

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 8<sup>th</sup> April, 2010

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

## QUESTIONS BY PRIVATE NOTICE

### HIKING OF SUBSCRIPTION CHARGES BY MULTICHOICE (K) LIMITED

**Dr. Khalwale:** Mr. Speaker, Sir, I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Is the Minister aware that Multichoice (K) Limited notified all its customers that effective 1st April, 2010, charges for its various services would increase by US\$3 each, despite the current high charges of up to US\$110 (about Kshs8, 000), and yet in South Africa, the country of origin, the company charges a mean rate of SA Rands 5 (about Kshs500)?

(b) Could the Minister state what investment the company has made in Kenya to warrant such huge disparity in subscriptions, considering that the transmissions are from the same satellites, and also explain why the Communications Commission of Kenya (CCK), as the regulator, has allowed the company to use its monopoly in satellite TV transmission to charge Kenyans so exorbitantly?

(c) Could the CCK compel the company to review the exploitative charges and levy similar charges in Kenya as in South Africa?

**Mr. Speaker:** Minister for Information and Communications! We will re-visit that Question a little later.

Next Question, Member of Parliament for Migori!

### SHORTAGE OF FAST-MATURING SEED MAIZE IN MIGORI

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

(a) What has caused the acute shortage of the fast-maturing 500 Maize Seed Series in Migori and its environs in spite of the current heavy rains?

(b) Could the Minister clarify whether the shortage is countrywide or in Migori area only?

(c) What immediate plans does the Minister have to avail the maize seed to Migori, especially to farmers whose farms were under tobacco up to early March and now need to plant the fast-maturing maize seed for subsistence?

**The Assistant Minister for Agriculture** (Mr. Ndambuki): Mr. Speaker, Sir, I beg to reply.

(a) There is no shortage of fast-maturing 500 Maize Seed Series in Migori and its environs.

(b) There were some stock outs for sellers in various parts of the country, including Migori, but this is being addressed through redistribution and stocks replenishment by maize seed harvested from the irrigation schemes.

(c) My Ministry has embarked on redistribution in the whole country to ensure maize seed is received in the requested areas like Migori.

Further, the Kenya Seed Company has commenced processing maize seed grown under irrigation schemes.

**Mr. Pesa:** Mr. Speaker, Sir, it is very sad that the Assistant Minister is misleading this House. Right now, farmers in Migori and in the entire country are busy planting. In fact, they do not have the 500 Maize Seed Series, which mature fast. These people have been using their farms to grow tobacco. Can he tell us the distributors in that area, so that we go and get the seeds from them? Last week I had to buy maize seed in Bomet to go and plant in Migori.

**Mr. Ndambuki:** Mr. Speaker, Sir, 70 per cent of the farmers in Migori have planted. Yesterday, the Kenya Seed Company transported 20 metric tonnes of maize seed to their stores in Migori. This morning, they transported 10 metric tonnes of 513 Maize Seed Series, which will be there this evening. I also called the District Agricultural Officer of that area and found out that there are seeds from other companies which are also favourable to that area. So, this matter is being sorted out. It was only a temporary problem. As you go home tomorrow, you will find all the stores full of 513 Maize Seed Series.

**Mr. Pesa:** Mr. Speaker, Sir, could the Minister assure this House that in future, he will not wait until I bring a Question to Parliament before he can transport maize seed to Migori and the adjacent areas?

**Mr. Ndambuki:** Mr. Speaker, Sir, we did not transport the maize seed to Migori because he raised this Question. It is just because the stocks of seed maize in that area were sold out and it took a bit of time for us to transport other stocks to that area. However, as I said, 70 per cent of farmers in that area have planted. It is only 30 per cent of the farmers who have not planted and now the stores are full. Farmers in that area now have everything they need. If the hon. Member thinks that his area does not have enough seeds, he may tell me on Tuesday, so that the two of us can follow up the matter.

**Mr. Speaker:** Next Question, Member of Parliament for Gwassi!

*(Mr. Mbadi entered the Chamber  
while speaking on his mobile phone)*

I am afraid you are out of order, Member of Parliament for Gwassi! I am inclined to order you to withdraw from the Chamber but I will make you suffer the lesser punishment. I will drop the Question. I called it out three times, but you were not here and as you came, you came talking on a mobile telephone. You know that we do not allow hon. Members to talk on mobile telephones in this Chamber. So, as a matter of fact, you are grossly out of order. So, I will drop the Question.

NON-IMPLEMENTATION OF CBA BETWEEN UNIONS AND  
INTER-PUBLIC UNIVERSITIES COUNCILS

**(Mr. Mbadi)** to ask the Minister for Higher Education, Science and Technology:-

(a) Why has the Government failed to fully implement the negotiated 2008/2010 Collective Bargain Agreement (CBA) between the three unions representing the staff at public universities and the Inter-public Universities Councils Consultative Forum?

(b) Why has the Inter-Public Universities Councils Consultative Forum failed to re-start the 2008/2010 CBA negotiations after calling for time out in November, 2009, in order to consult the Government?

(c) What urgent action is the Ministry taking to avert the imminent strike called by the Unions from 18<sup>th</sup> April, 2010?

*(Question dropped)*

**Mr. Speaker:** Member of Parliament for Gwassi, that is a very light punishment! Next Question by the Member of Parliament for Nyaribari Chache!

## REHABILITATION OF KISII-KEROKA ROAD

**Dr. Monda:** Mr. Speaker, Sir, I beg to ask the Minister for Roads the following Question by Private Notice.

(a) What steps is the Minister taking to improve the Kisii-Keroka Road, which is currently impassable?

(b) When will the Government rehabilitate or tarmac the road?

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

(a) My Ministry has allocated Kshs12 million for routine maintenance of this section of the road. The funds will be used to repair the potholes and opening of the drainage on this road. Tendering for these works is ongoing, and the contractor will be on site soon.

(b) My Ministry is finalising the Road Investments Plan. This road will be included in this programme and will be completed with other roads for rehabilitation under the programme. In the meantime, the Government will keep on repairing the road to make it motorable.

Thank you..

**Dr. Monda:** Mr. Speaker, Sir, the Keroka-Kisii Road is the one connecting Nairobi with Tanzania in that area. Therefore, it is a busy road. In the last financial year, a similar small allocation was made for that road. After small repairs of murrum, and no tarmac, the road was again destroyed because of the large number of vehicles that run through it. What the Minister is calling "potholes" is actually an earth road with no tarmac at all, and no potholes. It is an earth road that is supposed to be a highway. What is he planning to do to ensure that this section of the road is done once and for all?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I sympathise with the hon. Member because the road is, indeed, in a deplorable condition. I also wish to remind the House that the Keroka-Sotik Road, which is an extension of this road, was done recently at a cost of Kshs1.2 billion. You realise that in order for the road to be in full use, it would be important to complete the section from Keroka to Kisii. So, I want to assure the hon. Member that as soon as funds become available, we will address that matter.

Thank you.

**Mr. Kinyanjui:** Mr. Speaker, Sir, I did indicate that procurement for the repair work is already in progress. I have already stated that by next week, the contractor will be on site. Kshs12 million has been allocated in this financial year which ends in June. From the next financial year, we will be able to look for adequate funding for the road to get a facelift.

**Dr. Monda:** On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to continue talking about Kshs12 million to repair that big section of the road, yet we know that the same Ministry talked of several millions to repair one kilometer? Is it in order for him to give that misleading information?

**Mr. Speaker:** Order. That sounds to me like a question that you should have asked when you had your last opportunity.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, I have had the opportunity on several occasions to pass by this road. The state of the road is terrible. We do not need sympathies. The Assistant Minister said that he sympathizes with us. Could the Government ensure that in the next financial budget, funds are allocated to ensure that this road is reconstructed?

**Mr. Kinyanjui:** Mr. Speaker, Sir, if we had our way, we would have all the roads in Kenya tarmacked. Given the Budget that we have, we only have to prioritize. I have indicated that this is one of the crucial roads and a link road to that section of the country, which is very productive. So, we will prioritize it in the investment programme that will come up, and I am sure the people from that region will be satisfied.

**Mr. Njuguna:** Mr. Speaker, Sir, many roads in this country have been destroyed by the heavy rains that are taking place over the whole nation. Lari has not been spared from this pounding of roads, particularly Kagwe-Kimende Road and Gichiengo-Kijabe Road. I do understand that these roads will be constructed under the French 2000 Programme. Could the Assistant Minister indicate when that programme is due to commence?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I am sure you realize that, that is a totally different question. In the meantime, I wish to say that we have done an assessment of all the roads that were damaged during the heavy rains, and a report will soon be tabled to ensure that we have proper figures of what actually happened. In the meantime, the rains are still going on and the figures keep varying. As soon as we get the relevant information, we will prioritize the repairs and work will be done.

**Mr. Joho:** Mr. Speaker, Sir, I have heard the Assistant Minister say that due to budgetary constraints, the prioritized roads will be repaired or tarmacked first. Could the Assistant Minister tell this House the rationale they use to identify which road is a priority and which one is not?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I want to agree with the hon. Member that previously, the method has not been very well defined, but my Ministry is coming up

with a road investment plan that will spell out the roads that we plan to do in the next 10 years and thereafter. I want to assure the hon. Member that, indeed, there are many---

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. The Minister is not answering the question. The question is: What factors do you use to prioritize these roads?

**Mr. Kinyanjui:** Mr. Speaker, Sir, it is not in order for the hon. Member to stop me from giving the answer and claim that I am not giving the answer. But what I am clearly saying is that it depends on the request from the people, the economic activities and many other factors. Previously, that has not been well documented in a way that you can interrogate it. It is for that reason that my Ministry has come up with a clear and tangible method that will be subject to scrutiny by hon. Members.

**Dr. Monda:** Mr. Speaker, Sir, in the Assistant Minister's answer, he sympathizes with our situation of this road in Kisii. At the same time, he is talking about a rehabilitation programme, where this road is competing with other roads. This means there is no definite time when this road will be done. When will this road be done, so that it is brought to the standards of other roads, to connect the road he has done in Sotik and the road he is doing from the Migori side?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I want to say once again that it is this same Ministry that did the Sotik-Keroka Road that was in a worse condition. The same Ministry is now telling him that it will do the remaining section to the same standard. I want to assure the hon. Member that we shall prioritize that road in the coming financial year; this matter will be addressed once and for all.

#### CONTRACTOR'S FAILURE TO INSTALL WARNING SIGNS ON NAIROBI-THIKA ROAD

**Mr. C. Kilonzo:** Mr. Speaker, Sir, I beg to ask the Minister for Roads the following Question by Private Notice.

(a) Why has the contractor on Nairobi-Thika Road not put up adequate and properly illuminated warning and diversion signs on the road?

(b) What action is the Minister taking against the contractor for putting up many concrete barriers that have caused many accidents?

**The Assistant Minister for Roads (Mr. Kinyanjui):** Mr. Speaker, Sir, I beg to reply. (a) I want to assure the hon. Member that the contractor is putting up adequate road signs on the on-going Thika Road works. Unfortunately, the signs are being vandalized as they are put up. Nevertheless, I have instructed the contractor to be replacing them soon as they are vandalized.

Further, I have also instructed the contractor to use properly illuminated warnings and diversion signs, and clean up the road signs regularly, especially during this rainy season.

(b) The concrete barriers that are being used to protect deep cut excavations, and to separate the two lanes are essential. If the barriers are removed, this may cause numerous road accidents. However, as a matter of security measures, my Ministry will continue to advertise warnings to motorists through the media, newspapers and radio to ensure that they are properly advised regarding the condition of the road.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, this is the busiest road in the country and the region. Using this road at night is dangerous, because there are no road signs. Considering that diversions are changed on day to day basis, could the Assistant Minister ensure that these diversions are marked with properly lighted diversion signs?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I agree with the hon. Member. We have already sent out the instructions and his suggestion will be taken into account immediately.

**Mr. Chanzu:** Mr. Speaker, Sir, in his answer, the Assistant Minister said that he has been instructing the contractor to replace these road signs every time they are stolen or vandalized. The Assistant Minister should know that this will add to the cost of the project. Could he consider using either police patrols or the contractor's security, which is factored into the cost of the project rather than opting to replace the signs every time they are removed?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I wish to assure the hon. Member that we will take his suggestion. I also wish to tell this House that the cost of metal has really gone up. Scrap metal is very expensive. Whenever we put up even road signs on our major highways, it does not take long before all of them are vandalized. This is a major cause of concern because when warning signs are removed and motorists are driving on a road they are not familiar with, accidents are bound to occur. So, it is a concern that we are working on.

I would also like to tell the hon. Member that, as to how the contractor will actually be able to achieve our desired goal is not the business of the Ministry. Ours is to state what we want done.

**Mr. Chanzu:** On a point of order, Mr. Speaker, Sir. You have just heard the Assistant Minister say that how the contractor will realize the final result is not their business. He must bear in mind that if you give an instruction, it adds to the cost of the project. Is he in order to say that?

**Mr. Speaker:** Order!

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I concur with him that it is not only Thika-Nairobi Road where signposts are vandalised, but on many roads in this country. What is the Ministry doing to ensure that it safeguards against vandalism because it looks like it has become the order of the day on our roads?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I want to agree with the Member that the issue of vandalism of road signs and all other metal railings, especially in serious corners, has been a major concern. I think one of the things that we would really advocate is the issue of whether we should have scrap metals being sold or bought in the markets. As long as the market is there, people will go on to vandalise them.

Secondly, we would also want to sensitize the people that when they steal the same roads signs, they are the very same people who are going to suffer. So, I think it is not a one-answer question. We, as leaders, need to work to sensitize our people that the responsibility of road safety belongs to all of us.

**Mr. Mbugua:** Mr. Speaker, Sir, I just want to give the Assistant Minister some information!

**Mr. Speaker:** It is Question Time. Do you want to ask a question?

**Mr. Mbugua:** Mr. Speaker, Sir, could the Assistant Minister consider putting up plastic signboards since plastic is not stolen?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I want to agree with the hon. Member on his suggestion. One of the options we are considering is to use other materials that will also be useful and would not be bought by scrap metal dealers. This could be plastic or any other material, including concrete, for that matter. So, there are many others synthetic materials that we can consider using instead of metal.

**Mr. Mututho:** Mr. Speaker, Sir, there is a section of a road that is a killer section. In actual fact, 83 Kenyans have died there. The victim number four was knocked down by a car from Bunge. This is Kinungi section. There is not a single warning. Leave alone foot bridges or anything, but we have lost 83 pedestrians over a period of three to four years. What are you going to do about this section, Mr. Assistant Minister?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I sympathise with the hon. Member because I am a frequent user of that road. Indeed, I agree with him that it has been a major black spot.

Mr. Speaker, Sir, we have come up with an elaborate road safety programme that will include educating the people who live within this area because we realize that we cannot make foot bridges throughout the entire highway.

Secondly, we are also considering putting up soft bumps that will be able to reduce the speed because that is a high population area. Indeed, in that way, we will be able to address that section. Lastly, sensitizing members of the public, especially in areas where accidents occur a lot will be done. Schools will be part of the programme that we will be launching very soon, so that as the children cross back and forth, we reduce the accidents arising.

**Mr. Mbau:** Mr. Speaker, Sir, I am, indeed, a regular user of Nairobi-Thika Road and confirm that I have witnessed very many incidents of accidents accruing from the paved blocks that are put haphazardly along the road. Could the Assistant Minister confirm when this road will be completed to standards, so that there are no obstructions on the road?

**Mr. Kinyanjui:** Mr. Speaker, Sir, indeed, I agree with the hon. Member that we have received various complaints in terms of the inconveniences along Nairobi-Thika Road. But I also want to assure the hon. Member that the road construction actually commenced last year. It is projected to be completed by the end of June 2011, if there is no delay in the project. So, I want to assure the hon. Member that we will ensure that the project is completed on time to reduce the inconvenience of the road user.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, none of the concrete barriers have reflectors. Traffic rules are very clear. Any obstacle on the road must have a reflector. Why are there no reflectors on all the concrete barriers, whether they are protecting construction sites or separating traffic lanes?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I want to concur with the hon. Member that, indeed, that is the situation. As I had said earlier, we will ensure that, that matter is corrected immediately.

The reason for the barriers as we said earlier is to ensure that the vehicles that are moving on the opposite direction do not come into contact or to separate the areas that have actually been excavated, failure to which we will have very serious accidents. So, we will ensure that we hasten the issue of reflectors.

## ORAL ANSWERS TO QUESTIONS

*Question No.119*

## STATUS OF KIRIMA-NDINDA/KIRIMA-ENGINEER ROADS

**Mr. Ngugi** asked the Minister for Roads:-

- (a) what the status of improvement of the Kirima–Ndinda and Kirima–Engineer roads to bitumen standards is; and
- (b) whether the Government could consider awarding the contract to China Wu Yi Company, which is already on site on the Njabini–Ol Kalou– Ndundori Road.

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

(a) My Ministry is committed to improving Kirima- Ndinda and Kirima- Engineer roads to bitumen standard. However, the award for the design contract of the road was delayed due to budgetary constraints. The design will be factored in the coming Financial Year, 2010/2011.

(b) As for the award of the contract, this can only be handled in line with the provisions of the Public Procurement and Disposal Act, 2005.

**Mr. Ngugi:** Mr. Speaker, Sir, we were given commitment of improving this road by the Ministry in 2008. For the year 2008/2009 Budget, it was not factored. For the year 2009/2010, it was also not factored and hence, my asking of this Question. This is a road that is only 25 kilometres. Could the Assistant Minister consider, not only factoring the design cost in the Budget for 2010/2011, but also the contractual amount, so that my people who have waited for two years can benefit from this road?

**Mr. Kinyanjui:** I want to agree with the hon. Member that my Ministry expresses its desire to ensure that the road is done. But as I had said earlier, the completion of this road or any other road must be backed by available finances. But I want to assure the hon. Member that we would set aside the Kshs15 million required to do the design upon which we will be able to get the total amount required and work will be tendered as soon as funds are available.

**Mr. Mureithi:** Mr. Speaker, Sir, considering that Nyandarua-Kinangop and Olkalou are new settlement areas, could the Assistant Minister tell us the grade of this road? Why has it not been graded and tarmacked?

**Mr. Kinyanjui:** Mr. Speaker, Sir, the project actually starts at Kirima junction, that is, D393 up to D391, which in effect means that it is a D road. From Kirima to Ndinda its is D391 up to D392. So, if I got the Member right, the class of the Road is D.

From D392 to a C69 at Ndinda. So, the roads are between C and D. The reason why we have not been able to tarmac this area is not because of the grade. As I said earlier, my Ministry had already expressed its commitment to ensuring that the road is done. As soon as finances are available, even at current grade of the roads, we will be able to do it.

**Mr. Speaker:** The Member for Ikolomani, please proceed!

**Dr. Khalwale:** Mr. Speaker, Sir, I am surprised that the Assistant Minister is assuring the House that roads which are yet to be surveyed will receive immediate action.

What plans does the Ministry have for those roads that have already undergone survey and design done like the Ikolomani road of Shigalagala – Butere – Sidindi?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I indicated that we would not be able to procure the contractor to do the road before the design has been done. To that effect, I have said that a detailed design contract of about Kshs15 million will have to be completed so that we would know how much we will have to seek to do the road.

Mr. Speaker, Sir, this is not the only road that is being designed or has been designed and is waiting for funding for it to be constructed to bitumen standards. The road that the hon. Member has stated is one of them. I want to assure them that these will be the roads that will be given the first priority in the road investment programme that we will launch very soon.

**Mr. Ngugi:** Mr. Speaker, Sir, the road that we are talking about joins two tarmac roads, one from Naivasha up to Kirima and the other one being done from Njabini – Olkalou up to Nakuru. However, my people cannot use these tarmac roads without these connecting two roads from Dinda to Kirima and from Kirima to Engineer. Likewise, the road that has been done from Njabini – Olkalou to Nakuru is of no use to most people because the section from Njabini to the Flyover is full of potholes. Could the Assistant Minister assure this House that even as he will do the Kirima – Dinda and Kirima – Engineer roads, the section from Njabini to Flyover will also receive attention?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I agree with the hon. Member that when you do the main highways and do not address the feeder roads, the utility of the road is, indeed, compromised. Therefore, we will look at the roads we have already stated. I would like to say that the road from Engineer to Njabini which is in a deplorable condition, will indeed, be looked into. We will look for immediate remedial action to address the potholes.

**Mr. Speaker:** Let us move on to the next Question by the Member for Migori!

*Question No.135*

NON-PAYMENT OF DUES TO RETIRED  
TEACHERS BETWEEN 1997 AND 2007

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

(a) what the Ministry's position on the dues of thousands of teachers who retired between 1997 and 2007 and are yet to receive money running into millions of shillings as was ordered by the High Court two years ago is;

(b) why the Teachers Service Commission (TSC) has deliberately refused to implement Court Orders issued by the High Court sitting in Nakuru in 1997 soon after the negotiated salary deal between the Government and the Kenya National Union of Teachers (KNUT); and,

(c) whether he could state the position of the Pensions Department and the Treasury on the matter and also indicate how much interest will be paid on these monies, considering that the affected teachers have incurred a lot of expenses in the hope of being paid by the Government.

**The Assistant Minister for Education** (Mr. Mwatela): Mr. Speaker, Sir, this Question came up yesterday and the Chair directed that we provide the answer. After consultation with the officers of the TSC, we felt that we should be given more time so that we can give a comprehensive answer on Tuesday.

**Mr. Speaker:** Tuesday, next week?

**The Assistant Minister for Education** (Mr. Mwatela): Yes, Mr. Speaker, Sir.

**Mr. Speaker:** It is so ordered! The Member for Migori, please, get up for that day!

**Mr. Pesa:** Mr. Speaker, Sir, these retirees have waited for too long and if---

**Mr. Speaker:** Order, the Member for Migori! They have waited for too long and it is another three days of waiting and you will have a comprehensive answer!

**Mr. Pesa:** Mr. Speaker, Sir, the three days is not much. I have also consulted with my lawyer, Mr. Olago Aluoch, on this matter, and we are willing to wait until Tuesday, next week.

**Mr. Speaker:** Please, do so!

Hon. Members, the Member for Laisamis has had to go and attend to an emergency pertaining to security in his constituency and so, we defer Question No.010 to Wednesday next week in the morning!

*Question No.010*

NUMBER OF DAMS/RIVERS/LAKES  
THAT HAVE DRIED UP

*(Question deferred)*

Let us move on to the next Question by the Member for Naivasha!

*Question No.127*

CESS OWED BY LAKE NAIVASHA  
GROWERS ASSOCIATION

**Mr. Mututho** asked the Deputy Prime Minister and Minister for Local Government:-

(a) how much money the Lake Naivasha Growers Association owe as cess after the recent remittance of Kshs 10 million to the Naivasha Municipal Council after many years of default; and,

(b) whether he could order immediate audit and state accrued cess from all the growers, KenGen and others around Lake Naivasha.

**The Assistant Minister Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Nguyai): Mr. Speaker, Sir, I beg to reply.

(a) I would like to say that Kshs 1.4 million is owed by the Lake Naivasha Growers Association as cess after the recent remittance of Kshs 10 million to the Municipal Council of Naivasha.

(b) The Ministry has directed an immediate audit of accrued CESS from all growers, KenGen and others around Lake Naivasha.

**Mr. Mututho:** Mr. Speaker, Sir, I want first of all, to send my condolences to the Assistant Minister, having lost his driver because of thugs last night. That is the only reason I think he has given such an inaccurate answer.

Having said that, Kshs10 million was paid over a ten year period. If you do simple calculation in ten farms, that will work out to be about Kshs20,000 or an equivalent of Kshs2,000 per month. Some of these flower farms produce up to 1 million stems of roses which they export daily to Europe. A stem costs up to Kshs100. So, they pay cess of only Kshs2,000 per month for exporting about Kshs100,000 worth of goods. I find this answer most inaccurate and inconsistent with what happens on the ground. When will the audit be done so that we have the true picture of what is happening in Lake Naivasha?

**Mr. Nguyai:** Thank you, Mr. Speaker, Sir. I appreciate the condolences from the hon. Member. Give us at least two months to get the full audit and then we will give you the full answer.

**Mr. Mututho:** Mr. Speaker, Sir, two months is good time if we could note the time because we have waited without CESS for over 15 years. I agree with him entirely but let it be comprehensive and be made public.

*(Recording hitch)*

*(Question deferred)*

### QUESTION BY PRIVATE NOTICE

#### HIKING OF SUBSCRIPTION CHARGES BY MULTICHOICE (K) LIMITED

**Dr. Khalwale:** Mr. Speaker, Sir, for the second time, I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Is the Minister aware that Multichoice (K) Ltd notified all its customers that effective April 1, 2010, charges for its various services would increase by US\$3 each, despite the current high charges of up to US\$110 (about Ksh8,000), and yet in South Africa, the country of origin, the company charges a mean rate of SA Rands 5 (about Ksh500)?

(b) Could the Minister state what investment the company has made in Kenya to warrant such huge disparity in subscriptions, considering that the transmissions are from the same satellites, and also explain why the Communications Commission of Kenya (CCK), as the regulator, has allowed the company to use its monopoly in satellite TV transmission to charge Kenyans so exorbitantly?

(c) Could the CCK compel the company to review the exploitative charges and levy similar charges in Kenya as South Africa?

**The Assistant Minister for Information and Communications (Mr. Godhana):** Mr. Speaker, Sir, I beg to reply.

The Member for Ikolomani, Dr. Khalwale, asked the Ministry:-

(a) whether the Minister is aware that Multichoice Kenya Limited---

**An hon. Member:** Apologize first!

**The Assistant Minister for Information and Communications** (Mr. Godhana): Mr. Speaker, Sir, first, I apologize for not being able to respond to this Question when it was called out for the first round today.

I beg to reply.

The Member for Ikolomani, Dr. Khalwale, asked the following Question:-

(a) If I am aware that Multichoice Kenya Limited has notified all its customers that effective 1<sup>st</sup> April, 2010---

**Mr. I. Muoki:** On a point of order, Mr. Speaker, Sir. I am sure you gave a ruling earlier that we should not repeat Questions when we stand to ask them and when Ministers are replying. Is the Assistant Minister not wasting time by reading what the Questioner has already put on paper? Would I be in order to ask him to give the answer straightaway?

**The Assistant Minister for Information and Communications** (Mr. Godhana): Mr. Speaker, Sir, I beg to reply.

(a) The Government is aware that Multichoice Africa has notified its customers throughout the territories where its services are provided in Africa of an average increase of US\$3 (Kshs234) subscription charges in its various bouquets. Multichoice is said to make annual adjustments in its subscription fees to cater for inflationary changes and increase in transporter (satellite) lease costs. The review covers all African States covered by DSTV services, including South Africa.

(b) DSTV introduced multichannel subscription satellite television services in the country in 1995 through Multichoice (K) Ltd. as its local subscription service management provider and has so far employed 150 Kenyans directly and another 500 indirectly. Multichoice Kenya is a joint venture of Kenya Broadcasting Corporation (KBC) and Multichoice Africa, each having a shareholding of 40 per cent and 60 per cent, respectively.

(c) In the current tariff regulations guiding competition in the Information and Communications Technology (ICT) sector, the services provided by Multichoice are open to competition and, therefore, do not attract regulations of tariffs.

Multichoice is also not in the category of dominant operators and, therefore, the Government cannot impose tariff regulations to its services. All subscription broadcasting services including, cable, terrestrial and multi-satellite channel distribution shall be brought under a new regulatory framework in June, 2010 and will have licences with conditions that will prevent any form of exploitation of the consumer in Kenya.

**Dr. Khalwale:** Mr. Speaker, Sir, I would like to remind the Assistant Minister that we are now living in a global village. In South Africa, DSTV charges the consumers R499 which is an equivalent of around Kshs4,990 for 80 channels. This reduces to Kshs61 per channel. In Kenya, we have about 30 channels and our subscribers pay Kshs6,000 per month. This reduces to Kshs200 per channel. Could the Assistant Minister tell us why the Communications Commission of Kenya (CCK), the regulator of the service, has not addressed this differential of Kshs200 per channel in Kenya vis-à-vis Kshs61 per channel in South Africa?

**Mr. Godhana:** Mr. Speaker, Sir, I have already said that Multichoice (K) Ltd. is not in the category of dominant operators. Therefore, the Government cannot impose

tariff regulations to its services. In my response, I said that Multichoice (K) Ltd. informed all the customers about the changes in the new prices and so, it is the customer's choice. I also said that in June, we will put---

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead the House that DSTV is not dominant when we know for a fact that DSTV enjoys monopoly in this country?

**Mr. Godhana:** Mr. Speaker, Sir, I am quite in order. The market is open and I said that according to our categorization, Multichoice (K) Ltd. is not in the category of dominant operators. If you doubt that, you can come to our records and we will give them to you.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, the Government is supposed to protect consumers as well as the investors. It appears that your interest is protecting investors. Multichoice (K) Ltd. is a monopoly. What action are you taking to ensure that Multichoice (K) Ltd., being a monopoly does not abuse and take advantage of its own customers?

**Mr. Godhana:** Mr. Speaker, Sir, it is true as it appears to you, but it might not be true. As I said in my response, under a new regulatory framework that will be brought in June, 2010, the Ministry is in the process of putting Multichoice (K) Ltd. under those regulations that will bar them from exploiting customers. That will come in June, 2010.

**Mr. Mututho:** Mr. Speaker, Sir, you heard that KBC owns 40 per cent of DSTV. That means that KBC which is the national broadcaster and is funded 100 per cent by the nation owns 40 per cent of DSTV. Could KBC then consider staying their profitability because the Kenyan public is the one which has been funding it, so that during the World Cup season we can enjoy DSTV services at 50 per cent?

**Mr. Godhana:** Mr. Speaker, Sir, I beg that the hon. Member repeats the Question because I have not got what he exactly wants.

**Mr. Mututho:** Mr. Speaker, Sir, I will go through it very slowly. The Assistant Minister has said that KBC owns 40 per cent of DSTV. The KBC is a national broadcaster which is financed 100 per cent by the public. Therefore, in these premises, could he consider, during this season of World Cup, to have DSTV charge 50 per cent subscription fees?

**Mr. Godhana:** Mr. Speaker, Sir, first of all, just to put the hon. Member in shape, KBC is not funded 100 per cent. However, his proposal can be considered.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I would like the Minister to clarify to this House that in his answer, he said that Multichoice (K) Ltd. or DSTV charges throughout the continent are at the same rate. Dr. Khalwale has just laid on the Table figures to show that South Africa is charged lower than what is charged in Kenya. Could the Minister lay on the Table facts and figures to show that they are all charged the same or agree with Dr. Khalwale that there is disparity in charges between the two countries?

**Mr. Godhana:** Mr. Speaker, Sir, I did say in my response that Multichoice (K) Ltd. did a review of the prices to the customers and they notified all customers across Africa. I want to lay on the Table these two documents that show the charges per country. It is not the same all over Africa. They are here and I submit.

*(Mr. Godhana laid the documents on the Table)*

**Dr. Khalwale:** Mr. Speaker, Sir, I would like the Minister to tell us the benefits that Kenya Premier League and the teams within the league access by virtue of coverage by DSTV, and especially, what royalties they are paying to AFC Leopards, whose footage, is being used worldwide. This is very important because Tiger Woods for his footage is paid US\$10 million every time it shows. If they do not want to pay US\$10 million to AFC Leopards, they should consider that the lowest that anybody is paid worldwide for appearing on Supersport is US\$100,000. When will he ensure that AFC Leopards accesses that particular payment?

**Mr. Godhana:** Mr. Speaker, Sir, I believe that the question posed by Dr. Khalwale is a different one. I prefer if he poses it as separate.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. It is the same question about charges. DSTV is doing business in this country and we want to see what benefits accrue to the Kenya Premier League teams and more importantly, AFC Leopards, which does not receive any royalties for the footage that appears worldwide. Tiger Woods is paid US\$10 million---

**Mr. Speaker:** Order, hon. Member for Ikolomani! You are being repetitive! Your point is made. I find that, that question, in the context of the Question that had been put by Private Notice No.1, is a different Question and it is possible that the Minister would not have prepared to give you that answer which is specific to that Question. I would, therefore, direct that Dr. Khalwale, you be in touch with the Minister so that he has time to come up with that information and avail it to you. If you are not satisfied with that conduct with the Minister, then you may raise the matter subsequently.

**Dr. Khalwale:** Mr. Speaker, Sir, I thank you for that and I would do exactly like that but can you kindly allow me then to ask my second question since that one has been denied.

**Mr. Speaker:** Order, Dr. Khalwale! You know our procedures very well. You have the last bite at the cherry being the questioner and you have utilized that opportunity already. So, I direct as earlier guided.

Hon. Members, that brings us to the end of Question Time.

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. Yesterday in the afternoon, I had a Question on the Order Paper which was directed to the Minister for Fisheries Development and the Speaker did direct that the Question appears on the Order Paper today. I saw the Minister here willing to reply and I am here and willing to ask, but the Question is not on the Order Paper. Could you give us your direction?

**Mr. Speaker:** Hon. Members, I am not aware that there was a Question deferred to today that ought to have been answered but I would urge the hon. Member to avail that information to the Clerks-At-The-Table just now and we will ensure that the Question appears on the Order Paper on Tuesday afternoon, if that is fine with you.

Tuesday afternoon! It is directed.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. On Tuesday afternoon this week, the Question about the imminent auction of Xavarian Primary School in Kisumu and the hon. Minister for Education asked to be given time to answer this afternoon. Mr. Mwatela has been here and we discussed the issue and talked to Prof. Ongeru, that the matter be dealt with, on Tuesday afternoon.

**Mr. Speaker:** It is so ordered!

**Mr. Olago:** Mr. Mwatela is behind here! I did not know!

**Mr. Speaker:** Order! Hon. Member for Kisumu Town West, you have already asked indulgence that this Question appears on Tuesday afternoon. Will you please furnish the Clerks-At-The-Table with the details of the Question so that it will then appear on the Order Paper on Tuesday, next week?

**The Minister for National Heritage and Culture** (Mr. ole Ntimama): On a point of order, Mr. Speaker, Sir. I am not challenging your ruling but I can see that the chronometer is still five minutes to the end of Question Time and I want to answer Question No.145 which is on the Order Paper.

**Mr. Speaker:** Order, Mr. Minister! It would appear that although you are present in the House, you have not been keeping up with the proceedings. I actually dealt with Question No.145 and I gave direction. The hon. Member for Kandara is unwell and had to be admitted in hospital. So I deferred it to next week to a specific date which I gave.

**The Minister for National Heritage and Culture** (Mr. ole Ntimama): Mr. Speaker, Sir, I want to say that I came here five minutes after the House had started; so, maybe, you said that before I came.

**Mr. Speaker:** Very well, Mr. ole Ntimama, it is allowed. Sometimes, you can miss on events.

Next Order!

**Mr. Speaker:** Hon. Members we will now take the first Statements which are ready for delivery and then we will deal with requests.

Prof. Onger!

## MINISTERIAL STATEMENTS

### CRITERIA FOR RECRUITMENT OF TEACHERS

**The Minister for Education** (Prof. Onger): Mr. Speaker, Sir, I would like to issue a Ministerial Statement. I wish to respond to the hon. Member for Vihiga, Mr. Chanzu, on the question about the criteria used in the current exercise of recruiting teachers and also to clarify why the recruitment is not being done through the respective District Education Boards (DEBs).

The Teachers Service Commission (TSC) is mandated to conduct recruitment, remuneration and discipline of teachers among other functions. Accordingly, on Thursday 18<sup>th</sup> and Friday 19<sup>th</sup> March, 2010 the TSC advertised a total of 2,780 posts for primary and post-primary institutions in the print media both in the *Daily Nation* and the *Standard* newspapers, respectively. This was a routine annual exercise for replacement of teachers who exit the service through natural attrition and not recruitment in actual sense. Recruitment is meant to increase the number of teachers and is usually funded by Treasury.

Mr. Speaker, Sir, for primary schools, the TSC invited interested candidates to present their documents to the District Education Officers (DEOs) in the districts of their choice to be considered for employment within a week from the dates of advertisement. Moreover, the DEOs were asked to compile a district merit list in adherence to the provisions of the recruitment guidelines and to submit the same to TSC within two days after the expiry of the deadline. On the other hand, for post-primary institutions, interested candidates were required to apply to the Board of Governors (BOGs) of the

schools or institutions where the vacancies of the two teaching subjects had been advertised. The BOGs then conducted the selection exercise and submitted minutes together with other relevant documents to the DEOs offices for onward submission to TSC.

I wish to highlight the criteria used in the distribution of available teaching posts. The TSC has a formula for calculating primary and post-primary teachers' shortage against the national shortage.

This formula is then cascaded to the district and institutional levels. The advertised teaching posts for primary schools were 1,480, while those for post-primary institutions were 1,300 as shown in the appendix. The formula takes into account the district shortage over the national shortage times the number of positions available in that category. In this case, for primary, 1,480 will be the actual shortage within that district over the national shortage times 1,480, which will give us roughly the number of teachers to be employed within that district itself.

Mr. Speaker, Sir, as earlier mentioned, I wish, once again, to clarify that the ongoing exercise is meant for recruitment of teachers who have exited service through natural attrition. The merit list submitted to the Teachers Service Commission (TSC) by the District Education Officers (DEOs) has been endorsed by the chairmen of the various DEBs. Because the number of teaching posts in the districts lists was negligible, it was not economical to set up DEBs to select one or two teachers

Further, Mr. Speaker, Sir, I wish to inform hon. Members that the Ministry does not allocate teacher shortage slots to the constituencies, but to the districts. It should also be noted that in the application of the distribution formula, not all districts were captured for the replacement of teachers as they did not meet the required threshold as calculated by the TSC. For the clarity of hon. Members, the threshold for primary schools is a shortage of more than 200. That was the minimum threshold that was considered for allocation of some slots or some places. We have, in fact, some districts with as high as 700 shortage of places in a given district. As far as the secondary schools are concerned, the threshold was any school which had more than ten to 15 teachers shortage.

Mr. Speaker, Sir, I wish to confirm that the deadline for submitting documents to the TSC Headquarters was on 31<sup>st</sup> of March, 2010, for primary schools and on 15<sup>th</sup> of April, 2010, for post-primary institutions, and not on Tuesday, 30<sup>th</sup> March, 2010, as alluded by the hon. Member.

Further, Mr. Speaker, Sir, the Ministry does not consider suspending the exercise because it is satisfied that the process was conducted with the highest degree of professionalism, integrity, merit and transparency as stipulated in the Public Officer Ethics Act, 2003. The candidates were awarded marks against academic and professional certificates; that is, a basic university degree, post-graduate diploma and diploma certificates. Other factors which were also considered during the interviews were duration after graduation, communication ability, moral character, special talents and willingness to participate in co-curricular activities.

Mr. Speaker, Sir, I am aware – I think this is the most important part of it – that complaints have been raised on the merit list from various districts such as Yatta, Msambweni, Mandera, Mandera West, Isiolo and Kinango, among others. To allay the fears, I wish to assure the hon. Members that stringent measures have been put in place to address these irregularities. I have accordingly, instructed the TSC vetting committee that

will vet all the forms that will be submitted to the TSC Headquarters. The agents have been instructed to issue employment forms to locals who qualify first before issuing them to other applicants. Furthermore, any move to reverse the exercise at this stage will compromise the teaching service to the learners since the newly recruited teachers will be required to be in the classrooms in May, 2010, when the schools and institutions reopen.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** We will allow a few clarifications, a maximum of five, beginning with hon. Chanzu.

**Mr. Chanzu:** Thank you, Mr. Speaker, Sir. I have got a lot of respect for the Minister for Education. But I think the statement he has given us--- First of all, when I asked for the Statement, he gave an indication that he did not even know what was happening; he did not know! So, what is it he is talking about today when it was the economic stimulus programme? The Minister did not even know what was happening in his Ministry. He has given us a statement here, which has got a lot of untruths. He is telling us that the chairpersons of DEBs endorsed this; my chairman in Vihiga, the DC, is not aware of this!

*(Applause)*

Mr. Speaker, Sir, I asked about specific issues and there were four of them, and the Minister has not answered them. Why were the DEBs not involved? After all, what the Minister wants at the Headquarters are the numbers of the people to be recruited; but he should follow the right procedure. Why did he change from the laid down procedure of using DEBs and used an individual, which we are running away from!

Mr. Speaker, Sir, in my constituency, more than six of the names we have in the list do not come from Vihiga!

*(Applause)*

So, the Minister has not addressed the question. He has just spent a lot of time reading the Statement and, therefore, wasted a lot of time of the House. So, can he address himself---

**Mr. Speaker:** Order, hon. Chanzu! Be specific on the clarifications you require from the Minister, arising from the Statement that he has issued!

**Mr. Chanzu:** Mr. Speaker, Sir, can the Minister clarify why the DEBs were not used in this recruitment? Number two, how many slots were given to a constituency?

**Mr. Speaker:** Right; you have done well!

Proceed, Mr. Wamalwa!

**Mr. Wamalwa:** Thank you, Mr. Speaker, Sir. This issue has raised a lot of complaints, not just in Vihiga, but also in Trans Nzoia as well. In Trans Nzoia, the DEB, in the last recruitment had set a certain date after graduation; the teachers who were to be recruited were given up to a certain year, which only the DEB was aware of. In the recent recruitment, this was not taken into account and, as a result, the recruitment that was done benefitted people from outside and not the locals. In view of these complaints, will the Minister consider actually reviewing this recruitment exercise so as to involve the DEBs?

*(Applause)*

**Mr. Speaker:** Proceed, Mr. Abdirahman!

**Mr. Abdirahman:** Thank you, Mr. Speaker, Sir. the Minister is not – I am sorry to say this – very honest in the manner in which he is trying to explain what we had asked for. If the DEBs signed in any of the districts--- I know that in my own district, they have not signed and were only used as rubber stamps. When he says that they are only using the procedure for the purpose of recruiting people who may not be available now because of natural attrition, I wonder. It is because we do not have teachers that we are getting these jobs; whether it is due to natural attrition or job opportunities that have come up, we have staff shortages. Can he be very clear and tell us why he cannot suspend this entire process because it was not transparent?

*(Applause)*

**Dr. Kones:** Thank you, Mr. Speaker, Sir. May I also know--- Of course, the point raised by hon. Members that DEBs were not involved is actually true. I was turned back along the way when I was going to attend the meeting. May I know from the Minister whether this is going to be an annual event? Are all the teachers who leave the service through natural attrition going to be replaced annually?

**Eng. Rege:** Thank you, Mr. Speaker, Sir. We have noticed that most of the schools in the rural setting did not do very well in national examinations. In particular, in certain districts, you could not get a student with Grade “A”. I would like to ask the Minister what steps he is taking to make sure that in every school, each class has a teacher plus one more teacher, especially in the rural setting where teachers fall sick inadvertently? This is a very serious issue. Therefore, I would like him to tell the House what steps he is taking to make sure that students pass examinations and that there will be an improvement next year.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Mr. Speaker, Sir, I want to declare here and now that this is a matter that concerns us as the representatives of the people. The question of collective responsibility may not arise here because I have a serious problem in my constituency.

**Mr. Speaker:** Order! Member for Mwingi South! You are well aware that you belong to the Cabinet. Being an Assistant Minister, Ministry of State for Defence, you cannot, under the doctrine of collective responsibility, seek clarification from the Minister who is your colleague! If anything, you should be supplementing the Minister in providing information to the House.

Hon. Musila, you know where we will go from here.

**Mr. I. Muoki:** Thank you, Mr. Speaker, Sir. Indeed, the problem of understaffing and underemployment of teachers is very crucial to all of us. We have some areas, for example, Kitui South Constituency, which is seriously understaffed. The issue of not involving the District Education Boards (DEBs) appears to be questionable. In my case, we have 14 slots. According to that rating, the best candidate in my constituency is No.145. That means that if we go by that merit list, no one from my constituency will get employment. The problem we have of understaffing is because people come from outside, they get employed and seek transfers immediately. I would like to know from the Minister whether he can assure me that the 14 slots for Kitui South Constituency will

go to people from that area, so that they do not ask for transfers as soon as they are employed.

**Mr. Ruteere:** Thank you, Mr. Speaker, Sir. The threshold for giving teachers to secondary schools is very high, especially for day secondary schools. When he talks about a shortage of 15 teachers as the requirement, is he considering the current shortage in the day secondary schools where there is only the head teacher employed by the TSC, while the rest are employed by the BOGs? This is the same case for primary schools. Is he considering the natural attrition that has taken place in a district, so that he can do a replacement?

**The Minister for Education** (Prof. Onger): Mr. Speaker, Sir, starting with hon. Chanzu, I think he did not listen carefully to my Statement. Indeed, why were DEBs not involved? I clearly stated in my Statement that given the number of people who were going to be employed in any given district, it became totally uneconomical to employ them through the DEBs. The next line of choice was to employ our District Education Officers. We had the Chairman of the DEB countersign that aspect and ensure that there is clarity in that area.

**Mr. Chanzu:** On a point of order, Mr. Speaker, Sir. The Minister made an allegation here which I think is unfair. He said that I did not listen carefully. I did listen carefully to his Statement. He has gone ahead to talk about the endorsement of the DEB Chairman. I said that there is no DEB Chairman who endorsed this list. Is he in order to say that I did not listen carefully?

**The Minister for Education** (Prof. Onger): Mr. Speaker, Sir, at the expense of reading my Statement, I indicated that I wish to inform the hon. Member that it was not economical to set up DEBs to select a single teacher or two.

**Mr. Abdirahman:** On point of order, Mr. Speaker, Sir.

**The Minister for Education** (Prof. Onger): Hon. Abdirahman, I will be coming to you shortly. You do not have to raise a point of order.

**Mr. Speaker:** Order! You cannot behave that way. Please, relax!

**The Minister for Education** (Prof. Onger): Mr. Speaker, Sir, I will satisfy Mr. Abdirahman in due course.

As far as the Member for Vihiga is concerned, he may wish to know that, indeed, his district is one of the very few districts in the country that was noted to have very high threshold of teacher shortage. Therefore, consequently, we gave a total of 12 teachers. Other districts were getting one or two teachers. Therefore, the Member should count himself lucky for getting those 12 teachers.

With regard to Mr. Wamalwa---

**Mr. Abdirahman:** On a point of order, Mr. Speaker, Sir. Please, allow me, this is not my issue.

**Mr. Speaker:** Order, Mr. Abdirahman! You cannot start addressing the House until you have catch the Speaker's eye and been permitted to talk. You are an old Member here. I think you are on your second term.

**The Minister for Education** (Prof. Onger): Thank you, Mr. Speaker, Sir. With regard to Eugene Wamalwa and hon. Abdirahman, I would like to assure you that I am a very honest Minister. I have just stated in this hon. House that the list that was submitted at the closure---

**An hon. Member:** Is it secondary or primary list!

**The Minister for Education** (Prof. Onger): I am talking about the primary list. The secondary list is still ongoing until the 15<sup>th</sup> of this month. I think we should differentiate between the primary list and the secondary list. I believe that hon. Members were more concerned about the primary list more than the secondary list. The district list for the secondary schools will be released on 15<sup>th</sup> April.

With regard to the list that has been generated for primary schools, I have already indicated in my Statement, and quite clearly so, that we have noted some irregularities. For instance, there were cases where locals were not considered at all. They were not given the top priorities. They are down in the priority list. I have instructed the Teachers Service Commission (TSC) to go back and look at the list afresh before they make final appointments. They must consider the local applicants who have applied for that position. This issue is not over yet. I want to thank the hon. Member for Yatta who confided in me about the kind of staffing which was totally skewed towards favouring some applicants. This afternoon, I have taken corrective measures.

Similarly, in other areas where I found out that there is one line of people from top to bottom, obviously justification cannot be carried out. This is why I have asked the Teachers Service Commission (TSC) and they have agreed that they are going to look at that list afresh. They will now look at all the applicants who applied from that constituency. They will look at the local people by using the identity cards because this is the only way you can know that, that person emanates from that constituency. Then, accordingly, they will be able to be considered on that basis of merit. So, you need not worry about the first list that came in.

Dr. Kones asked whether this is going to be the usual feature, yes, as long as we have not got substantive posts in the Treasury, we will use this process in as long as it serves us well minus all these irregularities that we are now correcting. Hon. Rege was actually addressing an issue related to the acute shortage of teachers and I believe that is what was bothering hon. Musila, and many other Members of Parliament here. Let me say it again, for clarity purposes, that this is a replacement of teachers either who are leaving the service, who have retired or who have died through natural attrition. The figure is only 2,740. The shortage of teachers in this country is 65,000. We have a shortage of 23,000 teachers in secondary schools and 43,000 in primary schools respectively. We have used a threshold, which is any district with a shortage of more than 200 teachers and I want to give the Members of Parliament the sense of that scatter. The minimal threshold is 200 to 700 and once we get the normal establishment of teachers, we will be able to employ through the normal channels. We shall definitely address that acute shortage. I am aware, for instance, that in some schools, we only have one teacher from the TSC, who is also the headteacher. There are no other teachers. I have no way of getting those teachers until I have that factored in the Budget. It was factored in the Budget and all of us were party to it, we passed the Economic Stimulus Package to employ 12,500 teachers. However, the teachers have gone to court and my hands are tied up until that matter is sorted out. We have lost out on 12,500 teachers who should have been on board to address some of the concerns which are being raised by hon. Members. So there is nothing fishy that we are doing.

**Mr. Abdirahman:** On a point of order, Mr. Speaker, Sir. What we are discussing is a matter of policy with regard to teacher recruitment. It will be a serious omission on our part as representatives of the people if we endorse such a process. You have heard the

Minister say that it is uneconomical to actually constitute the District Education Boards (DEBs). The DEBs virtually meet every other day to discuss matters that relate to education in the districts. It is very easy to call them. This is a very important institution that has been neglected in this process. Is the Minister in order to actually say that it is uneconomical to constitute a DEB that can meet in one day within a district?

**The Minister for Education** (Prof. Ongeru): Mr. Speaker, Sir, hon. Abdirahman should be patient to listen.

I have already said that whatever method we use, we have since then discovered that we need to actually include a minimum of 25 percent of the locals being employed within that district. I am already addressing that issue effectively, unless he comes up with the specifics. I know what his problem is. He thinks some people from the neighbouring districts have been employed at the expense of his own people. The answer is no. I am going to rectify that imbalance and we have asked the TSC to now look afresh at the list which has been submitted affecting Isiolo specifically. I think that is what is worrying him. I have looked at the list of Isiolo and I know where the problem is. It is being addressed. I do not know why he is worried at this stage.

With regard to the issue of policy, Mr. Speaker, Sir, in as far as primary schools are concerned, we shall employ teachers from the local communities. That is the policy and we shall rigorously employ that policy. That is in the guidelines. The only time you can depart from that guideline is when that region does not have teachers to employ from the local level.

**Mr. Speaker:** Hon. Minister, do you wish to be informed by the Member for Vihiga?

*(Mr. Chanzu stood at his place)*

**The Minister for Education** (Prof. Ongeru): No!

*(Mr. Chanzu stood at his place)*

**Mr. Speaker:** Order, the Member for Vihiga! Hon. Members, we will move to the next Statement! Yes, Minister of State for Provincial Administration and Internal Security!

#### EVICTION OF PEOPLE FROM MALINDI

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Thank you, Mr. Speaker, Sir. It will be recalled that last week, the hon. Gideon Mung'aro asked for a Ministerial Statement regarding the circumstances under which a plot in that area was actually invaded and as a result, the people who were staying there were evicted. He also sought more information on the circumstances leading to the two people being killed.

I wish to seek your indulgence and that of the House because the information that I had actually sought for regarding the investigation had not come up properly. The information I received is fairly conflicting with what I myself saw on the ground. So, I would wish to come and make a comprehensive Statement here on Tuesday, next week.

**Mr. Speaker:** Fair enough! What is your reaction, the Member for Malindi?

**Mr. Mung'aro:** Bwana Spika, itakuwa vigumu kwa sababu juzi nilisema kwamba nataka taarifa rasmi leo kwa sababu Jumanne wiki ijayo, nitakuwa safarini katika shughuli za bunge kule Africa Kusini.

**Mr. Speaker:** You can be represented by anybody who comes from the diaspora like the Member for Kisauni.

**Mr. Maung'aro:** Kama utaniruhusu, Bwana Spika, kwa sababu juzi nilifanya hivyo lakini ofisi yako ilikataa.

**Mr. Speaker:** Tutamruhusu, kwa sababu nimesema hivyo. So, the Statement will be issued on Tuesday next week.

**Mr. Mung'aro:** Asante, Bw. Spika.

#### CARDS

**Mr. Speaker:** Any other Statement ready for delivery? The Minister of State for Immigration and Registration of Persons was supposed to give a Statement on the issuance of Identity Cards and voters cards. It was sought by the Member for Mathira. That Statement is due today. Where is the Minister of State for Immigration and Registration of Persons? Who is going to hold brief for him? Mr. Minister for Justice, National Cohesion and Constitutional Affairs, you are close to this issue.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, I beg the indulgence of the House and request that I be allowed to alert the Minister so that he can make the Statement on Tuesday next week.

**Mr. Speaker:** This is actually a fairly urgent matter in view of the ongoing voter registration exercise.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): I appreciate that. It also concerns me because I am also responsible for voter registration exercise---

**Mr. Speaker:** So, we defer this Statement to Wednesday afternoon. Please, alert your colleague.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Kilonzo): Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Yes, the Minister for Justice, National Cohesion and Constitutional Affairs!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, indeed, I have another Ministerial Statement in my own right requested by my good friend, hon. Outa. Some issues have been drawn to my attention that require me to do further consultation in addition to research. This is because my attention has been drawn to a court case that has been filed in court. Being the Minister in charge of justice, I do not want to do injustice. I, therefore, beg your indulgence and that of the House that this Ministerial Statement on the Cemetery Land be made on Wednesday, next week so that I can also finish the research that I have regarding the case whose attention has been drawn to me.

**Mr. Olago:** Mr. Speaker, Sir, I have been asked by hon. Outa to hold his brief on this matter. He had asked that if the Minister is not ready this afternoon then, the Chair could kindly push it forward to Tuesday, afternoon and not Wednesday.

**Mr. Speaker:** Will you be ready on Tuesday, afternoon, Mr. Minister?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, I beg your indulgence for Wednesday so that I can finish what I am doing.

**Mr. Speaker:** Mr. Olago, is Thursday fine with you?

**Mr. Olago:** Thursday will be okay, Mr. Speaker, Sir.

**Mr. Speaker:** It is so ordered! The Statement will be delivered on Thursday, next week.

Hon. Members, that brings us to the end of Ministerial Statements which were to be delivered. Could we have the requests for Ministerial Statements?

Yes, Dr. Khalwale!

## POINTS OF ORDER

### STATUS OF REFERENDUM ON THE NEW CONSTITUTION

**Dr. Khalwale:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Prime Minister in his capacity as the supervisor and co-ordinator of all our Ministries and Government functions. This is in respect of the forthcoming referendum on the new Constitution. I would like him to clarify the following issues:-

(a) What the Government is doing to avert a repeat of the 2005 Referendum when our Cabinet was split right in the middle leading to the violent Referendum of 2005 that many people think was a precursor to the bloody post-election violence of 2008.

(b) Could the Prime Minister tell us whether the call by the Vice-President and Minister for Home Affairs, Mr. Kalonzo Musyoka, and the Minister for Agriculture, Mr. William Samoei Ruto, that the country should again be taken back so that the draft is renegotiated is, indeed, the position of the same Government to which both Messrs. Musyoka and Samoei serve in?

(c) Is it true that what the President and the Prime Minister intend to do to bring on board the few dissenting voices from amongst members of the clergy?

(d) How the Government intends to persuade the group of around 30 Members of Parliament who are currently busy mobilizing people in an attempt to spearhead a potentially dangerous and unhelpful "No" campaign so that they may tone down?

(e) Could the Prime Minister reassure this House that the country is not going to be set on a collision course by the "YES" and "NO" campaigns for the new Constitution?

**Mr. Speaker:** The Minister of State for Provincial Administration and Internal Security, will you hold brief for the Rt. Hon. Prime Minister and indicate when this Statement could be delivered?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I will, indeed, pass on this information to the Rt. Hon. Prime Minister. I hope come Wednesday, afternoon, during the time allocated to him, he will be in a position to issue the Ministerial Statement.

**Mr. Speaker:** On Wednesday, afternoon? It is an important matter. Please, ensure it is delivered.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, absolutely. It is extremely important. We all know it is about the new Constitution.

SECURITY OPERATION IN KUTURU/TARBAJ IN WAJIR

**Mr. Affey:** Thank you, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the security operation that took place in the towns of Kutulo and Tarbaj in Wajir on 5<sup>th</sup> this month. I would like the Minister to confirm the following in the Statement:

- (i) Whether the operation was illegal or not.
- (ii) The purpose of the operation.
- (iii) Whether, indeed, the security officers terrorized and intimidated innocent Kenyans who were in these trading centres.
- (v) To confirm whether those officers actually carried live ammunition without official Government uniform for purposes of identification.
- (vi) To confirm whether the said officers were arrested by security organs on the ground and later released under very unclear circumstances

Mr. Speaker, Sir, this matter is critical because it seems this Government is not aware of what a section of the security forces is doing in the country. In the process many Kenyans have been unnecessarily intimidated and harassed by this kind of operation. I would like the Minister to give a clarification to these issues and urgently intervene in this matter.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I undertake to issue the Ministerial Statement on Wednesday, next week in the morning.

**Mr. Speaker:** It is so ordered! Hon. Members, that brings us to the end of that Order on Statements. Let us move on to the next Order!

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

**BILLS**

*First Reading*

THE ANIMALS TECHNICIANS BILL

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

**Mr. Deputy Speaker:** Order, hon. Members! Order No. 9 will be skipped because the Mover is not in. Mr. Ethuro has called to say that he is indisposed. As a

matter of fact, he is hospitalised. He will not be able to move his amendments. We will have to defer this to another date. He is in hospital and the Chair is satisfied with that.

*Second Reading*

THE INDEMNITY (REPEAL) BILL

**Mr. Affey:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I beg to move that The Indemnity (Repeal) Bill be now read a Second Time.

I want to begin by thanking this Parliament and particularly, the Chair for allowing the facilitation of the establishment of the new Parliamentary Standing Orders. If it were not for the reform process that Parliament took into account, it would have been basically impossible for a Member of the Back Bench to move an Amendment Bill of this nature.

Mr. Deputy Speaker, Sir, this Bill intends to repeal a similar Bill that this House enacted into law in 1970. If it were not for our reform agenda that has taken us to the level it has taken us in order to allow a Member of the Back Bench to propose an amendment of this magnitude, it would never have been possible. Therefore, I would like to thank Mr. Speaker and the House Standing Orders Committee for allowing us to facilitate the move to repeal this Bill.

This Bill has a certain fundamental background that is important for hon. Members to understand. The Bill that became the Indemnity Act was moved in 1970 by the then Attorney-General in order to protect the activities of Government officials and security officers, which activities go against the very fundamental principles of the Bill of Rights relating to the right to life and the right to own property.

Mr. Deputy Speaker, Sir, in 1970, the then Attorney-General moved the Bill before a very hostile Parliament. Indeed, the House was almost divided as to whether to enact this law, because this law is retrogressive. It attempts to shield Government officials even when they know what they have done is truly illegal, and that it goes against the Constitution that we have.

The Kenya Colonial Government enacted several laws that targeted northern Kenya and part of Coast Province. In 1902, the Outlying Ordinance Act, which declared the Northern Frontier districts of Wajir, Mandera, Garissa, Ijara, Isiolo, Marsabit, Moyale, Tana River and Lamu closed areas, was enacted. Movement into those places was only possible under a very special pass.

Mr. Deputy Speaker, Sir, in 1934, the Special District Ordinance Act, together with the Stock Theft Produce Ordinance of 1933, gave the colonial administrators extensive powers to arrest, detain, restrain and seize property. There is so much background to the Indemnity Act, with similar laws having been passed as early as 1933 by the colonial Government. This legalised what today we collectively call “collective punishment of tribes and clans”.

This law, together with the laws that were replaced even before we got our Independence, kind of institutionalised the culture of collective punishment such that if a criminal in a certain community or clan commits an act that is illegal in law, the entire community suffers for it. This policy of collective punishment is with us to date. The net

effect of this attitude towards northern Kenya, therefore, was to punish it into a closed zone.

Mr. Deputy Speaker, Sir, the history behind the Indemnity Act is best captured by an American writer called Negly Pearson, who, in one of his publications, says:-

“There is one half of Kenya about which the other half knows nothing about and actually seems to care less.”

So, it is the same institutionalisation of discrimination and intimidation that this part of the country has suffered in the past that it continues to suffer to date. Therefore, this is just the background that informs the preparation of this Bill. This Bill was not generated overnight. It was generated as a result of many years of discrimination and intimidation of the people of northern Kenya, even before we acquired Independence.

Mr. Deputy Speaker, Sir, when we come to independent Kenya, there was what we call “The Application of Emergency Law”. This law actually intended to have two sets of legal regimes within Kenya – one regime for the areas that I have mentioned, and another regime for the rest of Kenya. The constitutional and legislative framework for application of Emergency Law in the Northern Frontier districts was completed in 1970 with the passage of the Indemnity Act, Chapter 44, Laws of Kenya.

That is what makes me to have a reasonable feeling that the Indemnity Act, Cap.44, Laws of Kenya, is retrogressive, discriminatory, dangerous and, therefore, needs to be repealed. During the Eighth Parliament, the attempt to repeal this Act was made through a Motion which the Government was hesitant to support. However, in its collective wisdom, the House unanimously approved the Motion. It was accepted that this Act needed to be removed from the Statutes.

Mr. Deputy Speaker, Sir, the Indemnity Act is institutionalisation of impunity in Kenya. What does it say? Section 3 of the Indemnity Act is of particular interest to us. It says as follows:-

“3. (1) No proceeding or claim to compensation or indemnity shall be instituted or made in or entertained by any court, or by any authority or tribunal established by or under any law, for or on account of or in respect of any act, matter or thing done within or in respect of the prescribed area after the 25th December, 1963, and before 1st December, 1967, if it was -

(a) done in good faith; and

(b) done or purported to be done in the execution of duty in the interests of public safety or of the maintenance of public order, or otherwise in the public interest, by a public officer or by a member of the armed forces, or by a person acting under the authority of a public officer or of a member of the armed forces.

Mr. Deputy Speaker, Sir, as it is, in 1970, Parliament committed an illegality. It passed a law which contravenes our Constitution as provided for under Sections 70, 71, 75 and 82. For purposes of clarity, I would like to read out Section 70, where Parliament, in its own wisdom, had the audacity to go against the Constitution of the Republic of Kenya to establish a law that contravenes the Constitution. An illegality was also committed by the then House. Section 81 of our current Constitution says:-

“No citizen of Kenya shall be deprived of his freedom of movement: That is to say the right to live freely throughout Kenya; the right to reside in any part of Kenya; the right to enter Kenya or the right to leave Kenya, and immunity from expulsion from Kenya.”

Section 82 of the Constitution of Kenya says:-

“Subject to Sections 4, 5 and 8, no law shall make any provision that is discriminatory either on itself or on its effect.”

Mr. Deputy Speaker, Sir, the effect of the Indemnity Act is very clear – to discriminate against people in a section of the country, in the areas I have mentioned, and yet the Constitution protects those areas.

It is apparent, therefore, that the Government then, in defiance of the Constitution, continued to bulldoze, through Parliament, a law that in its nature discriminates against Kenyans. As I said, the Indemnity Act is flagrant in disregard of the current Constitution. It provides immunity from prosecution.

Mr. Deputy Speaker, Sir, in Kenya today, security officers are regulated by the rule of law. They cannot apply their own law. If they violate the basic freedoms of an individual, that individual has the right to seek legal redress before a court of law. The Indemnity Act denies Kenyans in the areas I have mentioned an opportunity to seek legal redress.

Mr. Deputy Speaker, Sir, we are going through a reform process. I am happy that we are looking for a new constitutional dispensation. The draft we have now, which will be subjected before a referendum, has got very specific sections in the Bill of Rights that will never allow any security officer or Government official to violate the basic rights of any Kenyan.

Mr. Deputy Speaker, Sir, the spirit of this Act was limited to the period 1964 to 1967. This was a period when parts of this country were under very serious threats from security officers, who were in search of insurgents. There was collective punishment in the North Eastern Province, whether you were a sympathizer, or otherwise, just because the insurgents happened to either look like you or speak the same language as you.

The spirit of the Indemnity Act, which applied to the period between 1964 and 1967 was used, for instance, in Garissa in 1980. For those of us who might have witnessed this, you will know that in 1980 in Garissa, in a place called Bulakartasi Estate, there was a huge massacre of Kenyans. Over 3,000 Kenyans lost their lives. The same number of Kenyans could not be accounted for. The same number of Kenyans might have lost their livestock and became poor in the process, because the security organs then were reacting to a situation where some of its officers were involved in skirmishes with the insurgents.

Therefore, the security officers collectively punished people in that area. The same was done in Lamu, Tana River and Isiolo. How could it be possible that Kenyans who pay tax, and who belong to the country--- Even in 1980, which was outside the ambit of the Indemnity Act, the Kenyan Government officers of Somali origin were beaten up and put in the same camp with civilians they were in charge of. Chiefs were beaten up, just because they were Somalis, yet those same chiefs and officers were earning salaries from the Republic of Kenya as officers of the Government. But when it came to the operation, there was indiscriminate killing and harassment. Whether you were a criminal or not, there was collective punishment.

Mr. Deputy Speaker, Sir, people were so intimidated that they could not go before a court of law. They were told that even though the law did not cover that period, it actually affected them. What happened thereafter, in February 1984 in Wagalla--- I happened to be a student and was part of a team of young students who went in and tried

to see whether we could save the remaining people who had run away from the camp as a result of thirst and hunger following several days of incarceration and collective beatings. In 1964, 24 Kenyans were killed in Isiolo in a Mosque and they did not even know why they were killed.

So, an injustice was committed in this part of the country and we must be able to close the chapter. When you have this kind of a law still in our statute books it reminds you of what happened. Students in a law school today continue to study the Indemnity Act and how it found its way in the laws of Kenya. We cannot speak about one Kenya in that case. We have a problem of speaking about one country.

This region has got a lot of Kenyans who are patriotic. In fact, almost all of them are patriotic Kenya. They have no other country; this is their country. But we have a set of laws that discriminate against them, yet you want them to feel part and parcel of this country. The same happened in Garba Tula in 1964. A lot of animals were killed by use of Government or military helicopters. Ordinary pastoralists who were looking after their animals died without knowing why they died.

Mr. Deputy Speaker, Sir, this is a dangerous law for us to allow to remain in our statute books. We are going through a reconciliation process. When we passed the Indemnity Act in 1970 we started to accept that impunity could be practised in Kenya by officers of the Government without due regard for the law. We agreed that anybody who was injured by the same officers whom he paid, through payment of taxes, had no right to go before a court of law and say that an injustice had been committed against them. We started, as a country, to accept that impunity should be rewarded. We rewarded impunity in 1970, as a Parliament.

If you look at the HANSARD you will see that when the debate was going on as to whether, in fact, we should have the Act, a lot of patriotic Kenyans, who did not necessarily come from this part of the country, felt that Kenya was very important, and that every Kenyan was as important as the other; they resisted the temptation by the Government then to allow this law to be in our books. They said that if we accepted it because it is for North Eastern Province, a time would come when it would apply to Rift Valley, Central, and Eastern Provinces or to any other part of the country, where we come from. Since it was a bad law they refused to enact it, but that did not prevail.

Mr. Deputy Speaker, Sir, following the post election crisis Parliament established the Truth, Justice and Reconciliation Commission. I will quote from the Act:-

“As part of the continued efforts towards reform of our country, the Truth Justice and Reconciliation Commission was established by the enactment of the TJRC Act, No.6 of 2008. The Commission’s mandate relates to promotion of peace, justice, national unity, healing and reconciliation amongst the people of the Kenya and extends to historical violations and abuses of human rights and economic rights inflicted on persons by the State, public institutions and holders of public office both serving and retired between 20<sup>th</sup> December, 1963 and February, 2008.”

It confines us to between 1963 to 2008. A lot of the violations against not only the people of the north but generally against Kenyans happened before Independence. We know what happened to the freedom fighters in this country. We know what happened when the colonial government used the divide and rule tactics. A lot of historical injustices and violations happened before this period. We would have been glad if the Act extended its mandate to before Independence. Even if we confine ourselves to the

period between 1963 and 2008 so much was done in this country that we need, as Kenyans, to honestly tell each other: "This happened; we owe apologies to those Kenyans who were unnecessarily affected." We should compensate where compensation is warranted because most of these Kenyans are alive.

As it is currently, the Indemnity Act shows that even if you appear before a tribunal the law has not been repealed by Parliament. We are hoping that this House will, in its wisdom, repeal it and then those officers who committed crimes can appear before a tribunal. Therefore, it is important that before the TJRC visits this part of the country, this Act is actually repealed. I would like to ask the Chair to facilitate this so that we can repeal it. As of now, we will not feel comfortable, and we are advised so; the commission that we have established will want to visit North Eastern Province, Coast Province, upper Eastern and those areas that are indicated in the Bill. These districts are Isiolo, Marsabit, Tana River, Lamu, Wajir, Garissa, Mandera.

It will be futile attempt for the TJRC to be visiting, when, indeed; an Act that institutionalises intimidation and killings is still in our statutes. We cannot allow the TJRC to appear before us until as Parliament we have resolved this matter. It is for this reason that the Indemnity Act is proposed to pave way for aggrieved Kenyans to seek redress in courts of law, the TJRC or any other relevant body. That is their constitutional right.

Mr. Deputy Speaker, Sir, I know that our security organs are not comfortable for the Act to be repealed. We had an occasion to discuss with them and they are not comfortable. I would like to tell them that those officers who, in their wisdom, did what they did against fellow Kenyans when they knew that the Constitution does not allow them to do so, must face the law. They did so in their own foolishness knowing very well that they were supposed to protect those Kenyans. Those officers must face the law. Even if they do not face the law of Kenya, I know they will face the law of God. One day, they will appear before God to answer for what they did against fellow citizens. They did not have to do so.

Mr. Deputy Speaker, Sir, how does raping a pastoralist girl in northern part of Kenya become an act of good faith? The Act says you can rape them, kill them and drive away their livestock because you are doing so in good faith to protect State security. How does rape, of all activities, become an Act of good faith? It does not even make sense. That is what exactly happened in the northern part of Kenya. We, from the north particularly, the leaders wanted to use this new opening of reform, reconciliation and forgiveness to open up a new chapter for us in the region. To date, the people of the northern part of Kenya feel so intimidated by the security forces to an extent that instead of taking their problems to them to help them, they better keep them in their homes. Therefore, I would like to call upon Parliament to repeal the Indemnity Act. This law is retrogressive. This law discriminates against fellow citizens. This law even goes against the current Constitution.

Mr. Deputy Speaker, Sir, I am happy that many Kenyans who necessarily do not come from northern Kenya feel exactly what we feel. I would like to thank hon. Imanyara who has been very consistent in this struggle; both as a lawyer and as a human rights crusader. He has been very consistent in this even when he was outside Parliament. Mr. Imanyara has accepted to second this Bill.

With those few remarks, I beg to move and request hon. Imanyara to second.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I rise to second this very important Bill. It is one of these historic moments that the House does something that posterity and history will recommend them for. When the history of this country is written. This day, when this Bill was moved with the promise of its passage in the House, will be remembered as truly one of those momentous days that have gone towards liberating this country.

Mr. Deputy Speaker, Sir, as we go through the process of bringing in new dispensation for Kenya under the new Constitution, one must always bear in mind that this has not just been a struggle in the democracy, it has been a police state. A police state where Kenyans could be taken from their homes and sent to detentions under the infamous preservation of Public Security Act. People are sent to detention centres where people have died without any form of compensation and recognition. One realises that this is a country that does collectively take a whole community and sets it aside for discrimination. Not just discrimination in terms of services, but in terms of criminal conduct by the arms of the State. Those people could not enjoy any form of human rights because the security apparatus in that region had a complete blank cheque to continue oppressing them.

Mr. Deputy Speaker, Sir, unfortunately, this is a region that for a long time supported KANU regime. It is a regime that introduced this law that for so long treated Kenya citizens as second class citizens. I see my good friend, Mr. Haji who is a former Provincial Commissioner here, nodding his head. He knows how the Provincial Administration was misused by the then regime and the then Commander-in-Chief of this country to mistreat Kenyans.

**The Minister of State for Defence** (Mr. Haji): On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to say that he is also a son of a soldier at that time.

*(Laughter)*

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, it is true. I am very proud to be a son of a soldier. That is why I have always stood against all forms of oppression whether from the military or civilians pretending to be commanders-in-chief like the one that ruled this country for 24 years and subjugated a whole community; telling them that they may not even speak about their own rights.

So, one must congratulate the Mover for this Motion for seeing the necessity of reminding Kenyans that we cannot have a new Constitution and the TJRC in this country, when we have a law that is a bloat in our books. This is a law that identifies a community of Kenyans to subject them to second class citizenship status.

Mr. Deputy Speaker, Sir, not only was the entire community subjected to unfair treatment at the hands of the security forces, but also in terms of economic development. This region was subjected to terror tactics by the State. They were also subjected to very unequal economic disadvantages. Every year we are passing budgetary allocations in this House, when it came to North Eastern Province, these communities that were subjected to this, a very small fraction of development went to this region. It depended almost entirely on the goodwill of international community or international religious organizations. Today, when we see the fruits of policies of the Government in terms of the sensitive political situations there; the demands of the people, we target them and say:

“These people are just Somalis. They are bad tempered. They do not behave properly and they are not part of Kenya.”

Mr. Deputy Speaker, Sir, that is the reason why the culture of impunity in this country is so deeply entrenched. We had public officers who took it upon themselves to remind an entire community that they were not part of Kenya.

When we talk about the international community; when we talk about sending people to the Hague, if there were people who should have been the first suspects to be sent to the International Criminal Court, it is those who have governed this country under this law. They have documentation. When we talk about the Wagalla Massacre, it is nothing compared to the incidents that took place there at the hands of the Provincial Administration. We cannot forget that it is only in that region, where a Provincial Commissioner has the powers of a Resident Magistrate; where a District Commissioner has the powers of a District Magistrate. They could arrest a person, investigate the crime, try them, convict them and then supervise their imprisonment, all under the arm of one system of Government. So, if there is any person who should be really worried about going to the Hague, it should not be the 20 people in the envelope that Kofi Annan sent to Ocampo, but the people who were the Provincial Commissioners and DCs in this region. These are the people who abused the law to disenfranchise and take properties from communities and killed them. The Mover talked about rape.

As a lawyer I can tell you of the many times I have had to go to the region to defend people under court martial. I can tell you it was even better to appear before court martial than to appear before civilian courts in that region.

Mr. Deputy Speaker, Sir, I remember one time I went and the Provincial Commissioner was acting as a magistrate. He called me aside and spoke to me in my own language and warned me that if I raised certain issues he would not have hesitated to jail me because in that region the law did not apply. Indeed, when I insisted, the court was adjourned and moved. I was left in the entire town alone. The Provincial Commissioner, the witnesses and the accused persons were flown to another part. By the time I got there they had already been convicted. They sentenced the poor fellow to nine years imprisonment. Although we eventually had the High Court quash the conviction, the period suffered during this time under the guise of serving sentence was just slavery.

This was institutionalized slavery and reign of terror that visited every single individual in this region for so long. It is, indeed, a shame that not many Members are in this House to participate, debate and pass this law as an acknowledgement that the people of Kenya have wronged the people of this province for so long. The little we could do is even to be in this House and pass this law by acclamation even without debate.

In a sense it is a matter of how far we have sunk that a matter like this relating to the human rights of an entire community can be debated in a near empty Chamber. This is the case and yet we are talking about human rights, bringing in the culture of rule of law and ending impunity. Every time we discuss these issues Members are more interested in calling Press conferences outside to criticise the decision that has been taken by unanimous will of the House. Instead of participating in debate here, we prefer to go out and talk to the gallery rather than being here and acknowledge that what we did to the people of North Eastern Province is something shameful, wrongful and should never have been supported.

Mr. Deputy Speaker, Sir, today, we are encouraging the former freedom fighters to fight a case. I am glad the Minister for Foreign Affairs is here because he has spoken strongly in favour of those people. Again, it is a matter of shame that this country almost 50 years after Independence when these people are at the sunset of their lives and when they need State protection in terms of getting pensions, all we can do is say we are supporting them to file a case in London to get what is justly theirs. The British Government has said this is State succession. I was very happy that the Minister for Foreign Affairs could see right through it and remind them that there is no way that the State could have succeeded taking over criminal activities for which so many people died.

Mr. Deputy Speaker, Sir, I am grateful that even as we support those *Mau Mau* fighters who have filed their case in London, the Government is acknowledging that we can be debating this Motion at the same time that we are trying to introduce a new dispensation or Constitution that brings in a new dawn to this country.

It is with great privilege that I acknowledge and celebrate this day by seconding this Motion.

I beg to second.

*(Question proposed)*

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Deputy Speaker, Sir, thank you for giving me an opportunity to contribute in full support of this Bill. May I also take this opportunity to thank my learned senior for the kind words he has said about me in his concluding remarks.

If you look at the Bill and the Statute it intends to repeal, you will ask yourself in what frame of mind the Parliament that passed this Bill was. It is very difficult to come to terms with the Bill that is so latently unconstitutional, whose contents are repulsive, discriminatory and not fit to be a law in any civilized country.

Mr. Deputy Speaker, Sir, as my learned senior and Mover Amb. Affey has very ably pointed out, this targeted the North Eastern Province. However, the law was actually wider. It also affected the people of Isiolo, Marsabit, Tana River and Lamu. The content of the law is very bad and unjust that it defeats any stretch of imagination that it was drafted, debated and passed by Parliament.

I do recall, like my colleague Imanyara, once I was hired to go and defend an accused person in Mandera. When I arrived, the District Commissioner, who was the magistrate, ordered me to be locked away. This was not in the cells but in a room where I was under what looked like closed arrest. As I was seated in that room the proceedings were going on. I came out and found my client had been sent to jail on fictitious charges. I eventually succeeded in appealing but after grave injustice had been committed.

Mr. Deputy Speaker, Sir, if you look at the rules of procedure that were promulgated to support this Bill, it is laughable. First, the principal player is either the Provincial Commissioner or the District Commissioner and the accused person is not allowed to call witnesses without the permission of the court. How can that be justice? That you are being accused, you want to prove your innocence and only the court can allow you to bring a witness to say so. Even more importantly the quorum for the court is said to be at the very least two; that is the District Commissioner and any other officer.

Therefore, the District Commissioner can sit with his secretary and constitute a court. They pass judgment by vote. You know very well that the District Commissioner cannot have his subordinate voting against him.

Thirdly, in case of a tie over and above his original vote the District Commissioner has a casting vote. So, if the District Commissioner sat with his secretary and for some strange reason the secretary said; “No, Bwana DC”, the District Commissioner will cast another vote and send somebody to jail. This is a collective shame to us. We should never have allowed a thing like this to happen in our country.

Mr. Deputy Speaker, Sir, the rules even permitted the “court” to decide when to prepare the proceedings of the case and hold them at will. In fact, what they have had in court and convicted you on may never be the record that you will go to appeal with. This is because the rules allowed them to do that if you read the rules that were promulgated.

History is behind us but I wish my colleague, Mr. Mutula Kilonzo, was here. We have a very critical organ in the Government called “the Law Reform Commission” for which this Parliament votes money to run.

Mr. Deputy Speaker, Sir, it did not have to take hon. Affey to scan through the Statute books and identify this as a bad law and bring it to this House. It is the duty of the Law Reform Commission to scan through our laws and weed out the wheat from the chaff. It should advise Parliament, the line Ministries and Attorney-General that we do not need this law in our statute books today. That is the duty we have given them and we vote money for them. I want to urge them and the line Minister – I wish he was here to listen to what hon. Members are saying – to advise the Law Reform Commission that its principal duty is to reform existing laws. Reform includes repealing them. When you have a law that turns a section of the country into what looks like a permanent state of emergency, where you exclude a section of the country--- It is history now because the period over which it operated is over, but we also know that in enforcement of injustices committed through criminal acts, courts will be liberal enough to allow the expansion of time to file suits for compensation.

Mr. Deputy Speaker, Sir, I think the repeal of this law must also open ways, one, for public servants who committed criminal acts to be individually held accountable if they are still living. This is because there are some public servants who, under the guise of executing orders from above, have committed a lot of atrocities on our people when nobody has ordered them from “above.” So, when this law is repealed, one would expect that we need to look at those who suffered the injustices. We have got the Truth, Justice and Reconciliation Commission (TJRC). Common and conventional wisdom has it that the beginning of healing lies in the acknowledgement of wrongdoing. Unless you acknowledge that you are wrong, how do you get forgiven or healed? I think that we, as a country, as we move to the future, if we do not want to carry excess historical baggage that will become a nuisance to this country tomorrow, the time is now to repeal such colonistic laws. But more importantly, I would want to see, one of these days, a great Kenyan who presided over a mischief and brutality of the type that we have seen walk briskly and talk to the public and say: “My fellow Kenyans, I am sorry.” The gates of heaven will be opened for such a man or woman, than people who live a lie and pretend that they are what they are not. We have people out there on the streets who were in this Parliament when this law was passed and they said nothing. Today, when they speak, you

would think that they are an infusion of Mohammed and Jesus dropped on earth to save our country, yet they were here when the law was passed.

Mr. Deputy Speaker, Sir, I hope that Parliament will support this Bill. I salute hon. Affey for bringing it. It will bring a new dawn to the people of North Eastern, Isiolo, Marsabit, Tana River and Lamu. It will also teach us a lesson that we should never let such things happen to our country again. Justice must be for all. All must be equal before justice, entitled to due process and treated equally irrespective of gender, status and anything else.

Mr. Deputy Speaker, Sir, I beg to support the Bill.

**Ms. Shakila Abdalla:** Asante Naibu Spika. Kwanza nataka kuchukua nafasi hii kumpongeza mhe. Affey kwa kuleta Mswada huu ili kipengele hiki cha Sheria kifutiliwe mbali.

Bw. Naibu Spika, pia ningependa kuwaombea msamaha wale waliopitisha sheria kama hii hapa Bungeni. Mwenyezi Mungu awasamehe kwa sababu najua kwamba wale binadamu ambao wamedhulumiwa hawatawasamehe. Atakayewasamehe ni Mungu. Mungu awasamehe kwa sababu ni sheria ya dhuluma ambayo imedhulumu watu kwa miaka mingi. Nitashukuru sana ikiwa Bunge hili litafutilia mbali kifungu hiki cha sheria ambacho kitawapatia watu haki zao ambazo walikuwa wamedhulumiwa kwa muda mrefu.

Bw. Naibu Spika, Tume ya Haki na Maridhiano ilipozuru sehemu kadhaa haikuweza kuwajibika kufanya shughuli zake kwa sababu ya kifungu hiki. Tume hiyo ililazimika kutofanya chochote. Iliambiwa na wananchi irudi ili ikafanye kazi ya kutoa hiki kifungu ama irudi kwa Wizara yake ijadiliane na Wizara hiyo ili hiki kifungu kiweze kutolewa. Tunasema kuwa Kenya ni nchi ya kidemokrasia. Lakini masikitiko ni kwamba hiyo demokrasia tunayosema iko Kenya bado haijakamilika ikiwa kifungu hiki kitaendelea kutumika kwenye nchi.

Bw. Naibu Spika, maonevu ya mabavu ya maofisa wa Serikali bado yanaendelea katika sehemu zingine nchini. Kuna sehemu nyingi sana ambazo maofisa wanawadhulumu wananchi kimabavu kwa kuwaingilia nyumbani mwao na kuwashika kiholela kwa misako ambayo haina misingi na kuwadhulumu kwa kuwapeleka kortini na kupigwa faini kubwa kubwa. Mambo ya maonevu ya hali ya juu hufanyika kwa sababu kifungu hiki kinawapatia nguvu hawa maofisa kuendelea na dhuluma na maonevu kama hayo. Kwa hivyo, ningepomba ikiwa tutaweza kupitishia huu Mswada ili hii sheria ifutwe bila ya mahojiano marefu kwa sababu ni sheria ya dhuluma na wengi wamedhulumiwa. Wale waliopitisha hii sheria walifanya hivyo kwa maonevu ya kutaka kufanya dhambi zao. Walijua kwamba walikuwa wamefanya dhambi katika sehemu kadhaa za nchi na hawatataka dhambi hizo zijulikane wala watu waende kutetea haki zao. Kwa hivyo, tunaomba sheria hii ifutiliwe mbali na wale waliofanya dhambi hizo wapelekwe mahakamani ndio watu waweze kupata haki zao.

Bw. Naibu Spika, kwa hayo machache, naunga mkono Mswada huu.

**The Assistant Minister for Energy** (Eng. M.M. Mahamud): Thank you, Mr. Deputy Speaker, Sir. I also want to join my colleagues in congratulating hon. Affey for bringing this important Bill.

Mr. Deputy Speaker, Sir, this Bill which was enacted in 1970 had serious ill motives. If we ask ourselves why it was enacted, the simple reason is because they wanted to reward those people who committed atrocities. Between 1963 and 1967, the

areas mentioned were under a state of emergency, especially the areas in North Eastern Province. I was a young boy then and I witnessed all that happened. Atrocities were committed in the name of security. In fact, there was no police force in the province at that time. We were under some sort of military rule and the might of the Kenya Armed Forces was unleashed on the people of that province. You will also recall that the people who were in that province, although there were some who wanted cessation, the great number of who wanted to secede actually went to Somalia. But those who were left were the loyalists who wanted to work with the Government then. But those people are the ones who suffered the might of the Armed Forces and this cannot be forgiven. As if that was not enough, Parliament then, in 1970, decided to enact that law. I remember as a young boy then during the debate that ensued in this Parliament through radio, quite a number of Members from the region and other parts of Kenya actually objected to this law from being passed, but it was passed.

Up to today, the very law is being used to justify any action done in that part of the country. Emergency laws are bad. This country has had experience from what happened during the struggle for Independence; the *Mau Mau* war. If we remember that one, then there is no difference between that and what happened in North Eastern Province. What happened there is a very serious matter. Quite a number of Kenyans do not know that we were blocked out then. I remember those days people were not allowed to listen to radios. They were even blocked out of news and the rest of Kenyans were not able to access information in that area. Since the enactment of that law, which we are now seeking to repeal, other crimes have been committed. We hear about the Wagalla Massacre, Garrissa, Malkamari and even those areas which Kenyans do not know about. Under this Act, institutions of indemnity were strengthened, intimidation was the order of the day and people in the provincial administration and the police were seen as oppressors. Today, quite a number of people in that region still fear the Government. Nobody seems to trust anybody who works in the Government, especially the armed forces and it is because of this law.

Mr. Deputy Speaker, Sir, my colleague, Mr. Wetangula talked about land law reform. Nobody remembers to amend the laws such as these ones. We only amend laws that give power to the people. People want to be prime ministers or presidents. Nobody remembers the very laws that violate the rights of human beings in this country as though they are not important. This law is illegal, discriminatory, uncalled for and should have been repealed yesterday. Now that we have the Truth, Justice and Reconciliation Commission (TJRC), we want people to come out and talk about crimes committed against humanity. It is impossible to talk about those things that happened from 1963 to date. Most of the things are being covered by this Act. So, I appeal to hon. Members to pass this Bill so that the law is repealed.

Mr. Deputy Speaker, Sir, although we are talking about the emergency law not being there, the very atmosphere that existed then is still there. When we hear about oppression and especially what happened in Elwak about a year ago, the intensity and the force that was used by the armed forces is the same as that used during the emergency law. Those years, there were *kijjis*. I was myself in a *Kijiji* for some time. The whole place was fenced off. All animals were confiscated and killed. There was collective punishment but nobody can tell you that all those forces suppressed the *shiftas*. They did not. It is the people who willingly appealed to the people across the border to stop the

hostility. The *shifita* war was a war against the people of Kenya. All the law-abiding civilians were terrorized. Some of those people are still there. My appeal is that this law be repealed so that those who committed those atrocities be brought to justice. If we enact the current Constitution, it will be useless without repealing this law.

With those few remarks, I beg to support.

**Mr. Wamalwa:** Mr. Deputy Speaker, Sir, I also rise to support the Bill and I wish to congratulate Mr. Affey for bringing another brilliant piece of legislation that he is proposing. It is only recently in the last session, that he brought another Motion proposing that we should have rotational sittings of Parliament so that we could see places like northern Kenya where life has been very different from other parts of Kenya. Indeed, looking at this piece of legislation, it is a shame that we have had it in our statutes for all this period. Indeed, with the proposed Bill, we as a country, have an opportunity to actually make peace with our past and do what should have been done many years ago so as to have this retrogressive piece of legislation out of our statute books. One of my favourite books was one by George Orwell; "*The Animal Farm*". That book tells you of a story of animals that kicked out the master from the farm. When the master left, the animals took over and wrote a set of rules. They said that the first rule amongst all the rules they set was that all animals were equal. It was until some animals started getting some privileges they were enjoying and discriminating against other animals that these rules started changing. One morning as the other animals went back to the rooms where the rules had been written, they found that the first cardinal rule had been changed and it no longer read that all animals are equal; it read that all animals are equal, but some are more equal than others.

When you look at our history as a country, it reminds you of the animal farm. After we kicked out our colonial master, we got our independence; yet several years after, in 1970, we ourselves introduced this piece of legislation. It was not given to us by the colonialists. It was a legislation passed by Kenyans in an independent, Kenya which had the effect of discriminating against fellow Kenyans.

Mr. Deputy Speaker, Sir, it is a discriminatory piece of legislation that is also unconstitutional. When you look at the provision of Section 82 of the Constitution, it provides that no law shall make provisions that are discriminatory either of itself or in itself. It also says that no person shall be treated in a discriminatory manner by a person acting by virtue of any written law or in the performance of the functions of a public office or a public authority. Section 82 of our Constitution goes further to provide that in this section, the expression "discriminatory" means according different treatments to different persons, attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connection. By prescribing in this law that the people of North Eastern Province, that is, Isiolo, Marsabit, Tana River and Lamu districts were to be in the designated area and would not be allowed to bring any proceedings for claims for compensation or otherwise, indeed by this law itself, they had discriminated against the people of North Eastern Province, that is, Isiolo, Marsabit, Tana River and Lamu. This ran against our Constitution in Section 82.

Under Section 3 of our Constitution, it says that if any other law is inconsistent with this Constitution, then this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void. Therefore, as we are speaking about this Act of Parliament, it is not only unconstitutional, but also void. So, we must strike it out from

our statute books so that it should never be seen by our children or our grand children to know that as a country, we have had this particular provision in our statutes for all this time.

Mr. Deputy Speaker, Sir, at the time of Charles Dickens he wrote about a tale of two cities. The truth about Kenya is that we have a tale of two Kenya. We have a Kenya in the northern part which has not enjoyed the rights or privileges of citizenship like the other parts of Kenya. We have a lopsided development agenda; we have looked at the high potential areas and given them more resources of the country as well as discriminated against the areas that we deem to be of low potential.

So, Mr. Deputy Speaker, Sir, we are saying that as we progress in terms of reforms, as we reform our laws and institutions, we must also be scrapping from our statute books discriminatory statues that exist up to now.

Mr. Deputy Speaker, Sir, we do know that this year is the year of reforms. We are expecting that we will have our Truth, Justice and Reconciliation Commission (TJRC) going around the country, trying to look at our history and find out the truth about what happened. When you look at this particular legislation, it was passed in 1970 after the atrocities between 1963 and 1967; it was specifically meant to cover those who committed the atrocities – the public officers who, within this period, had committed the atrocities, so that in future, they would not be followed.

Mr. Deputy Speaker, Sir, unlike in civil law, criminal law has no restriction. We do know of atrocities that were committed during the First World War and the Second World War; we have had people still being brought to account for them under international law. We do have the Nuremberg Trials, where those who committed atrocities have still faced the law many years after the First World War and the Second World War. We do believe that from this time when we strike off this legislation from our statute books, we will have opened the doors for justice to be done to those officers who actually committed atrocities in the name of “the line of duty”; they should come out and actually atone for their sins against those they whom they wronged.

Mr. Deputy Speaker, Sir, we do also know that as the TJRC goes to the north, the people of North Eastern Province, as hon. Affey has indicated here, will not be comfortable until this particular Act has been repealed. We would like to facilitate the work of the TJRC by removing this restriction on their work, so that when they go up north, they will be free to actually hear the truth; they will be free to actually ensure that justice is done, not only for the victims, but also against those who committed these atrocities.

Indeed, Mr. Deputy Speaker, Sir, it is an opportunity that we must not fail to seize as a House, to do away with this legislation and to facilitate the work of the TJRC. I want to thank Amb. Affey for bringing this Bill.

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

*(Applause)*

**Mr. Muthama:** Nashukuru, Bw. Naibu Spika, kwa nafasi hii, nami nichangie Mswada huu ambao ni wa maana sana. Nimewasikiza walionitangulia kuzungumza kwa makini na Mswada huu unafaa kuzungumziwa kwa nguvu zote.

Bw. Naibu Spika, ni haki na ni ukweli kwamba katika nchi yetu ya Kenya tunapozidi kuzungumzia umoja wa Wakenya na kuweka nchi pamoja, matamshi au maneno yetu ni tofauti na matendo yetu. Tukiangalia kama kuna Mswada ulioweza kuletwa katika Bunge letu la kitaifa na nikaamua kwamba kutakuwa na ubaguzi wa haki, na utathibitishwa kwa kuandikwa chini--- Hata sio mazungumzo tu; watu watachukua kalamu, kuiweka wino na kuandika kwamba sehemu fulani, fulani katika nchi yetu tukufu ni sehemu ambazo hazitazingatiwa, na hazitaonekana kwamba zinakaa wananchi, au viumbe wa Mungu. Ati watu fulani watatengwa na sheria ya nchi, wawekwe kando na kusemekana kwamba katika taifa letu tukufu, mambo mabaya yakianza kupekuliwa, na kuchunguzwa, yawe ni ya jana au ya miaka kumi au miaka ishirini iliyopita, kuna sehemu fulani ambayo haitaweza kuangaliwa. Sisi kama wawakilishi wa wananchi, tunataka kusema kwamba ugandamizaji wa haki za Wakenya hauwezi kuendelea; waliopitisha Mswada huo walikosea sana! haifai tuishi katika makosa yaliyofanywa.

*(Applause)*

Bw. Naibu Spika, kuna msemo wa Kiswahili kwamba kosa si kukosa, lakini kosa ni kurudia kosa, na kuishi na kosa. Makosa yalitokea hapa na sasa tunataka kuthibitisha kwa imani yetu kwamba hatuwezi kuishi kwa makosa, na tunaweza kutengeneza tume zinazoweza kushughulikia maisha na haki za kibinadamu kiasi fulani, na waliotendewa madhambi waangaliwe. Mimi nasimama kusema kwamba kama tulivyobuni tume ambayo ni ya haki na maridhiano ya Wakenya, haitaweza kuonekana kuwa ni ya haki; hii ndio sababu unaona kuna taharuki ya maneno na kasheshe; pahali popote inapojaribu kusimama, inaambiwa: “Hatuwaamini; ondokeni hapa!” Kwa sababu gani?

Ukiangalia mauaji ya Wagalla yalivyotokea, hakuna kitu mpaka leo kinazungumziwa! Maisha ya binadamu mbele ya macho ya Mwenyezi Mungu ni sawa. Kwa hivyo, namuunga mkono Balozzi Affey kwa kuleta Mswada huu katika Bunge ili tuweze kuuzungumzia na kuupitisha kwa kauli moja. Tunasema kwamba sio tu baada ya kuunyakua Uhuru ndio tutaangalia madhambi ya Wakenya. Tutaangalia hata madhambi yaliyotendewa Wakenya na wakoloni; hii ndio sababu sasa unasikia kuna kesi tunafanya Uingereza ya Mau Mau na wananchi wa Kenya waliosulubishwa na Mwingereza. Itakuwaje sisi tumweke Mwingereza hapa, tumshurutishe kulipa ridhaa kwa Wakenya halafu turuke makosa yaliotendeka zamani, tuje tena tuanze kuchunguza ya juzi, ilihali hapa katikati kuna wengine tunaotaka kuwazika wakiwa hai na kuwalazimisha kusahau haki zao?

Nataka kusema kwamba, kama tunaanza na Mwingereza vile tumeanza, ili tuonekane tuna usawa, na ili tuangalie viumbe wa Mungu waliogandamizwa katika sehemu za Lamu, Wajir na sehemu zingine zote, mpaka Marsabit na Mkoa wa Kaskazini katika nchi yetu tukufu---. Ili tuonekane tunabadilika katika uongozi wetu, na tunasahau ubaguzi katika maisha ya binadamu na kusema kwamba yaliyotokea zamani sio tu tusahau--- Kama tunasahau, tusahau kila kitu hata yaliyotokea jana au leo asubuhi! Lakini kama ya asubuhi hatusahau, basi hata ya miaka 20, 30 au 40, hatuwezi kusahau; tutadai na kusema kwamba haki iwekwe katika uwazi ili wananchi wa Kenya waweze kuelewa ni kitu gani kilichotokea. Nimesikia, na ni aibu – na sitakubali kamwe - wananchi fulani wakitoka sehemu zao kuja hapa Nairobi, wanaambiwa: “Mkifika Kenya, wasalimieni Wakenya.”

(Applause)

Bw. Naibu Spika, katika wimbo wetu wa Taifa, hausemi kuwa jamii au kundi fulani la watu; unasema Wakenya wote wanalindwa na sheria za nchi yetu! Ni wakati huu sasa tunataka kusema kwamba haki ya kila Mkenya iheshimiwe na itambuliwe. Kwa hivyo, sheria hii tuifute na tuweke uwazi kwa wananchi wa Kenya.

Bw. Naibu Spika, tunaposema mambo ya ardhi; tunaposema mambo ya *Internally Displaced Persons (IDPs)*, tunaongea mambo ya Wakenya! Mimi sitakubali kusimama hapa niongee mambo ya jamii fulani; nitaongea mambo ya Wakenya! Hata tunapoongea juu ya IDPs waliopata taabu, hawa wote ni Wakenya na wanastahili ulinzi wa nchi.

Kwa hivyo, Bw. Naibu Spika, naunga mkono Mswada huu na kusema tuifute sheria hii.

Asante, Bw. Naibu Spika.

(Applause)

**Mr. Namwamba:** Thank you, Mr. Deputy Speaker, Sir. It is a great pleasure for me to stand and support this Bill. Let me start by applauding Mr. Affey for bringing this Bill. The timing of this Bill is very apt and right because it comes at a time when the whole country is focused on the agenda of reforms, re-engineering, restructuring and redesigning the very foundations of the Kenyan nation state. We are talking about the enactment of a new Constitution, a renaissance for our land and a re-birth. We are talking about correcting historical injustices; we are talking about laying to rest, finally, ghosts of impunity and marginalization. We are talking about ghosts that have disturbed the conscience and the soul of our motherland for a long time.

I just want to say that a society that is split or a society that is not at peace with itself, cannot pretend to be a united society. Sometimes, when we talk about national unity and national cohesion, those terms mean nothing more than clichés unless we move with deliberate action to ensure that everybody feels a proud part of the whole; the whole that is Kenya. When we talk about being proud to be Kenyan; “being Kenyan” could mean very different things to different people. Therefore, this is an opportunity for us to start asking ourselves and start interrogating the very notion of being Kenyan.

I believe it was President Jefferson who once said: “Unless there is peace, justice, liberty and for all, there can be no peace, justice and liberty for any.” Until this country opens doors of opportunity to everybody and everybody feels at ease and that they feel they belong, nobody can feel safe. We have had a sad history. Perhaps, we are not the only country in the face of the earth which has had a disturbed history. The State of South Africa, one of the shining examples in this continent today, has had a terrible past. Talk about segregation, apartheid and differences amongst communities. However, what sets that State apart is that they have deliberately moved to address those historical injustices. They have deliberately moved to take deliberate steps to forge what they have come to christen or to baptize as “The Rainbow Nation”.

A State like the United States, what is held and hoisted as a paragon of democracy and equality, is a state that has had a very sad history. Communities like the American natives have suffered through history, some of the worst gross injustices ever. However,

what sets the United States apart is that they have also taken deliberate measures to correct these injustices.

When I was going to the university in the US--- I attended a university which had very interesting scholarship programmes. For instance, they had a scholarship programme specifically for Americans of Indian descent, what they call the Native Americans. That was a scholarship that you could only compete for if you belonged to that community. They also had scholarships for African Americans. Unless you were an African American, you could not compete for such a scholarship. That is a small example of how that society has made deliberate efforts to raise those segments of society that have historically been left behind. These are the examples that this country must start to borrow and implement. As we talk about a new Constitutional dispensation, the way to go is the way hon. Affey is leading us by way of this Bill.

This Bill, by seeking to repeal a law that has almost turned almost a half of this country into a special zone, what amazes most is that even if this law came into being at the height of colonial repression, successive governments in this country have upheld it and allowed it to sit pretty in our statute books. Indeed, that this law has existed with us for 47 years, since Independence, is one of our greatest tragedies of our existence as a State. Sometimes you wonder why our nation is so restless. It is because of these ghosts that, if left unattended or unburied, they can only disturb the conscience of this nation.

Today, I stand here happy that I have the honour of being a Member of a House that has taken on the challenge of redressing these wrongs through this kind of legislation. This is the dream of any legislature. I believe that the dream of any legislature is to live and represent our people at a moment such as this, when you have the opportunity to correct wrongs that ought not to have been in the first place. That such a law was even ever enacted in this country is atrocious and goes to demonstrate the depths to which the human mind can sink in an attempt to repress and marginalize.

So, today, I believe is a great day among the historic days that must be mentioned in the history of the Tenth Parliament. This day that we have had the opportunity to debate and pass this Bill.

With those few remarks, it is my pleasure to support this Bill.

**Mrs. Noor:** Thank you, Mr. Deputy Speaker, Sir. I also stand to support the Bill. I want to take this opportunity to thank every person who has contributed to this very historical Bill. I want also to congratulate hon. Affey for having the courage to bring this Bill.

The colonial Government enacted many laws that specifically targeted the people of northern Kenya. There are specific laws such as the one that created the Northern Frontier Districts of 1902; the present day Wajir, Mandera, Garissa, Isiolo, Ijara, Marsabit and Moyale where there were clear restrictions of movement. There were clear restrictions of moving in and out. There was a provision of a special pass. Having this pass was very painful because it clearly indicated there were two sets of Kenyans in this country. We had Kenyans who were free, able to move and their movements were not restricted at all. There was also a class of people who were second class citizens, who were controlled through their movement, settlement and had no freedom of any sort. Then after that, we had the emergency law. The emergency law existed until 1997. That law empowered the President to impose emergency on specific groups of people. This is the discrimination and the marginalization that we were talking about. Whenever the

people of northern Kenya talk about the historical injustices, it touches them. They emotionally talk about the discrimination and the marginalization that existed.

Mr. Deputy Speaker, Sir, if you remember, under the emergency law, there were concentration camps where people were confined; where women were raped and property was looted by the security personnel. This particular act that hon. Affey is trying to repeal is because of those historical injustices that existed. This is to address those problems that existed within the society.

Through these historical injustices, there were a lot of massacres that took place in northern Kenya. There was the massacre in 1967 in Isiolo and other parts of this country where people were put in concentration camps, they were killed and animals looted. There were a lot of problems. In as recent as 1980, there was the Garissa Massacre where people's houses were burnt by the security personnel of this country. The human rights organisations that have conducted and audited some surveys indicate that there are over 3,000 people who were killed that night in Garissa. Over 5,000 people were displaced because their houses were burnt. The following three days, people were put into concentration camps where they were not allowed to take water and food. In 1984, there was the Wagalla Massacre where over 35,000 people were killed in Wajir. In 1987, there was the Malkamari Massacre. All this was in the spirit of this Indemnity Act. But because of the impunity, and there was something that was going to protect people, they thought that this inhuman exercise should continue.

Mr. Deputy Speaker, Sir, there are many issues including the three mile strip; that is, between the people of Coast Province and the North Eastern Province. This was initiated because the community in North Eastern Province then wanted to secede from this country. Because of that, the colonial Government said that the boundary of North Eastern and Coast Province will be three miles from the Tana River to the interior. The provincial headquarters for North Eastern Province is in Coast Province as I am speaking. That has caused a conflict between communities who have lived together for a long time. There are no developments that can take place along the boundaries of Tana River in North Eastern Province. Those people who want to do some irrigation scheme, along the river go as far as Coast Province to get their title deeds to date, as I am speaking. That is just because it is just a minute to the County Council of Garissa town and the municipality is just nearby where the people of North Eastern can get access to get permission to do their development initiatives along the boundary. This has not only created the discrimination we are talking about. If you look at the Sessional Paper No. 10 of 1965, it laid a policy where the resources of this country were to be distributed only to the high potential areas. All investments we generate as a country, all the money we generate, is to be allocated to a particular zone where development is taken and other places are neglected. There are many things over which the people of North Eastern, Upper Eastern, Lamu and other places have a bone to pick with the system.

Mr. Deputy Speaker, Sir, with regard to the Truth, Justice, and Reconciliation Commission (TJRC), its mandate is supposed to go back as far as 1963, to look at all the historical injustices that have been committed. However, because of the existence of the Indemnity Act, they are unable to exercise their mandate. This is the case and yet we are saying that we are in the reform era, we are trying to redefine ourselves as a country and we are trying to look at ourselves as a fresh Kenya. We want to look at all the historical

injustices, sit around a table and forgive each other so that we can move together as a country.

Mr. Deputy Speaker, Sir, if we cannot forgive each other and look at ourselves as Kenyans--- We have a law that is discriminative that states that between 1963 and 1967, whatever injustice that was committed, nobody can talk about it. If we considered that, then we will not be able to redefine or reform ourselves. We will also not be able to look at ourselves as Kenyans. As the Tenth Parliament, we want to change the history of this country. We want to go to the records of history and change the historical injustices that have taken place in this country. We want to look at ourselves as Kenyans. We want to be a just society that can look at and support each other and say, "We are Kenyans". If you look at the proposed Constitution, you will find that it tells us that in the preamble. It starts with appreciating us by stating, "We, the people of Kenya". This is what I want to see in this country.

I want to be looked at as a Kenyan and not as a person from northern Kenya who cannot contribute anything apart from being a violent person. History has wrongly shown this country that any person from the northern frontier districts is a violent person. This Act that we intend to repeal portrays us as violent people. We want to tell Kenyans that we are not violent. We want to contribute effectively to this country. We want to give this country meaningful development. Any person who commits crime must face justice. We do not want to be punished collectively because my brother has committed an offence. That is wrong and it is one thing we are refusing. We have been given collective punishment for a long time. It is high time we stopped that.

With those few remarks, I beg to support.

**Prof. Kamar:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to support this Bill. I will be very brief because I do not think we have anything other than to support it. I was in the Bomas Conference where we talked about historical injustices. We heard people say historical injustices ought to go as far as 1890 when the colonialists came to Kenya. It is a shame that at the point of Independence in 1963, there were Kenyans who were not Kenyans within Kenya to the extent that there were some who were being freed after 1967.

Mr. Deputy Speaker, Sir, if this generation has to do anything and if the reforms have to make any meaning to the life of the Tenth Parliament, then it is honesty, sincerity and wisdom that we have to use in order to address all the issues that touch on reform and clean up the system. This Act has been an embarrassment to this country and it must be repealed. Whatever was swept under the carpet by the law that stated that we do not want to hear or see whatever happened between 1963 and 1967 are things that will surface one day and we must deal with them during our time.

We should say that all Kenyans are Kenyans. We must address the injustice meted on our brothers in North Eastern Province and the stated towns during that period. Either we address it or our children will do so. This will not be swept down the drain. We need to be very honest with each other. People were offended by the colonial Government, not only in this region, but also in very many regions. When we were at the Bomas Conference, we realised that the Pokots were Ugandans for 40 years. They said that they did not get development. They said that they became Kenyans for 40 years and only missionaries visited them. These are issues that are real.

If we think we can start with this and suspend it midway, we should realise that we cannot solve problems halfway and expect to co-exist as Kenyans. It is very important to tell ourselves these things now that we are looking at our Constitution. We should open up to non-citizens who would like to be Kenyan citizens. We must first recognise who are Kenyans and who is within the Kenyan territory so that we do not just claim a territory and disown the people within that territory. It is very important that as we clean up the Constitution now, we also clean up our past. We should be bold as the Tenth Parliament and say that we will not cover up anything but rather, we will allow it to come out.

We heard about the massacres when we were at the Bomas Conference. For some of us, it was shocking and an eye opener because we had never heard about it before. We did not know that it would have happened in a peace loving nation like Kenya. However, the reality is that bad things happened and we must start addressing them.

Mr. Deputy Speaker, Sir, I would like to say that there is no reason why we should continue to hide issues or sweep things under the carpet. Let us address them now and build Kenya that will belong to all Kenyans.

With those remarks, I support.

**Prof. Kaloki:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill that has been moved by Mr. Affey. This law ought to have been amended many years ago. I am saying this because we have one country and we should not have laws for one region. We do not want laws pertaining to Eastern, North Eastern and Nyanza provinces. We need laws that will govern the entire country.

If you look at the Indemnity Act, there is a section that states that no proceeding or claim to compensation or indemnity shall be instituted or made or entertained by any court or authority or tribunal established by any law. This shows that this Act was aimed at discriminating against particular people who lived in a particular region of this country. We have to repeal this law so that we can ensure that Kenyans who live in North Eastern Province and the towns that have been mentioned such as Isiolo, Marsabit, Tana River and Lamu, get justice. Unless we repeal this Act, we will never know what happened exactly. We would like to have an opportunity so that Kenyans who live in those areas can tell us what happened. This is because injustice or crimes were committed against these people.

Mr. Deputy Speaker, Sir, this Parliament should rise up and change this law so that all Kenyans, regardless of where they live or who they are, can feel that they belong to one country which has one law which will address this injustice.

Mr. Deputy Speaker, Sir, I support this Bill and urge that we move quickly and pass it.

**The Minister for Co-operative Development and Marketing (Mr. Nyagah):** Mr. Deputy Speaker, Sir, I stand to also join the other good Members of Parliament who have supported this Bill.

Mr. Deputy Speaker, Sir, those of us who do not come from upper Eastern Province, or parts of the Coast Province, or the North Eastern Province, or even parts of north Rift Valley Province, know that when we go there in aeroplanes, the local people there normally say of us: "These are the people of Kenya." Forty-five years after Independence, we still have people in some parts of Kenya who feel that they do not belong to Kenya.

*[Mr. Deputy Speaker left the Chair]*

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

The repeal of this law will go a long way in ensuring that people in those parts of Kenya feel that they are Kenyans. For the sake of the younger people in this House, I would like to clarify that the reasons as to why this law came into being is that after Independence, there was the *Shifty War*. Those of us who were in Nairobi felt threatened by what was happening in those parts of Kenya, which had been the Northern Frontier districts. It was for that reason, amongst others, that this law was introduced.

Mr. Temporary Deputy Speaker, Sir, it does not make sense, therefore, to continue having this law in our statutes 45 years after Independence, when those regions have become part and parcel of the larger Kenya. People from those areas are now senior members of this Government, unlike during that time. They participate in the public sector. They participate in the economic sector. They even feel Kenyan. In fact, if you go to parts of Nairobi, you will know how much contribution some people from those areas have made to the economy of this country. It is, therefore, important that this law is removed from our statute books, and that the communities of those areas feel Kenyan.

It is for that reason that I support this Repeal Bill. I want to thank my friend, Amb. Affey, for bringing this Bill to the House. These are some of the laws that should get out of our statutes, once and for all. When the Truth, Justice and Reconciliation Commission (TJRC) was created by this House, most people thought that we were only addressing the problems that occurred following the 2007 General Election. There was a feeling that we should only be addressing the issues of post-election violence that happened in December, 2007/January, 2008.

Mr. Temporary Deputy Speaker, Sir, many of us who do not come from the northern part of Kenya have not realised that people in that area also need to have a chance to make representations to the TJRC and receive a fair hearing. When this Bill passes into law, it will help people in those areas, just like those of us who were affected by the post-election violence. They will feel Kenyan, because their grievances will be listened to. So, the passage of this law will help to make all of us feel Kenyan. If we delay the passage of this Bill, and people in those areas do not get this golden opportunity to make their representations before the TJRC, one day, it will give us a problem. We have a golden opportunity for everybody in Kenya, who wishes to be heard, to talk. It is for that reason that I support this Bill.

May I also encourage Kenyans serving in the public sector who may get transferred to those areas, to prove that those are parts of Kenya. Quite often, when people are transferred to serve in those areas, they feel that they are being punished. Let us have a positive attitude. After all, oil is about to be discovered in those areas. Those areas have huge economic potential and we have a new Ministry dedicated to those areas. I want to urge those of us who have never been to those areas and who feel that working there is a punishment, that some of the best places to work, in the coming years, are those parts of northern Kenya, which have been neglected over the years.

With those remarks, I beg to fully support this particular Repeal Bill.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Yusuf Haji, you will be responding on behalf of the Government.

Please, proceed!

**The Minister, of State for Defence** (Mr. Y. Haji): Mr. Temporary Deputy Speaker, Sir, on the outset, I want to applaud my brother, Amb. Mohamed Affey, for having the foresight of bringing this Bill to the House to do away with the Indemnity Act, which has been in existence for several years.

Mr. Temporary Deputy Speaker, Sir, it is very unfortunate, and this law should have been repealed yesterday or in the yesteryears but not today. While hon. Members have the right to complain about atrocities, which are acts committed by the security forces, I would rather put the blame on the leaders of those days, because they were the ones who created this unfortunate law which gave rise to whatever happened. History will judge. Most of the Members of Parliament who passed this law in those days, are the ones who have been running around in the City of Nairobi, calling for change; they have forgotten that change should have started with them at that time when they were passing this law aimed at a certain region in this country and particular people.

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

*[Mr. Deputy Speaker resumed the Chair]*

We talk about the injustice that was done to our brothers during the struggle for Independence. This matter is now going to court in the United Kingdom. It is very unfortunate that while we talk about reforms in this country, we forget that some of the reforms should have started with removing this kind of draconian law, that discriminates against citizens of this country, from our statute books.

Mr. Deputy Speaker, Sir, we know that a lot of injustices were done during the colonial time. Those were people who ruled this country without the mandate of the people of this country. Unfortunately, when this Act was being passed, those who were ruling the country at that time, had the mandate of Kenyans. Their major role should have been to protect each and every individual.

We know that at that time, there was shifta activity, but I can say here that more than 95 per cent of the people of northern Kenyan were against the shifta activities. I say this with confidence, because I know that my father played a big role in ensuring that everything was done to do away with the activities of shiftas. When the people of northern Kenya boycotted participating in elections, it was my father who spearheaded participation in the election. It was his party, the Northern Frontier Democratic Party, which took all the senate and parliamentary seats and eventually he became the president of the regional assembly there. So, when I stand here to speak I know what has been happening in this country. With those few remarks, I beg to support.

**Mr. Deputy Speaker:** That is fair enough. We will now call upon the Mover to respond.

**Mr. Affey:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to respond. First of all, this is a great day, not only for this Parliament, but also for the

country. I want to begin by thanking the following Members of Parliament who, out of patriotic duty, found it fit to support this Bill.

I want to thank Mr. Gitobu Imanyara, Mr. Moses Wetangula, Ms. Shakila Abdalla, Mr. Eugene Wamalwa, Mr. Muthama, Eng. Mahamud, Mr. Ababu Namwamba, Mrs. Sophia Noor, Prof. Kamar, Prof. Kaloki, Mr. Nyagah and Mr. Yusuf Haji, the Minister of State for Defence. All these Kenyans found it necessary to support this Bill.

Mr. Deputy Speaker, Sir, this country has come a long way. I want to thank this Parliament and the Chair. I know the Chair himself being the Deputy Speaker and Member of Parliament from the region that is really affected will have been ready to contribute to this debate. But he has been performing a very important function of presiding over this event. I am sure the people of Lagdera Constituency and the people of North Eastern Province are happy that this historic day has been achieved because this Parliament is in the correct frame of mind, using the hon. Wetangula's language. The frame of mind of Parliament in 1970 is different from the frame of mind that we have today.

Mr. Deputy Speaker, Sir, some leaders who passed this retrogressive law are still alive. I have in mind fellows like the former Attorney-General, hon. Charles Njonjo. Mr. Njonjo stood on the Floor of the House to move this retrogressive law. I am glad he is alive and walking in the streets of Nairobi. He will be able to realize that the Tenth Parliament has risen to the occasion to repeal the retrogressive law.

Mr. Deputy Speaker, Sir, we need to change the frame of mind of the Kenyan people. We have the potential to grow this country to the heights it wishes to grow. If you travel from Nairobi all the way to Mandera, it is a shame that after Garissa we do not have a tarmac road. It is a mindset that has informed subsequent governments that this place called the northern part of Kenya, there is nothing, except problems. I am glad that this House is able to understand that every inch of Kenya is as important as every other part of this country.

We have established the Truth Justice and Reconciliation Commission (TJRC) in order for the truth to be said. We will never support insurgence of any form. The Act targeted even ordinary Kenyans who were doing their daily businesses. It gave a blank cheque to our security officers to do anything they wished, even to an ordinary person who was loyal to the country. There were killings, maiming and raping. That very Kenyan had no recourse to law and yet the Constitution protects him.

Mr. Deputy Speaker, Sir, I want to plead that this Bill should be enacted. I am happy that the Vice-President and Minister for Home Affairs is here. Parliament, in its own wisdom today, has supported this Bill. None of the hon. Members who contributed contradicted the spirit and letter of this Bill. They all want it to be repealed. I want to plead that once we move from this stage, it will go to the Committee Stage, and I do not see any problem there. I plead with the Cabinet to appeal to the President to assent to this Bill quickly, so that we delete it from our statutes. Then we will allow the TJRC to visit the province. I want to have an opportunity to appear before the Bethuel Kiplagat Commission. I want to plead with those Kenyans who want this Commission disbanded or its Chairman to step aside, to support it. For the first time in this country, we have an opportunity where Kenyans can have a commission that will listen to them. If we lose this golden opportunity, we may never have a situation where the truth will be known.

Let all of us give the Chairman and the Commission an opportunity and hear them. We want to tell Kiplagat, for instance, that some of the accusations have been that he was in Wajir the week before the Wagalla Massacre but he has denied it. However, when we get an opportunity we want to ask him, "Mr. Chairman, were you part of that scheme?" He will have an opportunity to tell us; "NO", which he has already said. We will then say that this is what happened on this day.

Mr. Deputy Speaker, Sir, the Wagalla massacre, Garissa in 1980 and Mandera in fact go outside the Bill itself. It is only the security system that uses the spirit of the Bill. The spirit says, collective punishment or punishment irrespective of whether somebody is innocent or guilty of any offence. This is what has subsequently been used over the years.

Therefore, we want to give those Kenyans an opportunity to appear before the Commission and say, in 1980, 1964, 1984, 1990 and all the years, these are the things that happened which go against the spirit of our Constitution, which protects the right to life of every Kenyan in this country.

After that we want the Truth Justice and Reconciliation Commission (TJRC) to document those facts. In fact, one of the reasons we want to appear before the TJRC or we want to ask those victims to appear before the TJRC is for the country to know exactly what happened. As leaders, many of us might not even know exactly what happened. If the TJRC is given an opportunity, the first thing is that we will get a historical documentation.

Mr. Deputy Speaker, Sir, our people are forgiving. No Kenyan in his right sense wants to keep bitterness. People want to move on but there must be an opportunity to close the chapter and then move forward. The country will be richer if it knows its history. We are going through a new Constitutional dispensation which will give us an opportunity to throw out all the laws that we have now and completely replace them with a new set of Constitution.

The other thing that should be done is for the Government to determine the following. If this is what happened, how can we close the chapter by way of compensation? There are those whose livelihoods have been affected by the security forces action. Can you imagine a camel herder or a normal pastoralist who, in 1960, lost everything he had through air raids by security forces in search of insurgents? The ordinary person lost everything. Today, they are poor not because they wish to be poor but because of actions of the Government. There are those men whose private parts were mutilated and they cannot give birth. These men are still alive. How can they forgive the Kenyan security forces? They were innocent because they had not committed any crime but that is what happened to them. They have no possibility of getting offspring because the security forces interfered with their private parts through harassment and torture. How can they forgive the security forces and say they belong to a country called Kenya?

Mr. Deputy Speaker, Sir, we want these people to appear before the Commission, say their bit of the story, we document it as a country, we compensate where due, we ask them to forgive, we ask those officers who are alive and were allowed to do anything they wanted to do because the law protected them--- How in your wisdom do you rape a pastoralist girl because the law is for public safety and security? Those who were raped are there. In fact, I was not born at that time but we have been told stories about young girls who were raped by security forces in the bush and the offspring do not resemble the other children in the family. It is very clear from the mixing of blood that the young men

or young ladies are not from that locality. They were born as a result of security forces getting access to what they should have not gotten access to in the first place.

This is the truth about Kenya. The country called “Kenya” is rich. Let us not destroy it. I happen to have been an ambassador, and I am glad I worked with the Vice-President and Minister for Home Affairs briefly as Kenya’s ambassador to Somalia. In that country people speak the same language and practice the same culture and religion but the politicians were so reckless. They could not forgive each other and allow the state to continue. They wrecked it and all of them ended up in refugee camps. Somalia was lost 20 years ago and they cannot get it back, despite having one religion, one culture and one physical appearance. What do you think would happen if we lost Kenya through the recklessness of politicians? What I know is that this law currently is in the statutes books. Students of law have an opportunity to access it as they learn. Law students from North Eastern have an opportunity to access it as they learn. They will ask: “What happened that a country could allow a law like this to remain in our statute books?” Then they go out of Law School with bitterness that actually the state discriminated against their community. So, when we remove it, there is no possibility of anybody in the School of Law to look at it as a law of Kenya.

Mr. Deputy Speaker, Sir, this country is bigger than all of us and there is enough space for everybody. If we destroy it, leave alone 20 years, we might never get it back again because of the diversity we have. How many languages do we have? In Somalia it is only one language. Here, we have almost 50 languages. How many religious affiliations do we have? How many ethnic groups do we have if we fight towards ethnicity? I am glad that we have found an opportunity to close this chapter to make sure that never again will this Parliament discriminate against any part of Kenya in any law it passes.

Mr. Deputy Speaker, Sir, therefore, I want to appeal to the people in the affected districts to appear before the Truth, Justice and Reconciliation Commission because the law is gone. There should be no excuse now that Parliament has said “yes” to the repeal of the Indemnity Act, of not appearing before Amb. Kiplangat’s Commission and saying the bits you have and let it be documented. Let us ask those officers who are alive to appear. For those who are dead, they will ask God to deal with them in the way He deals with those who commit crimes on earth. But let us close the chapter once and for all, so that this country can reconcile itself to being one united family.

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

**Mr. Deputy Speaker:** Under normal circumstances, the Chair would not record its own support for a Bill, but this is one Bill that the Chair is happy about.

*(Question put and agreed to)*

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

**ADJOURNMENT**

**Mr. Deputy Speaker:** Hon. Members, there being no other business for the remainder of the day, the House is, therefore, adjourned until Tuesday, 13<sup>th</sup> April, 2010, at 2.30 p.m.

The House rose at 6.10 p.m.