect the way the Copyright Society should conduct itself around the country. Too many Kenyans are complaining that there is a rogue group which is roaming around the country, using policemen. The so-called "Copyright Law" was passed in 2003. The other day, I saw a woman who was driving in her car on Langata Road and the policemen were accusing her for listening to music and breaking copyright laws! That must be repealed! You cannot have two sets of tax collectors. Tax collection must be done by Kenya Revenue Authority (KRA)!

Mr. Deputy Speaker, Sir, I was also in Kisumu two weeks ago when an ordinary Kenyan came to me and complained that he owns a bar where only six people can fit in. But somebody goes there and says: "You have to pay Kshs18, 000 to be able to play music." If there is any charge which anybody wants to tax Kenyans, please, let it be done at source where the people purchase music and not for people to collude! Policemen are using that section of the law to fleece Kenyans. That must be done away with! That is not the right way. We cannot have people collecting taxes parallel to the KRA!

*(Applause)*

We passed the law, made a mistake and it warrants immediate correction.

Mr. Deputy Speaker, Sir, I want to applaud the Attorney-General for amending the Energy Act so that our people can be able to afford electricity. That, I think, is very commendable, hon. Attorney-General and we shall support you on that. There are many amendments here which are very good. The Sexual Offences Act – we cannot have a scenario where we have our children watching pornography legally. We cannot have that! I know the Media Council, which I believe is rogue, is saying that, that provision infringes on their rights. But, hon. Deputy Speaker, if you are sitting in your house watching television, if you flip through the channels any time in the day, one hour will not pass without you seeing a naked person!

*(Applause)*

Which country are we living in? That is not infringement on broadcasting rights. We do not want to control or gag the media, but we must say that our children must be safe from the things they watch. That must be agreed upon. We cannot be intimidated as lawmakers. Kenyans are telling us that they cannot even watch television! There is no family time to watch television with your children because all you can watch is nudity!

*(Applause)*

The Attorney-General is right and we shall support him. Do not gag the media, but sexually explicit content must not be aired on television or radio. There are better things to talk about as a nation. We can do better. We know that sex sells cheap. It sells very easily, but some of the programmes I watch on Kenyan television--- Even in the USA, you can watch them, but they must be on pay cable. You cannot watch them at will! What do we do, Mr. Deputy Speaker, Sir? Now I am here and my children are at home. They are only ten years or seven years old. I cannot stop them from watching television. That is the responsibility of the Government. Do not fear. There is nothing to fear. There is no country where such things are not controlled. If there is one, I stand to be corrected.

Mr. Deputy Speaker, Sir, I know many hon. Members have interest in this matter, but I would like to tell the Attorney-General that there are many more issues that he can incorporate here and we shall support him to the end. I would like to tell him that, personally, I am not against him getting paid. This is because there is an office of somebody called “Kenya Anti-Corruption Commission Director”. Why should he earn more money than the Attorney-General? Why should Mr. Ringera earn more money than the Attorney-General? He earns more money than even the President! So, let us be honest. The timing may be wrong, Mr. Attorney-General, but negotiate with us. The truth is that the Attorney-General, being the chief legal advisor of the Government, must earn good money so that people do not see him with briefcases.

I beg to support.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Deputy Speaker, Sir, I rise to support the Attorney-General on this very important Statute Law (Miscellaneous Amendments) Bill. I am saying this because it contains some very good provisions.

**Mr. Deputy Speaker:** Order, Mr. Githae! You are not supporting the Attorney-General, but the Bill which is appropriately before the House.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir. I would like to commend the Attorney-General for bringing this very important Bill. If you assume one or two typos, which I have noticed, for example, on page 236, there is no church known as the “Seventy Day Adventist”. I think it is called Seventh Day Adventist. If you exclude those few typos, it is a wonderful Bill.

The Bill gives the Chief Justice certain powers which he can use to dispose of cases in courts quickly. For example, he is now being compelled to embrace new technology. That is where we have failed. The main reason we have such a big backlog of cases is because of the technology that we use. Judges and magistrates have to write in long hand what the counsels and witnesses are saying.

Mr. Deputy Speaker, Sir, can you imagine if today we are to require you to write what we are saying? You will not even be able to handle the debate because you will be busy writing what hon. Members are saying. It does not require a lot of money to change. Even in other places where they have not developed adequate technology, they have shorthand typists and stenographers. These are people who can transcribe, for example, 140 words per minute. We can use such people to begin with as we embrace technology. It is not expensive. We have stenographers and shorthand typists in this country who are

not employed. They will assist the Judges so that they can look at the credibility of witnesses instead of wasting time writing down what is being said.

Mr. Deputy Speaker, Sir, the other power that the Chief Justice has been given is to make rules. Recently, we passed the Arbitration Bill. We have now given him rules for mediation, so that even before a case is taken to court, there can be evidence of mediation efforts that have been made to resolve it. Currently, we refer some very petty and useless cases to court, because there has been no provision for mediation. With this power, this now can be done.

The other amendment I am happy with is the deletion of Section 88 of the Communications Act. I do not even know how that provision entered into our law books. It is draconian, oppressive and arbitrary. I am referring to the section that empowers a Government official to confiscate or impound broadcasting equipment of media houses. If a media house breaches the law, there are other ways in which you can regulate the media without having to impound or destroy its equipment. So, that is a good move, and we need to support this Bill.

Mr. Deputy Speaker, Sir, the other issue, which my learned friend, Ms. Odhiambo mentioned, is on State Counsel. It is true that all the Senior Counsel are former members of the Law Society of Kenya (LSK), with the exception of Rachael Omamo but this was not discrimination. I remember that at that time, I was in the Ministry of Justice and Constitutional Affairs. She was the current chairperson of the LSK at that time, and a decision was made to promote the past chairpersons of the LSK. Now that she has ceased to be the chairperson of the LSK, it is right that she is also appointed Senior Counsel.

However, the rule providing that in order for one to be appointed Senior Counsel, one must have a lot of experience in court cases, is discriminatory to the advocates who are in this House. It is not easy to be elected to this House. Anybody who is elected to this House deserves commendation. One way in which we can do this is to recognize and commend those Members of Parliament who are lawyers and who have been elected to this House. They have no opportunity of practicing law in court. So, right now, as I speak, I am practicing law.

Therefore, I am calling upon the Attorney-General--- Could the Attorney-General listen to me?

**Mr. Deputy Speaker:** Order, Mr. Attorney-General and the Minister for Justice, National Cohesion and Constitutional Affairs; you should be listening!

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir. I was saying that for lawyers who are hon. Members of this House, the only place where they can practise law is when speaking in this House. That service should be recognized.

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

**Mr. Deputy Speaker:** What is it, Mr. Konchella? Are you a learned friend?

**Mr. Konchella:** Mr. Deputy Speaker, Sir, I am not one, but is it in order for the hon. Member to use the Floor of the House to advance his own interests?

**Mr. Deputy Speaker:** That is not a point of order! Proceed, Mr. Githae!

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Deputy Speaker, Sir, we have just distinguished personal interest from statutory interest.

**Mr. Deputy Speaker:** Order, Mr. Minister! You had already declared your interest by saying that you are a lawyer. So, proceed.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir. What I am saying is, as Mr. Danson Mungatana was speaking here, he was practicing law. As Ms. Odhiambo was talking here, she was practicing law. As I speak here, I am practicing law. This service needs to be recognized by the Attorney-General by awarding all lawyer hon. Members, who have managed to come to this august House, the rank of Senior Counsel, because we shall not have an opportunity to practise law in the High Court and the Court of Appeal.

This is done in most Commonwealth countries and since we have adopted the practices of those countries, I think we need to do this. There is no personal interest but it is only fair.

Mr. Deputy Speaker, Sir, the other provision concerns the salaries of the constitutional office holders. It is true that the timing may be wrong but we must take cognizance of the fact that their salaries have not been reviewed since 2001 to the extent that they are not in harmony with the other Government officials. The Permanent Secretaries and the Provincial Commissioners (PCs) are earning more than judges. I think it is not fair. For us not to be seen to be unfair to the constitutional office holders, I urge this House to accept those clauses that deal with salaries of constitutional office holders. The solution is what Mr. Musyimi talked about in this House. We need total reform of the remuneration in the public sector. I am one of those who have been saying that we need to do reforms in that section. Those officers in the Public Service who have leverage are able to negotiate better salaries. For example Members of Parliament are privileged and are able to negotiate better salaries for themselves. Teachers are also able to negotiate best salaries for themselves. That applies to judges but what about the magistrate? What about the executive officers and other junior officers in the Government?

Mr. Deputy Speaker, Sir, in the Public Service, the most senior officer is the President. So, no person should earn more than the President. Then we need to copy what the United States of America (USA) did for the federal employees. You are given a grade and not a position. There are grades one to 24. So, even if you move from one sector to another one, you go with your grade. For example if you are a Member of Parliament, you are given your own grade. So, you enjoy the allowances that go with that position and if you move to another Government position, you go with your grade and your basic salary. That works well. It means that a public servant can move from the Kenya Revenue Authority (KRA) to the Ministry of Nairobi Metropolitan Development. You can move from the Armed Forces to the Civil Service because you move with your grade. It is time to make reforms in the public pay system so that all the sectors move together.

Mr. Deputy Speaker, Sir, as I have mentioned, the only sectors that are adequately remunerated are the ones who are able to negotiate their salaries. What about those who are not in a position to negotiate their salaries? What are they going to do? That is why you find that there is a big disparity between the top earning official and the lowest earning person. We should also put a provision that no person will earn more than ten times the lowest paid person. If you do that, there will be some basis of fairness. Otherwise at the moment, there is no fairness and that is why there are some people earning more than the President and yet, the President is the overall head of the Public Service. It is time we reformed the Public Service.

Mr. Deputy Speaker, Sir, we will have all the opportunities to make the necessary amendments at the Committee of the whole House. In fact, I am aware that already, a few

hon. Members have drafted certain amendments. Going by what the previous speaker said, if there is any law or act that is being amended, you can bring it. However, it must not necessarily be on that section---

With those few remarks, I beg to support.

### ADJOURNMENT

**Mr. Deputy Speaker:** Order, Mr. Githae! If you have concluded your contribution that is up to you but should you wish to continue, you still have seven more minutes next time the debate resumes.

Hon. Members, it is now time to interrupt the business of the House. The House, is therefore, adjourned until tomorrow, 27<sup>th</sup> May, 2009 at 9.00 a.m.

The House rose at 6.30 p.m.