

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 6th April, 2010

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

TREASURY'S PLAN TO RAISE MONEY FOR EMERGENCIES

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

(a) Could the Minister confirm to the House how Treasury plans to raise money for the growing list of emergencies, given that the process of the sale of the Consolidated Bank of Kenya has run into trouble after a group of investors moved to court to block it?

(b) What stake does the Treasury (together with the Deposit Protection Fund) own in the bank and what percentage had been earmarked for sale in the 2009/2010 Financial Year?

(c) Is it true that proceeds from the sale were to help plug the Kshs168 billion budget deficit in the 2009/2010 Fiscal Year and that Treasury had projected to raise Kshs6 billion from privatization by June 2011 and, if so, what will happen in the event that the Court case succeeds?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Government will raise money for emergencies through rationalization of budgets of various Ministries, implementation of expenditure cuts across the board, including reducing funding to projects whose absorption capacity is low and increase domestic borrowing.

(b) The Treasury does not directly own shares in the Consolidated Bank of Kenya, but owns 50.2 per cent through the Deposit Protection Fund, this being Treasury's contribution that went into establishing the bank. There is no definite percentage of the Treasury shareholding in the bank that has been earmarked for sale in the 2009/2010 Financial Year.

(c) The proceeds from the sale of the Consolidated Bank of Kenya were not part of the privatization receipts that were envisaged in the Financial Year 2009/2010 Budget Framework. The outcome of the court case will, therefore, not affect the Government's financial operations.

Mr. Pesa: Mr. Deputy Speaker, Sir, the Assistant Minister has given a very good answer. However, he says that 50.2 per cent of the money which was under the Deposit

Protection Fund was given to the Treasury by the Consolidated Fund. In addition, he says the Treasury does not directly own any money in the Consolidated Fund. I do not understand that aspect. Could he explain it further because 50.2 per cent was given by the Treasury when this bank was being initiated?

Dr. Oburu: Mr. Deputy Speaker, Sir, the Treasury invests directly in parastatal-owned companies and these are investments which are made through subsidiaries or through other funds. As I have explained, the Treasury, therefore, does not directly own those shares, but through the Deposit Protection Fund.

Mr. Koech: Thank you, Mr. Deputy Speaker, Sir. I appreciate the answer from the Assistant Minister. He has put it very clearly that this was not part of the Budget for 2009/2010. If these proceeds were not meant to support the Budget during that financial year, what informed the decision to sell the Consolidated Bank of Kenya?

Dr. Oburu: Mr. Deputy Speaker, Sir, the Government is divesting. This is a policy of the Government for very many years. When shares of the Government in a given parastatal are sold, they are not necessarily meant to support the deficit in the Budget. Some time we use the funds to reduce our domestic borrowing which has a very heavy charge on our funds. It is very expensive money.

Mr. Okemo: Mr. Deputy Speaker, Sir, we have heard a variety of statements being made by different Ministers of Government about privatization of different sectors, including the sugar industry. I would like to know from the Assistant Minister when the Office of the Deputy Prime Minister and Ministry of Finance will present the privatization programme to the Departmental Committee on Finance, Planning and Trade as it is provided for under the law? We have been waiting for this for a long time. We get many statements indicating that privatization is going on. Yet, it is a requirement of the Privatization Act that we, as a Committee, must be told about any intended privatization of a Government body before it is done.

Dr. Oburu: Mr. Deputy Speaker, Sir, the privatization programme, before it is brought to Parliament, must be approved by the Government internally. Already, there are quite a number of them lined up. Once the Cabinet confirms them, they will be promptly presented to the Committee on Finance, Planning and Trade as required by law.

Mr. Okemo: On a point of order, Mr. Deputy Speaker, Sir. We are aware that Ministers who belong to the Cabinet where these decisions are made have said publicly that the Cabinet has passed the privatization, particularly of the sugar sector. So, is the Assistant Minister in order to misinform this House that the Cabinet will first pass this decision before they come to the Finance, Planning and Trade Committee, while, in fact, the Cabinet has already done so?

Dr. Oburu: Mr. Deputy Speaker, Sir, what I know is that we, as a Ministry, have prepared a Privatization Programme and a Cabinet Paper which we have presented. However, I am not aware of the statements by those Ministers.

Mr. Ngugi: Thank you, Mr. Deputy Speaker, Sir. For a number of years now, the Government has just been selling parastatals to raise money to bridge the gap in the Budget. When all these parastatals are sold, how will the Office of the Deputy Prime Minister and Ministry of Finance bridge the gap as this seems to be an ill advised way of raising money to bridge the gap in the budget?

Dr. Oburu: Mr. Deputy Speaker, Sir, in fact, in future, we do not intend to include the sale of parastatals or privatization to bridge the gap in the Budget. This is

because the privatization process, at times, takes time. It becomes very disappointing when we budget for a parastatal to be sold and it is not sold. For instance, in the current Budget, we had included Kshs6 billion for the sale of the National Bank of Kenya and Sony Sugar Mills. Unfortunately, it will not be possible for us to realize these funds before the end of the financial year. In future, we will not be including them because they are just a stop-gap measure. They are something which we cannot rely on, just as the hon. Member rightly said.

Mr. Ogindo: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has said that one of the ways of managing such a deficit is to engage in expenditure cuts and avoid projects that are not going to start in the name of budget rationalisation. Does the Ministry believe in their budget as they present and also, that at some point they want to engage in budget rationalisation through budget cuts and through avoidance of projects that are already in the budget, and yet Kenyans are looking forward to their implementation?

Dr. Oburu: Mr. Deputy Speaker, Sir, we fully believe in the budget that we present to Parliament, but there are many factors that affect the non-implementation of projects, including very long procurement procedures, some of them involving even litigation which then delay the implementation of these projects. We reallocate funds because of unforeseen circumstances and the other reasons are the emergencies. For instance, we have to divert money to deal with emergencies such as floods which have now destroyed a lot of infrastructure. We have to find ways of cutting on some of our current expenditures, not necessarily projects, but we have to adjust our budget in order to meet some of these emergencies which were not foreseen. There is nothing to show that we do not believe in the budget we present here.

Mr. Ogindo: Is the Assistant Minister in order to talk about reallocation in budget when we are asking about the deficit mitigation?

Dr. Oburu: Mr. Deputy Speaker, Sir, the Question he asked was about adjustment. He asked why we adjust budgets on projects which wananchi are expecting and, therefore, we might not believe in our budget. That is the Question he asked and that is the Question I answered.

Mr. Pesa: Mr. Deputy Speaker, Sir, I think the youth are really wondering about the trend of sale of parastatals and other assets that this country acquired some time back. Could the Assistant Minister assure Kenyans here and now, that he will stop the sale of these parastatals with immediate effect now that we are going on with the budget process making?

Dr. Oburu: Mr. Deputy Speaker, Sir, the issue of privatization of parastatals and divestiture from Government doing business is a Government policy. We are not about to abandon the policy and, therefore, I cannot assure the House that we are not going to continue with the sale of our shares in some of these parastatals.

Mr. Deputy Speaker: Next Question! I understand Dr. Khalwale is out of the country on official Parliamentary business. So his Question by Private Notice is deferred to a date when he is around.

HIKING OF SUBSCRIPTION CHARGES BY
MULTICHOICE (K) LIMITED

(Dr. Khalwale) to ask the Minister for Information and Communications the following:-

(a) Is the Minister aware that Multichoice (K) Limited has 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 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 South Africa?

(Question deferred)

FATAL STABBING OF NAKINI LEMOYOG/LMAINO
LEKOLOI BY ADMINISTRATION POLICE

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

(a) What were the circumstances under which Administration Police officers based at Wamba stabbed to death one Nakini Lemoyog and fatally wounded Lmaino Lekoloi at Kirish area of Uaso Division along Archers Post- Merille Road on 24th March, 2010?

(b) What prompted the officers to force the two herds boys to take a poisonous chemical and what was the nature of the chemical?

(c) What disciplinary action has the Minister taken against the concerned officers and when will the two sheep confiscated by the officers from the boys be returned to the owners?

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

(a) On 25th March, 2010, one Lolita Lekoloi reported at Archers Police Post that his son Lmaino Lekoloi aged 18 years came home bleeding from the neck. He informed him that they had been attacked while walking home by people who were in an Administration Police Land Rover believed to be from Rapid Deployment Unit in Wamba. He managed to escape after sustaining a cut wound on the neck leaving behind his friend Nakini Lomoiyok. When police visited the scene, they found Nakini Lomoiyok dead. Lmaino Lekoloi was rushed to hospital and admitted in fair condition. An inquest file No. 3/2010 has been opened.

(b) Investigations are underway to establish if any poisonous substance was taken by the victims. Specimens samples were taken from the body of the deceased during the post-mortem on 29th March, 2010 and the same were taken to the Government Chemist, Nairobi, for analysis. We are waiting for the results which are likely to be out any time soon.

(c) I have not taken any disciplinary action since the investigations are ongoing to establish the actual assailants. We are waiting for one of the victims to start talking to be able to assist in the investigations. The sheep are yet to be recovered as at now.

Mr. Deputy Speaker: Mr. Letimalo!

Mr. Letimalo: Mr. Deputy Speaker, Sir, on the fateful date, it was about 12.00 noon when the Administration Police officers met these two boys as they were leading two sheep to their home. They were beaten by the officers, forced into their vehicle and then they were taken to a bush where they were forced to take poisonous chemicals. The boy who survived had his heels burnt. I think the boy was stabbed after resisting and refusing to take the poisonous chemical. One of them was stabbed and killed instantly. What was the motive of forcing these boys to take the poisonous chemical?

Mr. Ojode: Mr. Deputy Speaker, Sir, I do not want to speculate the motive. This is a serious matter and we are going to take action against those who were involved. I would request the questioner, Mr. Letimalo, to give us time for the investigations to wait for results to come in order for us to discipline those who were involved in this heinous act.

Mr. Deputy Speaker, Sir, I want to promise this House that we are not going to leave any stone unturned. It is quite absurd to force somebody to take a chemical. I do not believe in the 21st Century, a police officer can force anybody to take chemical substances. I would urge the hon. Member to let the investigation reports come out in order for me to take action. Already, we have taken the specimen samples to Government Chemist. We are just waiting for the analysis. Once this is ready, then we are going to act. I promise this House that we are going to act with the full force of the law.

Mr. Olago: Mr. Deputy Speaker, Sir, the Question touches on an issue of murder. One young man has died and from the words of the Assistant Minister, he has accepted the explanation from one of the victims that the suspects were in an AP Land Rover from Wamba. By now, while further investigations are being carried out, all or some of those APs should have been charged with murder. Why has this not happened?

Mr. Ojode: Mr. Deputy Speaker, Sir, It would not be fair for people who are stationed at Wamba to the tune of 38 officers to be charged with murder. That is why we have opened a file for inquiry and urge that we let the law take its own course. Let the investigations be done and I will plead with my colleagues to let the law take its course. We have opened an inquiry file and once this person recovers, we are going to parade all those fellows who are at Wamba Police Post and the guy will be able to identify one or two officers who were involved in this act. We will take action.

Dr. Nuh: Thank you, Mr. Deputy Speaker, Sir. It has become a normal clause under which the Ministry of State for Provincial Administration and Internal Security, always to hide under the fact that an inquest file has been opened. In March, 2008, two people were shot at by police in the Chardende area of Bura Constituency. Since then, despite several letters to the Ministry, they have always been claiming that an inquest file has been opened. So could the Assistant Minister tell us what is the benefit of opening

inquest files which are never closed, which are never concluded and what is the average time within which an inquest file should be concluded?

Mr. Ojode: Mr. Deputy Speaker, Sir, under normal circumstances, once we get some information about fellows who have committed a crime, we move with speed to arrest them. For instance, you are aware that we are implementing police reforms. These are some of the reasons why we are implementing these reforms. We will not transfer a police officer who has done something wrong from another district to another district to continue committing those criminal activities. I am only left with one alternative which is to dismiss such officers. You will not see them being transferred from one place to another. I want to assure my colleagues that once the implementation of the police reforms start, several police officers who are implicated in criminal activities will be dismissed from the police force. However, they are just two or three fellows and they are not very many. The 40,000 plus police officers are doing a commendable job. I want my colleagues to help me to support the officers who are doing a commendable job. I want to assure the House that we will start implementing the reforms and we will get rid of those bad officers.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to deceive this House because every Kenyan knows that it is a normal practice for the police to transfer their fellow colleagues whenever---

Mr. Deputy Speaker: Order, Dr. Nuh! Ministers do not deceive this House. They mislead the House and this should not be the case!

Dr. Nuh: Mr. Deputy Speaker, Sir, I withdraw that word in that context and replace it with "mislead".

Mr. Ojode: Mr. Deputy Speaker, Sir, when my friend talked to the Assistant Minister called "Ojode"--- I do not mislead or lie to the House. I have said that we will implement the reforms and get rid of the police officers who are tarnishing the good name of the Police Force. I want to assure this House that that is exactly what we will do. We will also retrain police officers so that they can do a good job.

Dr. Eseli: Mr. Deputy Speaker, Sir, the Administration Police (AP) has been reputed to be disciplined over the years. However, in the recent past, incidents involving the AP have become too many. Even last week, about four people died in Kimilili Constituency following incidents related to the indiscipline of the AP. What will the Assistant Minister do to instill the discipline that has been lost in the AP, including changing the recruitment procedure which has deteriorated to the extent of the Kenya Police? That is why indiscipline is creeping in.

Mr. Ojode: Mr. Deputy Speaker, Sir, I am not aware of a case in the hon. Member's constituency where three or four people were killed. If at all there was an incident like that one, I do not think it involved the APs.

We have a force of 40,000 plus officers and not all of them are bad. One or two of them will have a weird kind of thinking. That is why we will retrain both the APs and the regular police officers. As has been mentioned earlier on, the officers have been doing a commendable job. I still believe that the APs and the Police Officers are doing a commendable job, save for one or two officers. The implementation of the police reforms will get rid of these fellows. I vouch that the majority of the regular police officers and the APs are doing a commendable job and I want them to continue doing the same.

Mr. Letimalo: Mr. Deputy Speaker, Sir, I appreciate the promise given by the Assistant Minister that after investigations they will arrest the suspects. I seek the indulgence of the Chair on this matter. Since the station where these APs are based is known and the day the incident took place is known, could I request that the Assistant Minister be compelled to give us an update of the investigations in two weeks' time to ensure that the culprits are arrested?

Mr. Ojode: Mr. Deputy Speaker, Sir, that is a good suggestion. I have no problem in giving updates on what we have so far done on the ground. I can do that in a month's time. That is okay.

ARREST OF AGIKUYU CLAN ELDERS
BY ADMINISTRATION POLICE

(Mr. Gitau) to ask the Minister of State for Provincial Administration and Internal Security:-

Under what circumstances did Administration Police officers arrest the nine Agikuyu clan elders, parties to case No.HCC 71/2006 at Embu who are opposed to the illegal settlement on land LR No.13963 at Ngariama Settlement Scheme, and later released them without charge?

Mr. Deputy Speaker: Hon. Members, hon. Peter Gitau is out on medical treatment and has communicated the same to the Chair. The Question is, therefore, deferred to a day when the Member will be in the House to prosecute the same.

(Question deferred)

NON-OPERATIONALIZATION OF KITUI
WEST CDF ACCOUNT AT EQUITY BANK

Mr. Nyamai: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Planning, National Development and Vision 2030 the following Question by Private Notice.

(a) Why has the Kitui District Accountant refused to facilitate the use of the CDF Kitui West account at Equity Bank, Kitui Branch?

(b) What is the Minister doing to ensure that the Accountant uses the bank account, considering that the constituency CDF account has now been rendered inoperational?

The Minister for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Deputy Speaker, Sir, I beg to reply.

Upon request by the Kitui West CDF Committee, I gave authority for the Committee to open an account at Equity Bank, Kitui Branch as required by the CDF Act. However, Kitui West CDF Committee forwarded documents to the bank to open the account without the District Accountant's signature.

The account was, therefore, opened but could not be operationalized without the mandatory signature of the District Accountant. I have followed up the matter and I can now assure the Member of Parliament that necessary action has been taken and the account is now operational.

Mr. Nyamai: Mr. Deputy Speaker, Sir, I would like to thank the Minister for his answer. Obviously, most of the Members of Parliament who are here do not have the benefit of the discussion we are having with you. However, with the indulgence of the Chair, this is an issue that I raised on 13th August, 2009. After the CDF Committee had struggled with the District Accountant to open an account with Equity Bank and he refused, I came to the Floor of this House and the Minister gave us a letter to go and open the account.

Seven months down the line, the Accountant has refused to open the account. So, what we did was to go to the bank and open the account. We did our bit and left him to do his at his own time. Could the Minister confirm that the District Accountant, indeed, went to open the account this morning after he got a letter from the Treasury instructing him to do so? He got a note from the Minister's office.

Mr. Oparanya: Mr. Deputy Speaker, Sir, I agree that when the accountant got my letter, he was not sure that I had signed that letter. He needed clarification from the CDF Board because he could not write to me. The Board replied to say that I had actually given authority for that account to be opened.

Mr. Deputy Speaker, Sir, the problem was that the Kitui West CDF Committee opened the account without involving the District Accountant. That is how the problem started. So, he felt that being a mandatory signatory, he should have been involved from the beginning. So, that is where the problem was, but it has been sorted out. I do not know whether the hon. Member has any other problem. I have a letter with me from the Accountant-General, dated 31st March, 2010, confirming that the letter written by me is acceptable according to the Act.

Mr. Joho: Mr. Deputy Speaker, Sir, it has become a habit of District Accountants to attempt to centralise these funds and decisions that were de-centralised, for the committees to decide on behalf of the constituencies they manage. What measures is the Ministry putting in place to ensure that once the committees take decisions after thorough consultations, those decisions are implemented?

Mr. Oparanya: Mr. Deputy Speaker, Sir, the Act is very clear that if you need to change an account, there must be a minute by the CDF committee to that effect. As soon as there is a minute, you will require a letter from the Minister. So, the letter from Minister, plus the CDF committee minutes, must be forwarded to the bank before an account is opened. If you follow that procedure, I do not see how you will have a problem. Furthermore, I have not had any hon. Member coming to me to complain that he has had a problem to that effect.

Mr. Nyamai: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to mislead this House? All that he is saying is that the Kitui West CDF Committee did comply. I brought this Question to Parliament in August, 2009, but nothing has been done to our account. Is it in order for him to mislead the House?

Mr. Oparanya: Mr. Deputy Speaker, Sir, I am not misleading the House. Kitui West CDF Committee forwarded the minutes without the signature of the District Accountant. The District Accountant is the mandatory signatory. In fact, the bank made a mistake to open that particular account because the signature of the mandatory signatory was not there.

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

Mr. Deputy Speaker: Do you want to raise a point of order or ask a question? It had better be a point of order!

Mr. Koech: Mr. Deputy Speaker, Sir, you have heard the Minister rightly put it; that he wants the minutes of the CDF Committee signed by the District Accountant, who is not a member of the CDF Committee. Is he in order to mislead the House?

Mr. Deputy Speaker: Order, Mr. Koech! The Minister did say that the District Accountant is a mandatory signatory to the account of the CDF; not the minutes. Did you say the minutes, Minister?

Mr. Oparanya: Mr. Deputy Speaker, Sir, the basic procedure of opening an account is that you forward the minutes, plus the signatory card from that bank attached. The signatories are supposed to sign the card and have it attached to the minutes. That is what I said. The District Accountant must have signed the bank's signatory card for that card to be attached to the minutes. First of all, you cannot open an account without the required signatories.

Mr. Mbadi: Mr. Deputy Speaker, Sir, even though the Minister is struggling hard to defend the District Accountant's action, listening to him and the Member of Parliament who asked the Question, this issue arose in August, 2009. For you to be allowed to open an account, there must be minutes. What was missing is simply the specimen signature of the District Accountant. How come it took this District Accountant, who is a resident of that district, all these months to just send a specimen signature to the bank, if this is not sabotage?

Mr. Oparanya: Mr. Deputy Speaker, Sir, I think the hon. Member came in late. So, he never heard what I said from the beginning. Furthermore, I am not struggling to answer the Question. Let me assure him on that one. I said that it took time. The CDF Committee of Kitui West made a mistake in the first place. They forwarded the minutes without the specimen signature. The bank also made a mistake---

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

Mr. Deputy Speaker: Mr. Mbadi, can you wait until the Minister explains himself? What is out of order?

Mr. Mbadi: Mr. Deputy Speaker, Sir, the Minister is deliberately refusing to understand my question.

Mr. Deputy Speaker: Order! Order, Mr. Mbadi! When you rise on a point of order, something must be out of order. The Minister is still trying to explain himself. He has not even completed explaining himself. Can you wait until he fully explains himself and then you can rise on a point of order?

Mr. Oparanya: Mr. Deputy Speaker, Sir, the Member of Parliament is complaining that it took a long time, from August, 2010 to date. I have explained that from the start, Kitui West CDF Committee forwarded minutes to the bank without the specimen signature of the District Accountant. That was the first mistake. The second mistake is that Equity Bank opened the account without the specimen signature of the mandatory signatory. It took time to correct those two mistakes. I have now told you that they have since been corrected.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. That is why I think the Minister did not want to answer my question. Once the account was opened without the specimen signature of the District Accountant, how come it took that period of time? Why could the District Accountant not just send his signature and the bank would

automatically have recognised it. Why did it take all that time? Why are you refusing to answer my question, Minister?

Mr. Deputy Speaker: What is out of order on the information he gave right now?

Mr. Mbadi: Mr. Deputy Speaker, Sir, what is out of order is that the Minister is trying to evade the question.

Mr. Deputy Speaker: Order! Order, Mr. Mbadi!

Mr. Olago: Mr. Deputy Speaker, Sir, the question that I wish to ask the Minister touches on the fundamental provisions of the CDF Act. Kisumu Town West Constituency has been having a more or less similar problem from August, 2009. It forced me to write a legal opinion of the requirements of the Act. The CDF Act simply requires that the Chief Executive Officer (CEO) be supplied with the Minutes of the CDF Committee. That should be all. There is no provision in the CDF Act for the Minister to confirm or authorise. If there is, could the Minister tell this House which section of the CDF Act provides that the Minister must authorise?

Mr. Oparanya: Mr. Deputy Speaker, Sir, my colleague here is a lawyer, and he knows very well that previously, the CDF was under the Ministry of Finance. During that time, the signature of the Minister for Finance was required for purposes of opening an account. Unfortunately, I do not have the CDF Act here. If you have it, could you read Section 45(1)? It says clearly that, for proper control of the opening and closing of the accounts, you need the authority of the Minister. The Members of the CDFC are here. They can confirm that position.

Mr. Deputy Speaker: Last question, Mr. Nyamai!

Mr. Nyamai: Mr. Deputy Speaker, Sir, the Minister has just confirmed about Section 45 and he is asking about members of the CDF committee and I am one of them. I am fairly conversant with it. Could the Minister confirm that he still has that authority? He has just read a letter to us right now from the Ministry of Finance telling the District Accountant (DA) to open the account? So, who is in charge? Is it this Minister or the Minister for Finance?

Mr. Oparanya: Mr. Deputy Speaker, Sir, the CDF Act came into operation in 2004. It was again amended in 2007. So, following the amendment in 2007, the CDF was moved from the Ministry of Finance to the Ministry of Planning. So, now it is under the Ministry of Planning. When there is change, you will appreciate that there are hiccups. Hiccups have been there and they are being sorted out. In fact, we are coming up with another amendment to the CDF Act as required by the old CDF Act.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. In answer to my question, the Minister referred to Section 45 as giving him authority before accounts can be opened. I told him that that is not my understanding of the provisions. The Minister is misleading the House. Section 45 of the Act only allows the Minister to approve a list of banks. Once he has approved the list of banks there is no further approval required. He is out of order.

Mr. Deputy Speaker: I thought the Minister said it is to be moved from one bank to the other.

Mr. Olago: No, Mr. Deputy Speaker, Sir. What I was saying was, since the Minister does not appear to understand it quickly, that Section 45 authorizes him to approve the list of banks. So, once the committee has decided to open an account in any

one of those banks which he has approved he does not need to give any further approval and he has got no powers to do it.

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

Mr. Deputy Speaker: Do you need the information from Mr. Imanyara?

Mr. Oparanya: No. I can provide the information. I read to you the section that I quoted.

“For the purposes of disbursing of funds under this Act, there shall be opened and maintained a constituency account for every constituency at any commercial bank, approved by the Minister, into which all funds shall be kept. Such an account shall be known by the name of the constituency”.

What does maintenance mean? When you maintain the account, what does that mean? You are a lawyer, and you can tell us what that means.

Mr. Olago: Mr. Deputy Speaker, Sir, clearly the Minister is wrong, but can you allow me to have a discussion with him later on outside the House, so that I can clear his mind on this? He is clearly being misled by himself.

Mr. Deputy Speaker: In these matters you do not need my approval for you to have a session with the Minister.

Mr. Oparanya: Mr. Deputy Speaker, Sir, I do not need to be informed by the hon. Member afterwards. Let us just have our discussion here. Maintaining means operationalizing the account. That is what I know. What does maintenance mean? What does it mean when your car breaks down and you maintain it? you want it to operate. That is my understanding of it.

Dr. Nuh: Mr. Deputy Speaker, Sir. I think this will give us a serious hitch when it comes to policy matters, because this Act was not solely made by the Minister; it was made by this House. What is being maintained is the account. The Minister is just supposed to authorize the list of the banks and that is why you have an annexure there. It is not up to the Minister to go and operationalise every account. He is supposed to approve the banks. It is the work of the committees to go and open their own bank accounts. The opening of the bank accounts is solely the prerogative of the committees and not the Minister.

Mr. Oparanya: Mr. Deputy Speaker, Sir, please protect me and help me to interpret the law. He is a member of the CDF, just as Mr. Nyamai is one. He had to come to me to solve this problem. If he knew that he could open the account, why did he have to come to me?

Mr. Deputy Speaker: Next Question.

CIRCUMSTANCES SURROUNDING CONTRACT BETWEEN
XVARIAN SCHOOL/M/S SAMJOS BUILDERS COMPANY

Mr. Olago: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

- (a) Under what circumstances did Xvarian Primary School in Kisumu Municipality enter into a contract with M/s Samjos Builders Company for construction of classrooms?
- (b) What was the obligation of the Ministry to discharge the contract amount?

(c) What urgent steps is the Ministry taking to protect the school from auction by the company in pursuance of judgment in Kisumu Chief Magistrate's Court, Civil Case No.311 of 2008 for approximately Kshs3 million?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, the matter touches on issues of a legal nature and we have sought an opinion of the Attorney-General. We have not got his view yet. I have talked to the Questioner and we have agreed that he gives us up to next week, so that we can give a proper answer.

Mr. Deputy Speaker: Mr. Assistant Minister, as much as you talked to the Questioner, this is a Question by Private Notice. A Question by Private Notice is essentially a Question that has a lot of urgency. Looking at the Question itself, it has a lot of urgency and it is the property of the House. So, next week is too far. Could we have an answer tomorrow or the day after tomorrow at the very latest?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, tomorrow or the day after tomorrow is a bit too early for us.

Mr. Deputy Speaker: That is the essence of a Question by Private Notice. When you have a Question by Private Notice, you need a 48-hour notice. You need to bring that answer because the nature of that Question is urgent.

The Assistant Minister for Education (Mr. Mwatela): I do agree but the situation or the matter---

Mr. Deputy Speaker: The Attorney-General does not work alone. he works in an institution. So, Parliament takes supremacy in these things.

The Assistant Minister for Education (Mr. Mwatela): Thursday.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister actually explained to me what his difficulty is but Xvarian Primary School is under threat of auctioned. I did advise the Assistant Minister that if he wants more time he should kindly undertake to the House that by tomorrow morning, he will dispatch a letter to the auctioneers to withhold any action as he is sorting himself out. That way, I will be willing to concede to Thursday.

Mr. Deputy Speaker: Mr. Assistant Minister, the matter at hand is an urgent matter. There is a public institution that is faced with the threat of auction and that is why this Question is by Private Notice.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. Given that the Attorney-General will be here in another 20 minutes, or so, to move the Witness Protection Bill, could the Assistant Minister agree to wait until the Attorney-General comes to the House and he takes advice from him, because this is a very straightforward matter. This will enable us to save the school from auction.

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

Mr. Deputy Speaker: Fair enough. The Question is deferred and it will be the last one today.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

*Question No.075*TERMINATION OF MR. ROGIN KIDUYA'S
EMPLOYMENT

Mr. Chanzu asked the Minister for Labour:-

- (a) what led to the termination of the employment of Mr. Rogin Kiduya, who was an employee of Barclays Bank (K) Ltd stationed, at Nyamira Branch;
- (b) why he was not paid terminal dues at the time of termination of his employment; and,
- (c) what steps he is taking to ensure that he is paid what is due to him.

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

- (a) Mr. Rogin Kiduya's services were terminated on grounds of non-performance.
- (b) Mr. Rogin Kiduya was paid his terminal benefits and pensions as follows:-
 - (i) pension of Kshs844,108.05;
 - (ii) pay in lieu of notice Kshs101,787;
 - (iii) leave pay of Kshs100,459.
- (c) Mr. Rogin Kiduya was paid as per the laws.

Mr. Chanzu: Mr. Deputy Speaker, Sir, I want to thank the Minister for the answer, but I find it rather casual because in part "a" of the Question I asked what led to the termination. I would like the Minister to tell this House whether due process was followed in terminating the employment of this gentleman. What actually led to it, because we cannot just say that his employment was terminated due to non-performance? How did they arrive at non-performance? Can we have details of this?

Mr. Munyes: Mr. Deputy Speaker, Sir, the bank has not provided the actual reasons why Mr. Rogin was dismissed. But what my office was informed is that because of non-performance, the officer could not meet the target laid down by the bank. He was given a chance to prove himself severally, but could not do so. Therefore, his services were terminated.

Mr. Chanzu: On a point of order, Mr. Deputy Speaker, Sir. You have just heard the Minister say that the bank has not provided him with information on what led to this termination. Would I be in order to ask that he produces this information? This is a very important Question. These employers are sacking people left and right when they feel like doing so. Could he produce the information that led to the sacking of the officer?

Mr. Munyes: Mr. Deputy Speaker, Sir, it is difficult to produce specific information about somebody's contract or what was entailed in the performance contracting. I would not know what was actually put in that contract. After 13 years of performance, they tell us it was low performance. I would not prove because I do not know what was put down in the performance contract.

Mr. Yakub: Mr. Deputy Speaker, Sir, this Question must be taken very seriously. Mr. Rogin worked for 13 years. The Minister accepts the reason of none performance as the only reason why Mr. Robin's services were terminated. If that is the case, many

employers will take advantage of this non-performance and dismiss so many workers. Many Kenyans will suffer from this so called “non-performance” syndrome if he does not take this case seriously.

Mr. Munyes: Mr. Deputy Speaker, Sir, my Ministry is misunderstood to be a workers’ Ministry only. My Ministry entails protection of workers and employers. As we protect the workers of this country, we also need to protect employer’s capital. So, we will not accept a situation where somebody has not performed and then the Ministry goes there to protect somebody who is not performing.

Mr. Kigen: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to say that his Ministry protects both the employer and the employee and yet, he cannot satisfy this House that actually this employer failed in his responsibility and, therefore, he should have been dismissed?

Mr. Deputy Speaker: That is not a point of order. But nonetheless proceed, hon. Minister.

Mr. Munyes: Mr. Deputy Speaker, Sir, for this particular case, I would have protected Mr. Rogin Kiduya if he was not paid. However, the employment law was duly respected. He was paid pension, notice of his pay and the leave was also paid. This was respected. We, as a Ministry, try to enforce and ensure workers working specifically with employers and those under unions are actually paid within the laws.

Mr. Jirongo: Mr. Deputy Speaker, Sir, 13 years is a long time. How would a bank keep a person in employment for 13 years, if he could not perform? Is the Minister satisfied that the bank gave him a serious answer on this Question?

Mr. Munyes: Mr. Deputy Speaker, Sir, when we got this answer; my own question as per this termination was whether Mr. Rogin was given a chance to appeal. I was told he was given a chance, but he could not improve his performance. You can have good performance at the beginning, but after 13 years, you go down with your performance.

Mr. Shakeel: Mr. Speaker, Sir, the Minister says his Ministry protects employers as well their capital. Could he inform the House what action he has taken against a District Labour Officer who is corrupt and not doing his duties as required of him for the last three years? This officer is being corrupted by certain employers in Kisumu. This matter has been reported to him. The Central Organization of Trade Unions (COTU) has written to him---

Mr. Deputy Speaker: Order! Hon. Shakeel, this is a different Question. You cannot hijack hon. Chanzu’s Question and ask your Question. If you want to have a Question on the same, please, put in a Question and it will be answered accordingly.

Mr. Kizito: Mr. Deputy Speaker, Sir, I would like to know whether the Minister has interest in this matter because, in the first place, he seems to be very much harsh to the employee? He is talking about what he was told.

Mr. Deputy Speaker: Order! You are asking a Question. Do you want to know whether the Minister has any interest in this matter?

Mr. Kizito: Yes, Mr. Deputy Speaker, Sir, I want to know whether he has interest in this matter. I would like him to declare his interest.

Mr. Deputy Speaker: Hon. Minister, do you have interest to declare in this matter?

Mr. Munyes: Mr. Deputy Speaker, Sir, no interest at all. I have nothing to declare. I have the interest of the worker and the employer at my heart.

Mr. Chanzu: Mr. Deputy Speaker, Sir, I just want to say that the answer given by the Minister is not satisfactory. He has not given us any evidence to show that this man was paid. If he was paid, we want to know the mode of payment. Could he table documents to show that he was paid? I have information that he was not paid.

Mr. Munyes: Mr. Deputy Speaker, Sir, he was paid an amount of Kshs844,000. This money was credited to account 093028473. The notice of pay was credited to account No.016135542 and leave pay was also credited to account No.016135542

Mr. Chanzu: On a point of order, Mr. Deputy Speaker, Sir. I had expected that this information should have been part of the answer that the Minister was giving. Could he table this information, so that we can verify it? After that, could he also give me more time to probe him on this question?

(Mr. Munyes laid a document on the Table)

Mr. Deputy Speaker: Next Question by hon. Kaino! The Chair has been notified that hon. Ombui would be asking on behalf of hon. Kaino. Proceed, hon. Ombui!

Question No.138

POSTING OF LAND REGISTRAR
TO KAPSOWAR IN MARAKWET

Mr. Ombui, on behalf of **Mr. Boaz Kaino**, asked the Minister for Lands :-

- (a) why the Ministry has not posted a Land Registrar to Kapsowar in Marakwet; and,
- (b) when the Ministry will post the officer.

The Assistant Minister for Lands (Mr. Rai): Mr. Deputy Speaker, Sir, I beg to reply.

(a) A land Registrar has not been posted to Kapsowar because the volume of work there is not sufficient to warrant posting of a Land Registrar. In addition, no sufficient funds have been allocated for recruitment of staff to cater for the demand countrywide.

(b) Marakwet District would be considered among others once we recruit additional Land Registrars.

Mr. Ombui: Mr. Deputy Speaker, Sir, I thank the Assistant Minister for attempting to answer the Question. He has given two answers; the volume of work and insufficient funds. Taking the first one, could he state clearly the volume of work that warrants a District Lands Registrar to be posted to a specific place?

Mr. Rai: Mr. Deputy Speaker, Sir, currently, there are only 2,024 titles deeds ready for the whole of Kapsowar. However, as the adjudication schemes increase and titles are prepared, the district will be considered among others.

Mr. Koech: Mr. Deputy Speaker, Sir, issues of land are very critical to our people. We have so many districts that were created recently. The reason was to take services closer to the people. One such district is Nandi North District, Mosop Constituency. When will the Assistant Minister post Land Registrars to Mosop Constituency?

Mr. Rai: Mr. Deputy Speaker, Sir, we have availed our case to the Treasury and once it is approved, we will recruit land registrars. One will be posted to Kaspowar and we will also consider the hon. Questioner's constituency.

Mr. Deputy Speaker: Ask the last question on the same Mr. Ombui!

Mr. Ombui: Mr. Deputy Speaker, Sir, it is definite that sometimes, Ministers do not give specific answers. I believe that the Minister for Lands has extensive plan for the Ministry. Could the Assistant Minister be very clear and state when all these districts will be considered for land registrars?

Mr. Rai: Mr. Deputy Speaker, Sir, we will table our budget once the Budget is read in this House. Once we are allocated funds, we will consider all these cases because we know there are new districts where land registrars are supposed to be posted.

Mr. Deputy Speaker: Next Question by Mr. David Ngugi! The Chair notes that it noticed the presence of Mr. David Ngugi! What is happening Mr. Ngugi?

Proceed and ask your Question!

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 WuYi Company, which is already on site on the Njabini–Ol Kalou–Ndundori road.

Mr. Deputy Speaker: Is anyone here from the Ministry of Roads? That is fair enough. We will give it another chance!

Next Question by Mr. Njoroge Baiya!

Question No.102

NON-PAYMENT OF BENEFITS TO LATE
SAMUEL IKIGU KAMAU'S WIDOW

Mr. Baiya asked the Minister of State for Defence:-

(a) why Ms. Agnes Wanjiru Ikigu has not been paid any benefits in respect of her deceased husband, Samuel Ikigu Kamau (Service No. 8425); and,

(b) what action he will take to ensure the claim (File No. Mp (5456) is processed and the claimant paid.

The Assistant Minister of State for Defence (Mr. Musila): Mr. Deputy Speaker, Sir, I beg to reply.

(a) After retiring, the serviceman was paid his gratuity plus arrears of Kshs100,807.75. The serviceman had a Government liability of Kshs9,496.55 and therefore, he was paid Kshs91,311.20.

The ex-serviceman was put on monthly pension of Kshs1,512.85 with effect from 12th June 1994 through the Kiambu District Commissioner.

Mr. Deputy Speaker, Sir, the ex-serviceman died on 2nd January, 2005. However, his death was not notified to the Director of Pensions by the widow as it is normally done. The notification was done by the widow on the 14th of January 2009, four years after the death. This explains why there has been such a delay in processing the pension. It had now to be changed from the late husband to the widow. This process is ongoing.

Mr. Baiya: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for the answer he has given. As you will notice, the deceased earned low pension and the family is fully dependent on it. Many years have passed without the payment being processed. Could the Assistant Minister tell us when that will be done? He has evaded that part of the Question. When will the payment be made? That is what the widow and the family need for upkeep.

Mr. Musila: Mr. Deputy Speaker, Sir, as you are aware, I am very sympathetic to pensioners. If this widow had notified the Director of Pensions of the death of her husband, then she would have been paid by now. She did what is considered not to be in accordance with the law. She continued earning the pension of her husband for four years. She notified the Director of Pensions four years later.

Mr. Deputy Speaker, Sir, the mistake has been corrected. She has now notified the Director but there is a process of changing the pension from the late husband to the widow. I assure the hon. Member that the matter is being taken seriously and I will personally see that it is paid in the next two months.

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

Mr. Baiya: Mr. Deputy Speaker, Sir, I am satisfied although I would like to say that it was not part of the written answer by the Assistant Minister---

Mr. Deputy Speaker: Fair enough! The Assistant Minister has given an undertaking that his pension dues will be paid within the next two months. This will be reflected in the HANSARD. You can use that authoritatively to hold the Assistant Minister accountable for his undertaking.

Mr. Baiya: I will take that for an answer, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Let us move on to Mr. Dan Mwazo's Question!

Question No.151

DEATH OF GEORGINA SOPHIE NYASI
AFTER CORPORAL PUNISHMENT

Mr. Mwazo asked the Minister for Education:-

(a) whether he could confirm that a student, Georgina Sophie Nyasi, of Mwanyambo Primary School in Voi Constituency died after a teacher subjected her to corporal punishment;

(b) whether the Ministry conducted any investigations into the death

and, if so, what were the findings; and,

(c) what action he has taken against the teacher, considering that corporal punishment has been outlawed in schools.

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, I plead direct interest in the matter. The lady, Georgina Sophie Nyasi is a family member. I cannot get hold of my colleague Prof. Olweny to handle the matter. I would prefer that he handles the matter.

Mr. Deputy Speaker: That is very valid! Indeed, the Question will be put on the Order Paper at the time when your colleague can answer the same! When can that be?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, I have to establish whether he is in the country or not.

Mr. Deputy Speaker: Is he in the country or not?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, I could not get hold of him. So, I really do not know whether he is in the country or not. However, I believe the Minister, Prof. Ongeru, is in the country. You can direct that the Question is put on the Order Paper on Thursday.

Mr. Deputy Speaker: Fair enough! Is that okay with you, hon. Questioner?

Mr. Mwazo: Mr. Deputy Speaker, Sir, that is okay if it will be answered tomorrow but one.

Mr. Deputy Speaker: It is so directed that the Question appears on the Order Paper on Thursday, this week!

(Question deferred)

(Mr. Olago stood up in his place)

What is your point of order, Mr. Olago Aluoch?

Order, there is still one more Question! We have not exhausted the Questions!

Mr. Ngugi, can you ask your Question again!

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 WuYi Company, which is already on site on the Njabini–Ol Kalou–Ndundori Road.

Mr. Deputy Speaker: Is anybody here from the Ministry of Roads! Can a Minister, preferably, the Deputy Prime Minister and Minister for Local Government make an undertaking on behalf of his Cabinet colleague? Why is the Minister for Roads not here today? If he has the information himself, he can answer this Question.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I may not have the information as to why he is not here. However, may I undertake that he responds to the Question by Thursday afternoon?

Mr. Deputy Speaker: Fair enough! It is so directed! The Question will appear on the Order Paper on Thursday afternoon!

Let us move on to the next Order!

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. I had asked a Question but it was deferred to be the last one. I saw Mr. Wako walking into the House and saw him consult with the Minister.

Mr. Deputy Speaker: Indeed, he is in the House. Ask your Question!

QUESTION BY PRIVATE NOTICE

CIRCUMSTANCES SURROUNDING CONTRACT BETWEEN XAVARIAN SCHOOL/M/S SAMJOS BUILDERS COMPANY

Mr. Olago: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education, the following Question by Private Notice.

(a) Under what circumstances Xavarian Primary School in Kisumu Municipality entered into a contract with M/s Samjos Builders Company for construction of classrooms?

(b) What was the obligation of the Ministry to discharge the contract amount?

(c) What urgent steps is the Ministry taking to protect the school from auction by the company in pursuance of judgment in Kisumu Chief Magistrate's Court Civil Case No.311 of 2008 for approximately Kshs3 million?

(Mr. Mwatela went to the Dispatch Box)

Mr. Deputy Speaker: Order, Mr. Mwatela! Have you done sufficient consultation with the Attorney-General on the same?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, I have asked the Attorney-General and he says that he is not very sure of what the contents are at the moment.

Mr. Deputy Speaker: Attorney-General, given the urgency of the matter, this Question was deferred as the last Question to give you an opportunity for you to respond. It is a very urgent matter; it is a Question by Private Notice. It is a public institution that is up for auctioning and you are supposed to give a legal opinion to the Ministry of Education on the same. Could you consult and tell us what should happen? It is a Question by Private Notice and so the urgency is there. The Chair is of the opinion that this Question should be answered in the course of the week.

Mr. Wako: Mr. Deputy Speaker, Sir, if this Question had been directed to me in the first instance, I would definitely have come here prepared but I notice for the first time that it is a Question addressed to the Ministry of Education. It appears to be a dispute before Kisumu Chief Magistrate's Court Civil Case No.311/2008 and I will need a bit of time to look into it, particularly bearing in mind that it is a Kisumu case. I do not

know when the auctioneers are going to auction this property but we can look into it and see whether there is a defensible claim on the matter.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. Before the Attorney-General arrived in the House, I proposed that if there is need for the Assistant Minister for Education and the Attorney-General to consult, then they can be given a couple of days to do so, but on the undertaking of the Assistant Minister that he will do a letter by tomorrow to the auctioneers to withhold the auction. That is very reasonable in my view!

Mr. Deputy Speaker: Mr. Wako, would you want to answer that or is it the Assistant Minister who is going to answer that?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, the hon. Member is the lawyer acting on behalf of the school and so he can assist us to draft that letter.

Mr. Deputy Speaker: Order, Mr. Olago! Indeed, are you the lawyer who is acting for the school in this matter?

Mr. Olago: Mr. Deputy Speaker, Sir, I have made it abundantly clear to the Ministry that I am acting for the school on a *pro bono* basis to protect it but they should take their responsibility seriously.

Mr. Deputy Speaker: Indeed, you need to declare that particular interest, *pro bono* or otherwise. When you ask the Question, you must declare that! Could you declare it to the House now?

Mr. Olago: Mr. Deputy Speaker, Sir, I have not been asked before but now that you have, I will say it.

Mr. Deputy Speaker: Order! On matters of interest, you have to do it; you volunteer. You do not have to be asked to.

Mr. Olago: Mr. Deputy Speaker, Sir, I wish to declare that I am acting as a lawyer for Xavarian Primary School on a *pro bono* basis.

Mr. Deputy Speaker: It is accepted! Mr. Mwatela, the responsibility is yours. The hon. Member is doing this on a *pro bono* basis to help salvage the possible auction of the school!

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, we will generate a letter jointly with the hon. Member.

Mr. Deputy Speaker: He will generate a letter the earliest possible and that is tomorrow. Fair enough! Next Order!

POINT OF ORDER

TENSION IN WATAMU

Mr. Mung'aro: Bw. Naibu Spika, ningependa kusimama niulize taarifa kutoka kwa Waziri wa Utawala wa Mkoa na Usalama wa Ndani. Mnamo asubuhi ya 31st March, 2010, kikosi cha polisi na Askari wa Utawala kilivamia maskwota Watamu katika eneo Bunge la Malindi katika oparesheni ambayo ilikusudiwa kuwafurusha maskwota hao katika kipande cha ardhi kilichokuwa kikizozaniwa na Mkuu wa Mkoa wa Pwani na mfanyibiashara mmoja wa Watamu. Katika uvamizi huu, vijana wawili walifariki na kadhaa kupata majeraha mabaya ya risasi. Kufuatia tukio hilo, ningeliomba Waziri

mhusika kueleza ni katika mazingara gani yaliopoleleka polisi kuvamia kipande hiki cha ardhi usiku wa manane kikiongozwa na Mkuu wa Mkoa wa Pwani?

Pili, ni watu wangapi walijeruhiwa mikononi mwa polisi katika mkasa huu na kwa hivi sasa wako katika zahanati gani na hali yao ya kiafya ikoaje? Tatu, ni hatua gani Waziri amechukua kwa Mkuu wa Mkoa huo kutokana na kitendo hiki cha kinyama kwa watu wa eneo la Ubunge la Malindi? Na mwisho, ni hatua gani Waziri anakusudia kuchukua dhidi ya askari polisi na wa utawala waliohusika katika mauaji hayo?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Bw. Naibu Spika, tutaleta Statement by next week Thursday.

Mr. Deputy Speaker: Jambo la kwanza, haikubaliwi katika nidhamu ya Bunge kuchanganya Kizungu na Kiswahili. Aidha unaongea Kizungu ama Kiswahili.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I will be able to give a statement by Thursday next week.

Mr. Mung'aro: Bw. Naibu Spika, jambo hili ni la dharura na kama unavyojua, mpaka sasa hali ya taharuki iko katika kijiji cha Watamu katika Malindi. Pili, wiki ijayo, nitakuwa nje ya nchi kwa kazi ya Bunge. Swala hili ni dharura sana, kwa hivyo ninaomba kama ingewezeka Waziri alete taarifa Alhamisi wiki hii.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. With this Swahili of *taharuki* and *dharura*, are you sure that it is being understood by Mr. Ojode?

(Laughter)

Mr. Deputy Speaker: Order! Bw. Ojode, kuambatana na taharuki iliyoko; na taharuki maanake ni kuna hali ya wasiwasi. Kwa vile, usalama na mambo mengine yanaweza kuzoroteka. Bw. Mung'aro anaona ni afadhali uilete hiyo taarifa yako mwisho wa wiki hii. Unaweza kuileta Alhamisi ya wiki hii?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Bw. Naibu Spika, ninaweza kuleta Alhamisi lakini mnajua ya kwamba mimi mwenyewe nilienda mpaka kule Watamu na tulitatu yale ambayo yalikuweco huko. Kwa hivyo, sioni haraka ilioko sana, ama zaidi ya kuleta hii taarifa.

(Laughter)

Mr. Mwadeghu: Hoja ya nidhamu, Bw. Naibu Spika. Sioni kuwa Waziri Msaidizi anachukulia hili jambo vile linavyohitajika kuchukuliwa. Kama alienda Malindi na akaona ile hali ya taharuki iliyokuweco; watu wanataka kuuana, na huku anasema hamna lolote la taharuki. Waziri Msaidizi anafanya fedheha kwa watu wa Mkoa wa Pwani na naomba ikome!

Mr. Deputy Speaker: Bw. Ojode, huwezi kusema hakuna tatizo lolote pahali ambapo watu wawili wamefariki. Bila shaka, wananchi wa Kenya wanafahamu kuna taharuki.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Bw. Naibu Spika, ndio kulikuwa na matatizo kule, lakini nilikuwa naomba nilete hii taarifa Alhamisi.

Mr. Deputy Speaker: Alhamisi wiki hii?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Ndiyo, Bw. Naibu Spika; nitafanya hivyo.

(Laughter)

Mr. Joho: Bw. Naibu Spika, mtu anayetajwa kuhusika katika jambo hili ambalo limeleta maafa ya watu wawili na watu kumi kujeruhiwa kwa risasi ni Mkuu wa Mkoa wa Pwani ambaye yuko afisini mpaka sasa. Bw. Waziri Msaidizi yeye amesema alizuru eneo hilo na lilikuwa sawa. Mimi nilikuwa huko Jumamosi na hali ni ya taharuki. Ni hatua gani itakayochukuliwa mara moja ili uchunguzi wa haki ufanywe?

Mr. Deputy Speaker: Nidhamu, Bw. Joho! Hayo yote ni yale yatakayotajwa katika Taarifa ya Waziri Msaidizi.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Bw. Naibu Spika, hayo yote nitayataja katika Taarifa nitakayowasilisha hapa Bungeni.

Mr. Deputy Speaker: Ninaamrisha Taarifa iletwe hapa Bungeni Alhamisi, wiki hii!

BILL

Second Reading

THE WITNESS PROTECTION (AMENDMENT) BILL

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that the Witness Protection (Amendment) Bill, 2010, be read a Second Time.

This august House did see the necessity, need and the importance of witness protection in our criminal justice system. That is why they enacted the Act in 2006, an Act which was assented to by His Excellency the President on 31st December, 2006. There have been some reports that we are just enacting this amendment because of the post election violence; I want to emphasize that the Government saw the need to have this legislation in place in 2006, well before the 2007 General Election.

[Mr. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Mr. Imanyara) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, as I stated earlier, the Government and this House saw the need and the importance of witness protection in our criminal justice system. At that time, criminality and organized crime in this country had reached levels in which it was becoming very difficult to carry out successful criminal investigations

because of threats, intimidation and even deaths of crucial witnesses. As you know, a crime may be committed, but if there are no witnesses, a criminal prosecution cannot be sustained in court. So, the importance of credible truthful witnesses who are able to withstand cross-examination in court is very critical if we have to deal with the issues of impunity.

I will not be too long because this House has already enacted this legislation. This legislation has now become very important. Part of the experiences that we have had and the successes that we have gained since the enactment of this Bill is that, first of all, we have published the Witness Protection Regulations. The Witness Protection Regulations are the regulations which have enabled the Government to constitute a Witness Protection Unit, which has the mandate that has been set out under the existing legislation. The Witness Protection Unit also has a mandate to put the witness protection programme in place. This is the unit to which the person who wants to be protected can apply and this is where a decision on that application is made to protect a particular person.

Without going into many details, when we were trying to enforce and operationalize this Act, we came across a number of obstacles to successfully undertake our work. One of the major obstacles is that this Unit is placed under the office of the Director of Public Prosecutions, who is under me. Therefore, it is subjected to the transparent, and open procurement processes of the Government. The Unit, in order to be effective under the current Governmental systems, has to have a multi-departmental approach. Therefore, the members of that unit are drawn from various departments of the Government, for instance, the Police Department, the Criminal Investigation Department (CID), the National Security Intelligence Service (NSIS) and the Department of Immigration. That is also a problem.

It has been shown that a successful witness protection programme must give due observance to four pillars. The first pillar is operational autonomy. The current Act, as I have just explained, does not give the Witness Protection Unit that operational autonomy in as much as it is a unit of a department in the State Law Office, or otherwise, popularly known as the Office of the Attorney-General. Because of that, it is subject to the standard Government operational procedures and guidelines. That is the first pillar of a successful witness protection programme.

The second pillar is covert capability. This means being able to use front companies, operate secret bank accounts and enter into secret agreements with other agencies because of the need at times to relocate the witnesses out of this country.

This country has become so small that, say, if you are dealing with Mr. Amos Wako who should be protected as a witness in an important case, relocating me within the territory of Kenya is a waste of time. This is because even if you change my nose, ears and so on, given the voice alone, people will say: "That must be the Attorney-General." So, it is very difficult to carry out these covert operations when you are just a normal Government department. In fact, the only people who can carry out these covert operations right now within the Government is an organization such as the National Security Intelligence Service (NSIS) and possibly, the Criminal Investigation Department (CID). But all other departments, really, cannot carry out covert operations, yet this is a pillar which underpins a successful witness protection programme.

Mr. Temporary Deputy Speaker, Sir, the fourth pillar of a successful witness protection programme is confidentiality. In fact, without confidentiality, there can be no

witness protection programme. In an area where, for example, a witness wants to be protected and he must be subjected to an application which a committee must look at - the committee comprises of persons in the very agencies which that witness is complaining about - the police department and others - then that witness, of course, will shy away from applying to be protected by a body which cannot guarantee that he will be shielded from these people.

Mr. Temporary Deputy Speaker, Sir, the fourth pillar is accountability. These four pillars are not strictly obeyed, if I may say so. The current Act is not consistent with those pillars. It, therefore, became important and urgent that we put in place a witness protection agency which answers to the four pillars and, hence, these amendments. I must tell you that the programme so far has an office. It has an acting head of the unit and I am pleased to let you know that he is here. Those five officials are all within the Department of Public Prosecutions and are connected with the witness protection unit. Let us give credit where it is due. They, in the course of their operations, have come across these obstacles in implementing. It is they who came up with the amendments that this House is going to consider. They were not alone in that; they were assisted by experts from the International Criminal Court (ICC). I can tell you, as of now, that the former head of this unit, under the Department of Public Prosecutions, was poached by the ICC and is now working at the Hague in the department which deals with witness protection. In other words, they recognized that we have a talent here; that this unit is composed of professional people, but it is because of the structures that are in place that they are an impediment to the successful operation of the witness protection programme.

Mr. Temporary Deputy Speaker, Sir, I want also to pay tribute to the United Nations Office on Drug and Crime which seconded an expert in this area to come and work with us and come up with what this House is going to consider. He has been here up to now and has been quite instrumental in advising us in some of the amendments that we have today. I must also admit that the Department of Justice of the United States of America (USA) Government also seconded an expert. In other words, what we are trying to put in place is a witness protection programme which is also consistent not only with the national standards, but also with international standards. These international standards become important because a successful witness programme cannot operate on its own. It has to operate with the understanding of other countries because of the necessity of at times, relocating these witnesses to other countries and also those other countries relocating witnesses to Kenya. Therefore, to be able to have that mutual working relationship, the programme must be consistent with international standards.

Mr. Temporary Deputy Speaker, Sir, the Memorandum, Objects and reasons are well set out on Page 32 of the Bill. If I may just quickly go through this, you will find at page two of the Bill, a widened definition of the witnesses to be protected. They involve a person who needs protection from a threat or risk which exists on account of his being a crucial witness and who has given or agreed to give evidence on behalf of the State, has given or agreed to give evidence otherwise than on behalf of the State and, therefore, one can say even on behalf of the accused person, has made a statement to the Commissioner of Police, a law enforcement agency or is required to give evidence in the prosecution or enquiry held before a court, commission or tribunal outside Kenya for the purposes of any treaty or agreement to which Kenya is a party and in the circumstances prescribed by the regulations made under the Act. In other words, the person to be protected as a

witness must be a crucial witness not only before the local courts or tribunals but also outside tribunals to which, of course, Kenya is a party.

Mr. Temporary Deputy Speaker, Sir, you know that this House enacted the International Crimes Act. Under Section 20(1) Paragraph A(xi) of that Act, the ICC can request assistance for the protection of victims and witnesses. So, if this Bill is enacted, it will enable us to discharge our international obligations if the ICC decides that they require our assistance in protecting witnesses.

As far as the protection of witnesses of the International Criminal Court is concerned, the primary responsibility is their protection. They have an approved department just focused on protecting their witnesses but they can also assist us and if they have to assist us, then we want to be ready. I want to emphasize that what we are enacting, if it is enacted, it is not because of the ICC but because of our own criminal justice system here, to be able to protect our own witnesses in serious organized crime as I have indicated, for cases being heard by our own courts here, so that we can end the culture of impunity locally.

Mr. Temporary Deputy Speaker, Sir, the number of unresolved cases of serious nature in this country are many. In post-election violence alone, there are 3,600. In most of them, the witnesses could not be relocated because of the Internally Displaced Persons (IDP) camps and so on. This is because witnesses are afraid to come forward and co-operate with the investigative agencies to be able to get enough evidence to prosecute. So, what we are doing today is primarily because of our role in the criminal justice system here, to ensure that we can successfully investigate any crime however serious it is, to successfully investigate, prosecute and convict and punish. But because we are also a member State of the international community, it also serves to fulfil our obligations in case we are asked to do so.

Mr. Temporary Deputy Speaker, Sir, the other section that I want to draw your attention to in passing, is about the functions of the agency. The agency is going to be independent. You will find that under the current legislation, most of the major decisions are made by the Attorney-General. It usually says that the unit will advise the Attorney-General who will then make a decision. I am very pleased to say that the Attorney-General is being deleted from the entire Act. In substitution thereof, we are going to have an independent witness protection agency making those decisions. The objects and purpose of the agency is to provide the framework and procedures for giving special protection on behalf of the State to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with the prosecution and other law enforcement agencies.

The functions are to establish a witness protection programme, determine the criteria for admission and the type of protection to be applied. The agency shall have power to control and supervise its staff, enter into association with other persons and bodies or organizations within or outside Kenya as may be considered desirable or appropriate in furtherance of its objects and purpose, enter into confidential agreements with relevant foreign authorities like ICC, tribunals and other regional or international entities.

Mr. Temporary Deputy Speaker, Sir, the agency will, as usual have a director and its own staff who will be independent. The staff, particularly the director, will enjoy a statutory tenure of office so that he can operate without fear or favour. There are statutory

grounds on which he can be terminated as set out at page eight of the Bill. It is just due to the inability to perform the functions of the office, his conduct or misbehavior, incompetence or conviction for a criminal offence. To determine that, the procedure for appointing a tribunal and how the tribunal will conduct its work are clearly set out on pages nine and 10 of the Bill. Section 3(g) secures the independence of the agency. The agency shall have all the powers necessary or expedient for the performance of its functions under this Act without interference from any authority. So, there is a clear provision there that there will be no interference when the agency is carrying out its work.

Mr. Temporary Deputy Speaker, Sir, the issue of funding now also becomes very important. As you may have already realized, to protect somebody, whether here or outside the country and give him a new identity and ensure that the person stays in that new identity, for life or as necessary, is a very expensive procedure. Right now, I know under the current Budget, we have about Kshs30 million. But this is barely enough to be able to carry out a proper, credible and effective witness protection programme. Therefore, it is provided for under Clause 39(h) (i) at page 11 that the expenditure of the agency shall be charged on and issued out of the Consolidated Fund without any further appropriation under the Act.

Mr. Temporary Deputy Speaker, Sir, at page 21, it sets out the type of protective action that the agency can engage in. The agency shall establish and maintain a witness protection programme and shall take such action as may be necessary and reasonable to protect the safety and welfare of the protected person. Without prejudice to the generality of that paragraph, the action taken under this Sub-section may include, and is not limited to, critical and armed protection. That is, providing *askaris* to the protected person for day and night. It may need relocation or a complete change of identity. So, there are a number of ways in which this protection can be secured.

For that, it may become necessary to make appropriate applications in court, particularly, when one is talking about change of identity or change of face. It may be necessary to do that. Maybe, that person has some liabilities against third parties and so on. All that has to be looked into before you can relocate that person securely somewhere else. Therefore, it may be necessary to make the necessary application in court and if necessary, the hearing of those applications will be heard in camera. As I said earlier, whereas under the Act, the decision to admit or exclude any person from the programme rested with the Attorney-General but now, it is going to rest with the Independent Witness Protection Agency.

Mr. Temporary Deputy Speaker, Sir, this House had in the past the original Act and having seen the weaknesses in that and having identified them and having been informed by international experts in that area; about what ought to be done, we made these amendments which I am asking this House to approve, enact and pass.

I would not want to take too much time and I ask my fellow learned Counsel, Mr. M. Kilonzo, Minister for Justice, National Cohesion and Constitutional Affairs to second.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you, Mr. Temporary Deputy Speaker, Sir, I rise, with your permission, to second this very important law.

With your permission, Mr. Temporary Deputy Speaker, Sir, I want to begin this way; that any modern state will face a multiplicity of crimes of the following nature. One,

drug trafficking, two, pornography and three, gun running. While on pornography, I would like to mention to the House a fact, which is known; that pornography has now, in fact, moved to the internet.

Mr. Temporary Deputy Speaker, Sir, a modern state will be facing problems of money laundering with all that it means, because it adversely affects your budget, your fiscal policy and other measures designed for the general good. A modern state will face corruption. As a matter of fact in this country, this remains one of our biggest gridlocks, tied to our legs and dragging us backwards as we move forward.

Mr. Temporary Deputy Speaker, Sir, we have had enormous scandals involving all manner of issues, including a person who said that he could export gold from Kenya when Kenya does not produce gold.

Mr. Temporary Deputy Speaker, Sir, we have had problems of paedophilia, almost daily in newspapers. You will notice that the public now has the view that one out of every three girl-children is in one form or the other abused, attacked and, otherwise, compromised. I should not limit myself to the girl-child; it also extends to the male child.

Mr. Temporary Deputy Speaker, Sir, a modern state will face problems of international crimes. Indeed, as is obvious, this country already has an International Crimes Act, passed in 2008; international crimes mean just that; they are crimes against humanity, genocide and so on. Therefore, it is important for that modern state to bear this in mind.

Mr. Temporary Deputy Speaker, Sir, I can go on and on, but I cannot stop before I mention piracy. Right now, we have international piracy in our high seas, in the Indian Ocean which has adversely affected the cost of living in the East African region, all the way down to South Africa. This piracy delays the ships, raises the cost of goods, insurance and so on, and so forth.

So, what am I saying, Mr. Temporary Deputy Speaker, Sir? Allow me to turn to the origins of criminal trial. It is widely acknowledged that the Magna Carta of 1715, when King John of England was forced by his own citizens – the Barons – to sign the Magna Carta, it is now widely viewed as one of the most important legal documents in the history of democracy. You will now find it displayed in the West Lotunda Gallery at the National Archives out there in England.

Then, Mr. Temporary Deputy Speaker, Sir, in addition to the Magna Carta, we also have the French Revolution. You will remember the issues of equality and so on, and so forth. But, above all, the outstanding issues on methods of determining whether you were guilty or innocent are vested now, not only in the Magna Carta, but also in the Fifth Amendment of the US Constitution, which says: “No person shall be deprived of life, liberty or property without due process of law.” It amazes me; I am still pinching myself to know that I am real. Only on Thursday, this House unanimously passed the draft law, which also embraces this principle.

Mr. Temporary Deputy Speaker, Sir, the Magna Carta, passed 575 years ago, and signed by King John, and you know it well, Sir, says:

“No free man shall be taken, imprisoned or in any other way destroyed except by the lawful judgment of his peers or by the law of the land; to no one will we sell; to no one will we deny or delay the right to justice.”

Mr. Temporary Deputy Speaker, Sir, you cannot talk of justice, or the due process, without talking about witnesses. The principle of witnesses appearing before a

Tribunal that is charged with the responsibility of trying a citizen is everything. If there are no witnesses, the case will be thrown out. This reminds me of the famous trial of the Kosovo politicians, who led the genocide in that country. As you, Mr. Temporary Deputy Speaker, Sir, know very well, the trial out there in The Hague of that Tribunal led to the acquittal of those politicians, not because they were not guilty. The judges said that because a lot of the witnesses were killed; a lot of the others were intimidated while the others were threatened and in the end, there was no person willing to appear before the tribunal to give evidence against the perpetrators.

Therefore, in my research, Mr. Temporary Deputy Speaker, Sir, I have gone back all the way to 469 B.C. to the history of Socrates and the trial that he was subjected to. Allow me just to remind this House, and the country, what the problem then was. Mr. Socrates was accused of corrupting the minds of the youths of Athens by the methods by which he debated and argued issues. He was taken before the actual senate; the Senate was converted into a jury. The question that had been asked by Saint Cheveron--- He asked the oracle at Delphi if anyone was wiser than Socrates, in a way of setting up Socrates. The oracle responded that no one was wiser, thereby colliding Socrates with his fellow citizens.

Initially, Socrates believed that what the oracle had said was a paradox; he also thought that it was wrong. But as he proceeded to interview the citizens of Athens, he came to the conclusion that the oracle was right. By questioning them, Socrates came to the conclusion that while each man thought he knew a great deal and was very wise, they, in fact, knew very little and were not, really, wise at all. Socrates realized that the oracle was correct in that while the so-called "wise men" thought themselves wise, yet they were not, he, himself, knew he was not wise at all, which paradoxically made him the wiser one since he was the only one aware of his own ignorance.

But as a result, Mr. Temporary Deputy Speaker, Sir, as you very well know, because I know you have followed this history of Socrates, he was actually found guilty, and was condemned to die. What did Socrates do? He refused to leave Athens and his very good friend tried to persuade him to leave. His friend was called Quito, and I will cite you one of the reasons that Socrates advanced, so that you understand why this country must establish a modern method of looking after witnesses. He said--- This is Socrates to Quito: "Having knowingly agreed to live under the City's laws", that is Athen's laws, he implicitly subjected himself to the possibility of being accused, even falsely, of crimes by the citizens of the city, and also to be judged guilty, even wrongly by its jury. To do otherwise would have caused him to break his social contract with the state, and so harm the state and act contrary to its principles.

Mr. Temporary Deputy Speaker, Sir, what am I trying to say? I am saying that so long as this country wants to have the rule of law, law and order; so long as this country wants to be able to fight the crimes that I have described from drugs trafficking to piracy, then the time has come for us to modernize our law on witness protection. There are those who think that this law is directly only related to the International Criminal Court (ICC), or to the Rome Statutes. As far as I am concerned, that is a matter of little consequence, because these crimes occurred in this country for only a period of two months in 2008. But even after the events of the ICC are over, we will still be left with the problem of making sure that witnesses, who have evidence regarding any event that is

a violation of Kenyan law, can be protected and, thereafter, be produced in evidence for purposes of ensuring law and order.

Mr. Temporary Deputy Speaker, Sir, Clause 3b of this draft on page 4 says:

“The purpose of the agency is to provide the framework and the procedures for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their cooperation with prosecution and other law enforcement agencies.”

Secondly, the nature of the special protection referred to in subsection (1) shall entail the power of the agency to acquire, store, maintain and control firearms and ammunition and electronic or other necessary equipment, despite the provisions of any other written law.

This law speaks for itself and we have to enact it if we intend to produce a modern State that can move forward.

With respect, I would also like to say that the draft we passed last week has a dramatic change from what we have done since Independence. For the first time, the Attorney-General will be one out of the 23 Ministers that the President can appoint outside Parliament. He will no longer enjoy security of tenure the way we have designed the office now. The security of tenure has been transferred to the Director of Public Prosecutions in recognition of the fact that he who is looking after prosecutions is the one who demands and requires security of tenure. Similarly, therefore, this independent agency is an overdue item for this country.

I want to remind those who may be intimidated by the decision of the ICC that this country already has an International Crimes Act and the power to cooperate with the ICC is now law since 2008. It is not a matter of politics, like or dislike an individual, but a matter of merely following the law.

I thought that I should share with this hon. House the history of prosecutions. I, sincerely, do not want us, in this day and age to behave like the jury of Athens which sentenced Socrates to death. He was given poison and he refused to leave the country for merely poisoning the minds of young people.

With those many remarks, I beg to second.

(Question proposed)

Mrs. Odhiambo-Mabona: Thank you, Mr. Temporary Deputy Speaker, Sir for giving me this opportunity. I want to say from the onset that I support the proposed Amendment Bill. This Bill is coming at a very appropriate time. For the last two days, *Wild Life Publishers* and two authors; a woman from America called Nicole Braddock who is a survivor of sexual violence and a lady called Abemeri Sarusi from the UK and originally from Nigeria, and I, have been working towards creating awareness on issues of sexual violence against children and trafficking through the launch of their books *Harsh* and *Eyo*, respectively.

I want to say and agree with the Minister for Justice, National Cohesion and Constitutional Affairs when he says that whenever we talk about witness protection, many of us think it has to do only with the ICC. For me, I want to move away from that because we are putting too much emphasis there.

My challenge to the hon. Attorney-General is that he will have to create adequate space because he will have several witnesses to protect. These will be witnesses in the name of children who have sexually been abused. I will give you two examples. One of the cases, I dealt with, a Kisii girl aged six years old who was sexually abused by two of her neighbours, one of whom claimed to be a pastor. When the case was pending in court, they threatened the family by telling them if they did not withdraw the case, they would rape the girl again. Since the police were not able to protect her, they raped her again. Secondly, a Luo girl from Kibera, 14 years of age, the same thing happened to her. She was gang raped. When the case was pending in court, the same group told her that if she did not withdraw the case, they would rape her again. We assured her of police protection. However, the police were not able to give her protection and she was raped again. There was also an Ethiopian girl who was living in Kenya, but was abducted and trafficked. The people concerned wanted to forcefully marry her. We tried to help her, but we were not able. We put her in a centre where these people found her and forcefully removed her.

Hon. Attorney-General, for me, this is not just an issue of the ICC. It is an issue about thousands of our children who are raped daily.

I also want to say that one other thing I love in this Bill; other than dealing with the issue of witnesses, is that it also talks about protection of victims. I want to challenge the Office of the Attorney-General that I have seen this issue in three pieces of legislation; this one; the Sexual Offences Act, the law he talked about on International Crime and the current draft Constitution that talks about Victim Protection. We need comprehensive legislation on victim protection. We have a lot of provisions relating to protection of persons who are arrested or persons who are accused under our justice system. If you look at the current draft Constitution, I think there are almost two pages on persons who are arrested under our justice system and only two sentences that we introduced under the PSC on victim protection. The other challenge is that we make sure that we have a comprehensive law on victim protection.

Mr. Temporary Deputy Speaker, Sir, if you look at the cases confronting us on International Organized Crime (IOC), you will see that Kenya has not only become a hub, but also a destination and a transit country for organized crime.

QUORUM

Mr. Kizito: On a point of order, Mr. Temporary Deputy Speaker, Sir. We are talking about a very important Bill that will affect our lives and yet, we do not have quorum in the House.

The Temporary Deputy Speaker (Mr. Imanyara): Yes, I can see that there is no quorum. Please, ring the Division Bell.

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order! We now have quorum.

Proceed, Mrs. Odhiambo-Mabona!

Mrs. Odhiambo-Mabona: Thank you, Mr. Temporary Deputy Speaker, Sir. I was talking about the issue of counter trafficking in persons; that is very prevalent and I was indicating that Kenya is not only a growing hub as a transit point and a source and as a destination country. Indeed, I have actually brought a Bill that will be coming before this House on counter trafficking in persons, and I am also happy to note that the Government has actually brought another one on international organised crimes which will go hand in hand with this Witness Protection (Amendment) Bill.

I will not speak a lot on the issue of independence that has been spoken about by the hon. Attorney-General but I think it is important that such an institution is independent.

Mr. Temporary Deputy Speaker, Sir, I would also want to encourage the Attorney-General to look at the issue of incorporating persons with expertise on sexual and gender based violence in the two institutions, excluding the tribunal that is being set up especially because of the prevalence of the nature of cases that I am talking about.

Finally, Mr. Temporary Deputy Speaker, Sir, because of the culture of silence and taboo around the issues of sexual and gender based violence, we need this now and not a day later.

With those few remarks, I beg to support.

Mr. Wamalwa: Thank you, Mr. Temporary Deputy Speaker, Sir. I also rise to support this Bill. I want to thank the Attorney-General for bringing the proposed amendment. We know the Bill that we had passed here and the deficiencies that were evident, and being a lawyer, I know that the case is as good as the evidence. If you lack the witnesses to present the evidence, that is the end of the case. I believe in the Ten Commandments, we have a reference to witnesses, though in the Ten Commandments, the good Lord said that we should not bear false witness. But also if probably years after, He realises how many witnesses have died for bearing truthful evidence and witness to crime, He would have added to that commandment that we should also protect witnesses who bear to the truth.

Indeed, the history of the killing of witnesses, the history of other nations show us that in America and other parts of the world where there has been organised crime, we have had witnesses killed during the mafia wars and that country took steps to protect their witnesses.

Mr. Temporary Deputy Speaker, Sir, we do know of several cases where witnesses have been killed in our country. As a young lawyer, I had a privilege of serving as a pupil in the firm of Orengo and Company Advocates. At that time, Mr. Orengo was handling the case of the late Robert Ouko. Indeed, it is one of the longest trials we have had in this country. It is also one of the darkest chapters in the history of this country where witnesses disappeared and kept disappearing. Finally, the judge, Abdulla Fida Hussein, who was presiding over that case, collapsed and passed on as we were ending that trial. There were all sorts of insinuations about his death. Indeed, the investigator in that case, Inspector Troon, was poisoned. It was a case that saw different witnesses right from the little boy, Shikuku, who discovered the body of the late Ouko while herding cattle to the cooks, the ayas and the drivers disappear and yet they were vital witnesses.

Indeed, ours is a country that has seen a history of witnesses disappearing. It is a painful history that we have. We should not only be looking at international crimes and,

maybe, the post-election violence and what happened. Borrowing from our past history, we should support this very important effort to protect our witnesses.

Mr. Temporary Deputy Speaker, Sir, if you look at the Bill as drafted, you will realise that the biggest problem we have had, if we were to leave this unit under the Attorney-General's Office to go through the normal cumbersome procedures of tendering, operationalizing this unit would be very difficult. Therefore, for the Bill to propose that we have an independent witness protection agency to replace the Attorney-General in playing this role is a big effort towards operationalizing this important unit.

The funds that will run this unit will come directly from the Consolidated Fund. This in itself will ensure operational autonomy of this very important unit. It will also ensure that it operates. We have been advised by the Attorney-General the kind of operations the unit will be involved in; the covert capabilities that are required and the confidentiality. All these go towards ensuring that once we have operational autonomy by financing this unit, we will be able to make it more effective in its operations.

We must also look at the people who will be overseeing the operations of this unit. Indeed, from the description, the Attorney-General has given us and the ladies and gentlemen who are with us in this House today, it is a unit that will require highly trained personnel who are able to execute their work, sometimes far away from home in other jurisdictions, for example, in foreign land where the witnesses will be hidden. We will require people who should be well remunerated. I think the issue of the welfare of the staff that will take charge of this unit must be looked at very carefully to ensure effectiveness. Above all, there will be the welfare of the witnesses, who will be plucked away from their homes and taken away from their families.

Looking at the Bill, it has tried to look at a provision to protect these witnesses not only for their own safety but also in the event that they are killed in protection. They will probably be away from their families. We will require that their families be compensated. First of all, the fact that they will be taken away from their families is, indeed, a sacrifice enough on the part of their families. It will, however, be for the course of justice and in the event their dear ones are killed away from home and in protective custody, compensation must be assured and guaranteed for the families that will be left behind. I believe that by passing this Bill we would have enhanced and strengthened our criminal justice system so that witnesses are properly protected and we will win the war against impunity in this country in future trials.

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

The Minister for Foreign Affairs (Mr. Wetangula): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this very important amendment Bill. You may recall that when I spoke on the original Bill, I said that the Office of the Attorney-General, in fact, had earned itself, very unfairly, a bad reputation for not prosecuting cases successfully or sometimes at all. Just like my learned junior, Mr. Eugene Wamalwa has said, a case is as good as its witnesses. A case is as good as how you present it before the court.

The history of witness protection, if you look at other jurisdictions--- America was able to enact a witness protection law after the bootlegging scandals.

Mr. Chanzu: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not know whether it is in good taste for the Minister to refer to Mr. Wamalwa as his "learned junior".

The Minister for Foreign Affairs (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, Mr. Chanzu, being himself not learned, cannot understand that. Thank you Mr. Temporary Deputy Speaker, Sir, for understanding being my learned senior.

The American jurisdiction had to go to witness protection after the bootlegging scandals. If you look at the history of Italy, you will find that the mafia activities made it impossible to convict anybody and yet there were horrendous crimes being committed by citizens. They had to enact a witness protection law. In my brief remarks, I urge the Attorney-General that the unit we are creating must be a unit that is led by men and women of impeccable integrity. I have no doubt, the lady he has introduced here is a lawyer of very good repute and whoever else joins the Board must be people who can help this country move forward.

I am saying this because you have the benefit of being a practicing lawyer and you have seen what goes on in courts. You bring a case in court, particularly cases related to violence and organized crime and not a single witness turns up. Once, I was horrified in a court in Kibera where an accused person was literally telling a witness; “continue saying what you are saying and I will come out and you will see.” I asked myself: “How does the accused know that he will come out in the first place when he was charged with a hanging offence?” Secondly, “how can the State protect the witness who has such vital information to keep away such a bad person from society and yet he is left to the threats and intimidations of an accused person?”

More importantly is the point our colleague, hon. Millie Odhiambo has brought up. Rape victims are literally the most affected witnesses that require protection. Just the stigma for a lady to stand before cameras to admit that she has been raped is so horrifying to her. The manner and nature in which lawyers cross-examine witnesses - and as a lawyer who has been hired to defend an accused person - you have a duty to do your very best--- You will cross-examine a witness by asking questions that will eventually make the witness be unable to give proper evidence to convict a criminal. So, protecting women who have gone through sexual violence is very vital.

Mr. Temporary Deputy Speaker, Sir, our country has gone through a very frightening criminal evolution. In fact, those who have been talking about International Criminal Court (ICC) in relation to this Bill are trivialising the issue of protecting witnesses. There are many more criminal activities that require protection much more than the post-election violence. We are talking of human trafficking, child trafficking, sexual violence, and drug gangs – drug warlords, who will make it impossible for anybody to volunteer to testify.

As we do this, I recall an issue that was raised in a conversation with the Attorney-General; that we must also be able to weed out joyriders. Kenyans are very ingenious. Once you have a scheme like this, you also run the risk of having joyriders who will come with false information, convince everybody, and enjoy the protection and, perhaps, be taken out of the country, and end up being phony. So, the tribunal that has to look at appeals, especially where such joyriders have been locked out of the scheme, must be very careful to ensure that we do not have joyriders enjoying State largesse in the name of witness protection.

Mr. Temporary Deputy Speaker, Sir, I had the privilege of representing the Robert Ouko family in the inquiry in Kisumu and I did, very carefully, follow the case thereafter. If there is one case that this country will one day have to re-open and look at, it

is this one. Why on earth would, in a single case, more than 15 witnesses die one after the other? Why on earth, would every critical witness simply disappear and eventually die? There must be something!

These are the kind of mysterious murders and mysterious criminal acts in this country that we will have, sometimes, to grapple with ourselves and re-open. When you are talking of truth, justice and reconciliation, it is about the capacity, the ability and the courage to face your past and acknowledge the wrongs you have done and be able to look to the future with greater confidence.

Mr. Temporary Deputy Speaker, Sir, this Bill is so critical that I would want to urge the House to support the Attorney-General. Something that is lacking in this Bill is this: If you go to Italy, the administration of justice and the threats that come to it, and the eventual loss of lives that follow, is not limited to witnesses. They have gone a step further. They even have a law that protects judges and magistrates who preside over cases involving dangerous criminals.

When you are dealing with the “mafia” and the evolving very dangerous criminal gangs in this country – They are many and you know them - the Attorney-General should look for ways and means of not only protecting the witnesses, but also having a legal system that protects judicial officers who preside over cases relating to dangerous criminals. This is because, if those criminals are unable to reach and silence witnesses, they will reach and silence the judge. Judges and magistrates are permanently at risk from criminals of this kind. I hope that the Attorney-General will be able to do that, because law is never static. It is dynamic. It changes with time, with needs and with the sophistication of society, particularly where you have very sophisticated criminals, like we are witnessing in this country.

With those few remarks, I beg to support.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I want to thank you for giving me the opportunity to also make my little contribution to the Witness Protection (Amendment) Bill.

First of all, I want to say that I support the Bill but express my deep disappointment with the Attorney-General. When he was moving this debate, I listened very carefully. He said that this Bill was assented to by His Excellency the President on 30th December, 2006. When he was moving the main Bill in 2006, I was here, and I lauded him for moving it.

Mr. Temporary Deputy Speaker, Sir, it is an indictment on the Office of the Attorney-General for them to barely, four years later, bring the same Bill to this House with the reason that operationally, it became difficult to make it work. We were here praising the establishment of the Witness Protection Fund then and, four years later, we are being told that it was operationally impossible to make it work. I think we need to use the time of Parliament in a more effective manner.

However, the reason as to why I would want to support this Amendment Bill is the whole principle of witness protection. Many times, when we have talked about the judicial and security systems, we have gone an extra length to protect what you would call “security agents”. Here, my colleagues have raised the issue of victims, and the same fate befalls witnesses. Witnesses have not been traditionally given the necessary protection they require.

Mr. Temporary Deputy Speaker, Sir, my colleagues preceding me have talked clearly about what organised crime, and war time crime can do. I want to add what tribally-motivated crimes can do. A lot of witnesses disappear. A lot of people suffer. So, we have to do everything within our power to make sure that, at least, we do something in this Parliament.

I want to join my colleagues who spoke before me to urge the House to pass this amendment to make the Witness Protection Act stronger, and make it work, because we are not the first country that is doing this. Canada has a very effective system of witness protection, which is basically modelled under the United States of America Federal Witness Protection Programme. New Zealand has a very effective system, and there is nothing wrong with us picking some aspects from those models. Taiwan and Switzerland have effective systems. I want to urge this House that in passing this Amendment Bill through the Second Stage, without much controversy, we will not be making a mistake. We will be doing something that can affect ourselves, our families and the people we represent here in a very real manner.

Mr. Temporary Deputy Speaker, Sir, when you look at the history of how witness protection programmes started – I want to look at the USA system – you will realise that it was set up particularly in the 1960s, when one Gerald Shoe, who was then heading the Organised Crime and Racketeering Section of the US Department of Justice, saw the need for protecting witnesses.

Mr. Temporary Deputy Speaker, Sir, what they did in their programme was that they put it under the US Marshall Service. It has been very effective in the US, but not effective enough. This is the one point I wanted to bring in as a suggestion at this stage *vis-vis* the new Constitution that we will have. In the US they have a federal system of witness protection programme. When you look at particular States like Illinois, they have been affected so badly by crime and gangster activities. They have had a bad history and they have gone ahead to have State witnesses protection schemes, apart from the federal system.

The suggestion I want to make is that we must create a law that will apply across the country, but let us put it in place with the counties in mind. Let us broaden the parameters of this law to give effect in the 47 counties that we anticipate will be created under the new Constitution to enable these counties to run independent programmes. We already know, even without hazarding much, that there are specific areas in this country where organized crime is a big threat to security.

Mr. Temporary Deputy Speaker, Sir, if you look at the duties which the counties have given under the Draft Constitution, it is possible to create within this law something that will enable them to handle specific problems such as organized crime within their areas.

I would also want to point out that in the US there are grants that are given from the central government to the States to run the federal agencies that deal with witness protection. I would like to see, within this law, a system in which the fund that will be established, and this board that is being established, will enable counties which are affected by organized crime to access this funding and protect witnesses.

Mr. Temporary Deputy Speaker, Sir, every time we have had elections in this country there have been particular areas, where you will find violence of a certain nature, and it is basically tribal. I did say that we should add this to the list that my colleagues

have been talking about. We need to create a mechanism within this Bill that will allow the trickle down effect of funds to be felt all the way. Even in areas where organized crime is not prevalent, we have gangs which engage in cattle rustling as a trade.

In these borderline areas, like in outlying districts, we will have counties. The revenue which will come from those counties may not be sufficient to sustain protection of witnesses who could know or could help people arrest criminals who are involved in cattle rustling. We must find a mechanism within this Act. We must be inventive. We must think again. At the Committee Stage, I would request the Attorney-General, which is easier from our side, to move the necessary amendments to make a general provision, so that funds will move down to those areas and be helpful where it is required.

Mr. Temporary Deputy Speaker, Sir, I would also like to make a third suggestion to this Bill. In Canada, there was a very big public uproar when a witness, who had been protected and, therefore, his identity was properly concealed, committed a crime. Although you could say it was not a very serious crime in its nature, this witness was convicted of drunken driving. But because he was a witness in another case, where he was useful, his identity was hidden. His identity was hidden so well that when he committed another crime of drunken driving, this time actually killing somebody, the same witness protection programme was not willing to disclose the identity to enable prosecution to take place.

Therefore, I want to give a third suggestion here. We must find a mechanism within the Act that will not protect so much those witnesses who are able to get away with crimes which they have committed. For example, we have had this issue of sexual offences being referred to by previous speakers. If a person goes under the witness protection programme, but he has a criminal record and his identity is hidden--- If this law does not provide a mechanism under which we can trace that person, that person will become a danger to the community. So, he will become the joyrider that Mr. Wetangula was talking about. While he is enjoying the benefit of the witness protection programme, he becomes an agent of carrying out further crime against the very society that he is supposed to be helping in arresting suspects of other crime.

Mr. Temporary Deputy Speaker, Sir, I want the Attorney-General's office to be ingenious in this matter and think again. How do we capture situations that have presented themselves in other countries that have already run witness programmes for several years and they have these challenges?

We also need to look at a fourth suggestion at this stage. Ordinarily, witness protection programmes would involve the transfer of a person from his hometown or village to another place. His identity would be hidden. He will be given a new form of life and maybe moved to another part of Kenya. He is given a new identity card; his records are altered so that he can start a new life. Ordinarily, such a witness is also not allowed to make contact with his hometown or village. He is not allowed to reach those people. If he has to, then even the people that he reaches must apply to be under the witness protection programme.

When we have these people transferred to different parts of the country, as in the US and Canadian systems, this person is given a stipend. This person is given some money and maybe a job to keep him going, so that in two or three years he is supposed to be on his feet and earn a living on his own.

Mr. Temporary Deputy Speaker, Sir, I want to make a suggestion at this Second Reading Stage, that the Attorney-General and his team look for a way in which they can remove a person who does not aggressively look for a system of sustenance. If for example, a person under the witness protection programme comes and is settled in my constituency in Garsen, he is a stranger and he is being paid Kshs20,000; he is not doing anything, but is enjoying State largesse. People can develop hatred for him.

So, there must a provision within the Act that will say if someone is not looking for a job aggressively over a period of three years, then he will not continue getting this money for free forever. It is also possible that witnesses can abuse the Witness Protection Fund (WPF) that we want to set up. The provisions we are making here, the Attorney General has sought to make covert operation. This means that there will be a lot of money around. This money is not subject to the normal procurement procedures. There will be no Parliamentary Committee that will check to see what is happening. It is even possible for the people who will be running that WPF, to take their relatives who are jobless. They will ask them to apply as people to benefit from WPF and protect them using State money.

Mr. Temporary Deputy Speaker, Sir, there must be a way in which this WPF is protected, since it is will not be under the normal scrutiny of all other funds that we are setting. The person who will head this WPF will be an independent person. This is an autonomous agency. It is not the first time that we have seen State bodies being used and abused for the benefit of the officials whose names have been passed even by this Parliament. It is not the first time that we pass a name in this Parliament. These people go and hold offices and the first thing they do is to employ their relatives. This is an independent body and it is not subject to scrutiny. Things are not being done in the ordinary manner, but these people just abuse the protection that this Act will give them. So, we must find a mechanism within this Act to prevent abuse.

Mr. Temporary Deputy Speaker, Sir, I want to urge the House, because of the greater interest in justice and protecting witnesses, that our system of justice is evolving. We have made extremely good provisions under the proposed Constitution. These are some of the Acts that will give teeth to the system of justice that we want to evolve. We will be more effective to our people when dealing with situations that have confronted us, particularly organized gangsters who have become a real threat in the economy of this country.

Mr. Temporary Deputy Speaker, Sir, I would urge my colleagues to support this Bill. I am sure the Attorney-General will look at some of the things we have suggested. If they do not, we will bring amendments in the Committee Stage. It is better for them to bring these amendments at the Committee Stage and make sure that this time round, when we pass this Bill, the WPF works. We do not want to come back here and say it does not work. Today, we would be debating another Bill or Motion.

With those few remarks, I beg to support.

Mr. Mbadi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to add my voice in supporting the amendments.

First of all, when the parent legislation was passed in this House, I believe that Kenyans realized that impunity was been encouraged by the fear of witnesses in giving evidence because they realized that if they did so, then without protection, the culprits would not give them space. So, that is why this particular Bill was passed in this House.

Mr. Temporary Deputy Speaker, Sir, we can say a lot on historical injustices. A lot of issues took place. Immediately after Independence so many deaths took place. The Government promised to conclude investigations and take action against people who were responsible. However, this has not been possible. We can remember the death of Pio Gama Pinto, J.M. Kariuki and Tom Mboya. In the second regime, we can remember the death of Robert Ouko and others. Even the present regime has also witnessed its share of what one would call political deaths. The late Odhiambo Mbai and others. We have had the most recent case of post-election violence where so many people lost their lives. The issue is still outstanding. Many witnesses have not been able to give evidence because of lack of witness protection mechanism. But with the passing of this Bill in 2006, I think the understanding of the nation then was that some action will now be taken to protect the witnesses. Unfortunately, as hon. Mungatana articulately put it, it has not been possible to implement and operationalise this particular piece of legislation.

Today, the Attorney-General has brought amendments. I agree totally with the Attorney-General that the amendments sought are very important to make sure that this particular legislation is effectively operationalised. The amendments sought seek to introduce an Independent Witness Protection Agency. This agency will be a body corporate with teeth. It will be funded. A body that will be under a Director who will have powers, privileges and immunities like that of a police officer. I think this is a very good amendment.

The other amendment is to have the Witness Protection Advisory Board whose duty is to co-ordinate the functions of the Agency and also to approve its budgetary estimates. To me, it also looks a very good piece of amendment. If you give a body a responsibility without an independent funding, then definitely the independence of that particular body is compromised. That is why I support the amendment that seeks to provide direct funding for the Witness Protection Agency from the Consolidated Fund.

The amendment also seeks to introduce the Appeals Tribunal. Obviously when this Agency is going to establish a witness protection programme, to avoid cases of favouritism and misuse of the same, then you also need some kind of reference point. If I feel I have been unfairly left out of the programme and I have very crucial evidence; evidence that if I give without being protected, then my life would be in danger, then I can petition the same to the Appeals Tribunal. This is also a very good amendment.

The amendment sought by the Attorney-General is to expand the definition of a "witness". I think that is also very important because we need to include those who require protection from threats or risks that exist on account of being crucial witness. So, I fully support the Attorney-General.

The prayer of this House is that once we pass this amended version of the Bill, the Attorney-General will make sure that once assented to it is implemented. This will ensure that our labour would not be in vain. The time of this Parliament would also not be in vain. It is good that the Attorney-General has taken away some duties from himself and given them to the Director and some staff.

Mr. Temporary Deputy Speaker, Sir, I want to emphasize what Mr. Mungatana has said. We have had cases where we pass legislation creating bodies. Once those bodies are created, the people who are responsible for the hiring of staff like the Witness Protection Agency--- These are staff who will be well remunerated and will have teeth and power. In fact, the Act spells this out. We expect those who will fill these positions to

carry out due diligence to make sure that people qualify not on the basis of ethnicity, political party interest or regionalism but on the basis of competence acquired through training, practice and proven integrity. If that happens, then I think this Agency will do a good job. Cases of impunity that we have been seeing go on in this country because people are not willing to be witnesses to the State will come to an end.

With those very many remarks, I beg to support.

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, thank you for giving me an opportunity to contribute to this Bill. I want, first and foremost, to register my support for the amendment.

Mr. Temporary Deputy Speaker, Sir, I do not have kind words for the Attorney-General for bringing this amendment. In the first place the Act was passed way back in 2006. It has taken him five years to recognise that the initial Act was not operational or had operational challenges. The main reason for this is that the importance of witness protection in the administration of justice in a country is obviously a very critical issue. Our country has witnessed, over the years, continuous degeneration of the rule of law, quality of justice and these are some of the key components which have driven that degeneration. If the pace at which we have treated this Witness Protection Act is anything to go by, it is very unfortunate.

It would appear that the State has not actually been serious about witness protection. We know for sure that way back in the colonial period, when the State had a stake in the protection of interests of witnesses, it went to great length. For instance, during the Mau Mau days when they were suppressing Mau Mau in Central Kenya they went as far as inventing anonymous identification parades where the witnesses were anonymous. In Central Kenya they are today called *tokunia* because they would wear gunny bags to cover their faces. That is where the State had a clear interest in witness protection.

What we have witnessed, especially since the struggle for multi-party began in this country and generally the struggle for democracy, is a situation where the State participated actively in erosion of the rule of law as a political tool or as a means of controlling politics. That is when we had the political clashes that were baptized as tribal clashes. We also had militia being allowed in the country for political reasons. These are some of the compromises that now threaten the whole advice of administration of justice in this country.

Mr. Temporary Deputy Speaker, Sir, I am supporting this Bill because without it nobody would argue that you can have any meaningful administration of justice even in situations where there are normal incidences of administration of justice involving particularly strong personalities. Planned threat to witnesses has been witnessed. I have in mind personalities being put on trial, such as the current President of South Africa when there was complaint of rape against him. The complainant had to be transferred outside the country not because the complainant had anything to do with that but because the supporters posed a threat to the complainant.

In the Kenyan case, the biggest culprits for this kind of threat to witnesses are the well connected and strong personalities in this country. We have seen the death of witnesses like in the Ouko case, as mentioned by my previous colleague. It is because the suspects were not ordinary Kenyans. They are the ones who have the capacity to make witnesses disappear. Other cases where we have strong people involved in corruption,

they are the ones who can afford those cover ups. It is possible, therefore, to say that these are the same people who have been impediment to this Act of Parliament which would strengthen the administration of justice.

Mr. Temporary Deputy Speaker, Sir, when it comes to the structure of the Bill, it has set up an independent agency and I have no issue with that. It has also set up an independent board to advise and possibly lay policies. My concern as has been expressed by my previous colleagues especially, Mr. Mungatana, is the independence of the Agency. It is exceedingly important. That independence would possibly help a lot where a vetting process is allowed to come in, like in the case of appointment of the Director. This would ensure that the person who is appointed can be of such a background as would be able to assure the country that the interest of justice alone and not other vested interests from powerfully connected persons determine who is to be appointed.

With those concerns, I beg to support.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to support the Witness Protection (Amendment) Bill.

I know my colleagues have contributed to various issues but I want to stress that the people to serve in the proposed agency must be men and women of high integrity.

The qualifications of these people must also be something of a lot of essence. I was just looking at the Bill here very quickly and I found that the Witness Protection Advisory Board--- Of course, we have had institutions before, but what I want to applaud here is that we are not talking about representatives of the people to serve on this board. We are talking about these people by themselves as persons. We have had instances where we have such important boards, commissions or whatever you call them and have had people sending their representatives and they cannot be held to account. So that is something that I thought was very well considered. But what I have seen again, that is taking us back to what I do not approve myself out of the experience I have had in some of these institutions is on page 19; the Witness Protection Appeals Tribunal. We are saying that it shall consist of a chairman who will be the calibre of a judge of the High Court of Kenya. When we come to “b”, we are talking about other members appointed by the Minister who shall be persons possessing, in the Minister’s opinion”; expert knowledge of the matters likely to come before the tribunal. I think it would have been better now for us to start being specific. If we leave this kind of open discretion, people will come because we are all human beings--- Maybe I support a Minister and I go and convince him that I understand these things and he appoints me in that place because we are leaving a lot of discretion. I think we should be specific so that if the Minister can pick, he can go ahead. Right now in Kenya, we have a pool of human resources; people are very qualified and I think we can select from the shortlisted field rather than saying that we leave it to the discretion of somebody with the knowledge of something.

Mr. Temporary Deputy Speaker, Sir, the other aspect I was also looking at is on Page 7 which has been handled well because we are saying, “high moral character and proven---” I also think we should adopt this as we go along. I was just using this as an example that the director be the chief executive of the agency and shall be responsible--- He should be a citizen of Kenya, have high moral character and proven integrity and an advocate of the High Court. This is the kind of trend that I would like us to take in this kind of matter so that when we are appointing somebody, we really know what we are looking for.

Generally, the issue of these crimes in this country, there are so many people who have information but they get scared because of what they hear. Like when we read about the Goldenberg whistleblower who was working at the Central Bank of Kenya (CBK) and what eventually happened to him, it is very scary. I am sure there are a number of Government officers; people in the Civil Service, who know what goes on. They have a lot of information but they cannot give. This is why I highly support this document because all these things that happened, crimes and so on, were planned somewhere. The issues of corruption were planned somewhere and there is somebody who implements. These same people before this Act would not be willing to give evidence for fear of what is going to happen to them. Even the elections – it has been alluded to before here – of 1992, 1997, 2002 and 2007 where we ended up having clashes, how they were planned, I think there are many Kenyans who had information about it but they would not give the information. That is why they keep on recurring. So if we have legislation like this in place, I am sure it will help with a number of people coming forward to give information on what has happened.

Mr. Temporary Deputy Speaker, Sir, the other important thing which I think has been happening and making it difficult for this kind of service to be rendered is the funding, because it involves a lot of looking for information, spending money on the witnesses, sometimes without making it public. This is why we are saying that those who are appointed to these kind of positions must be men of high integrity and properly vetted by the systems of Government.

There is the issue of those who come and give false information; those who come and want to give evidence against somebody because they have fought over something or because they are fighting over something. Maybe I did not look at the earlier Bill, the Act of 2006, but that is also a very important thing because people will want to take advantage because they think they are going to be protected and give false information. There must be a proper way of handling these kinds of cases so that we do not have people going round and giving evidence against others when it is all false.

Finally, the case that we have been talking about of 2007 over elections, it just took a very short time. In Rwanda, I think it was something that was building for a very long time; the genocide of 1994. So it is just good that this has come at this time so that we do not build pressure and then it can erupt like what we witnessed in Rwanda. I am told it took a long time when there was frustration by people who could not give information. I saw this and yesterday I had the opportunity to go to the genocide place and it is something that I would not like to happen again anywhere in this world.

With those few remarks, I beg to support.

The Assistant Minister for Youth and Sports (Mr. Kabando wa Kabando): Mr. Temporary Deputy Speaker, Sir, I will be very brief. Thank you for the opportunity.

In a more rhetoric way, I will just reiterate what has been said; the need for this legislation whose time is really overdue, to ensure that we move to the next level in terms of getting things right in the governance of prosecution and getting matters of national concern, security and corruption submitted and executed without the hindrances that have existed in the past. The example that my colleague, Mr. Chanzu, was giving about Goldenberg should ring bells as we address this Motion, given that it has taken very few and isolated instances to expose issues that would have helped this country to grow and cause responsibility within the Government. These isolated cases and because of the

absence of the Witness Protection Act, have relied mostly on the Civil Society to expose them and they end up not being followed up, redressed or corrected. We have relied on the media to expose important matters which should be in the domain of the State agencies. There is an on-going campaign on children's rights and as amplified today in some of the media, there is need for the child to be protected. A lot of exploitations are happening in communities. They are happening in homesteads. Children are being exploited in illegal labour, abuse of children in institutions of learning, abuse of children within the jurisdiction of even religious organizations and a lot of this information gets to the hands of individuals who may wish to submit such violations but for fear of reprisals within the communities and organizations, these matters do not come out.

Mr. Temporary Deputy Speaker, Sir, just recently, I was reading of an instance where a woman was being exploited at her work place. This is not an isolated case. There are many women who get abused and subjected to violent and inhuman conditions. However, for fear of being seen as disobeying one's community, clan or those people in authority, whether it is in villages, work places and in plantations, these cases are never brought forward. As we move towards the enactment of a new Constitution, we need to see women of this country playing a key and more visible role that will bring fairness, equity and justice to them. It is important to have this sort of subsidiary legislation which will enable their protection and promotion by way of ensuring that they are not abused.

The events happening within the political arena, crimes that are committed like the electoral malpractices, be it at the ward or the constituency level, and the impunity that we see being enjoyed by the high and mighty, the rich and the most corrupt, it is because individuals who are in a position to ensure that those who are guilty or the suspects are committed to the justice system, do not do so. This does happen because people are fearful and paranoid. They fear that they will be isolated and denied privileges. Therefore, we permit these violations to happen because we do not have a framework within which we can protect witnesses. Therefore, this legislation will make people, not just to have courage or to volunteer information, but to know that they are protected within the law. Therefore, they can submit information without fear that will help in readdressing injustices in this country.

This has been said many times and will appear repetitive, but what we learnt in 2005, 2006, 2007 and 2008, leading to the post election violence and the controversies that now bedevil us to the extent that we do not wish to be subjected to international scrutiny or interrogation that we wish we did not have mediators or even investigators that we invited, is because there has been that impunity of the powerful ethnic barons. Only the small men and women on the ground are subjected to the justice system and are left to languish in our cells, while those who appear to have harvested from the trade of political violence, electoral bribery and ethnic incitement, walk scot-free. They are not touched. Therefore, this is an important legislation that will ensure that from the lowest level of society, our people will have courage to say the truth because they are protected within the law.

I have looked at Page 28, Section 30(c) on the Obstruction of the Staff of the Agency. It says:-

“A person who assaults, resists or willfully obstructs a member of staff of the agency or a person acting under the direction of that member of staff in the due execution of his duties under this Act commits an offence and is liable on conviction to a fine not

exceeding Kshs500,000 or to imprisonment for a term not exceeding three years or to both”.

My concern is that this section is very lenient. It will only be painful to the low income earners, namely, the commoners. I am imagining of the high level barons who can use their positions given where we are going in this country, towards a very important phase where we have individuals who may have financed, perpetrated or even promoted the violence that was precipitated by the disputed Presidential elections of 2007. If a person has a network and a machinery and causes the staff working under this Agency not to execute their responsibilities and you are just saying that we just fine them Kshs500,000, I think we need to have an opening where such fines can be a little bit on a higher ceiling or a flexibility created such that it can be very heavy. The Kshs500,000 will be peanuts to those who may enjoy impunity.

Finally, I want to talk about the appointees. I was in this House when we passed the list of the Commissioners of the Truth, Justice and Reconciliation Commission (TJRC). If I recollect well, and this has been shared by some of our colleagues, sometimes when you want some of these things to happen, we rush them very quickly. I would like to advise the Attorney-General that before the appointments are concluded, even if they are going to be brought before this House, to create public awareness. I have seen a deliberate effort not to create consciousness about lists being tabled in the House. Sometimes Members may feel that it is just a list being tabled only to realize later on that the list that was tabled in the House comprised of details of such significant magnitude that they can cause either the functioning or the mis-functioning of institutions as has happened with the TJRC. You bring a report to the House, table it, it is received by the Clerk and the Members of Parliament are expected to go to Room 8 to pick it. Before realizing, the report is adopted by this House only for the country to be subjected to inertia and immobility of such an important body.

My advice is that beyond passing this legislation, there should be requisite publicity. Let Kenyans know, particularly on this Agency, the individuals who are being recommended for appointment. Kenyans should know their resumes. This is good because this House has opened up even its watchdog and departmental Committees, so that the integrity of the individuals involved is subject to interrogation way ahead of parliamentary passage. This is a genuine concern because, as I speak now, I have seen colleagues and even myself, speaking out there about the TJRC. We have also seen hon. colleagues standing on the Floor of the House and saying that those who are criticizing the situation at the TJRC are motivated by ethnic hate, when we know that this is a very serious matter. This will be a very good opportunity for the Attorney-General to appoint men and women to this Agency whose standing in society and integrity are testable and whose service within the Agency will be enduring, so that they are not subjected to a situation where they can be captives of merchants of impunity, something I see is very likely to happen unless we are diligent and careful in constituting this body.

With those remarks, I beg to support.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to add my input to this very important Bill.

Mr. Temporary Deputy Speaker, Sir, when we were passing the initial Witness Protection Bill, I can recall advising the Attorney-General that the Bill did not go far

enough and that there were some shortcomings. But now I am glad that the Attorney-General has realized the shortcomings and brought the amendments. So, I want to thank him and his staff for the work they have done in updating and remedying the faults that were in the initial Bill.

Mr. Temporary Deputy Speaker, Sir, I just want to say two things. One, as we improve on the Witness Protection Act, we need to copy what some of the most successful jurisdictions do. I have in mind here the United States of America (USA). Hon. Attorney-General, you will never be able to prosecute successfully somebody charged with corruption in this country - I will give you the reason. It is because you make it both an offence for the giver and receiver. So, if you accept that you have been given, even if that person is denying, first of all, the courts deal with you because you have confessed. So, it can never work. You need to copy the American system where the prosecutor decides among the giver and receiver who is more prominent in society. If you decide that it is the receiver, because normally the receiver will be more prominent--- You do not prosecute the giver but the receiver, so that then the giver can give evidence against the receiver. But where you say it is both of them; whether you were given or you received, you have committed an offence, it will never work. So, you need to make that distinction and choice as to whom you want to go for. Normally, it is the receiver.

Mr. Temporary Deputy Speaker, Sir, even where you have been able to prosecute, to me, you are going about it the wrong way. I will give you an example. In America I think in 1933, when we had the Mafia in Chicago, there was one very famous one known as the "untouchable". He was known as Al Capone. All the various prosecutors tried to prosecute Al Capone and they were unable until a smart accountant entered into the fray. He said: "I do not care where Al Capone got his money from, but did he pay tax on the money he received?" All he needed to prove was that he received certain payments for which he did not pay taxes and submit in his tax assessment. That is how he was able to bring down Al Capone. Hon. Attorney-General, I do not see why you do not do this in this country. All you need to prove is that somebody received a certain amount of money which was not declared in his tax. You do not care whether he received it legitimately or illegitimately. This is because if you tried to prove that it was legitimate or through corruption, you have a problem. So, go for the tax. Prosecute them on the basis that they received money which they never declared in their tax and never paid any tax. The same case applies to grabbed land. It is a circus. If you say that you are going to repossess grabbed land, you will never be able to do so because the courts protect or want to enforce the sanctity of titles. They do not want to go behind the curtain to find out how this land was acquired. Again, you need to prove that this man received this land and the value was so much and, therefore, he received a benefit. If he received a benefit, did he pay tax on it? If he did not, you prosecute him on failure to declare and pay tax. Then, you add penalties on top of penalties. If you do that, even where somebody has been offered land, people will start saying they do not want it.

Hon. Attorney-General, I do not know whether you have visited our so-called witness rooms in our courts. There are no witness rooms. Witnesses wait for their cases under trees. We need a proper witness room. You have been to the United Kingdom (UK) and seen the Crown Prosecution Agencies and their witness rooms. They are nice with good sofa sets. They are given tea and *mandazi*. There are also magazines and a television set. It is a pleasure to give evidence. But here, first of all, you stay under the

sun or tree. So, it is not a pleasure to give evidence. In fact, people here avoid giving evidence. That is why we cannot get proper witnesses. So, as you do this wonderful job on witness protection, please, you also need to do some reforms on other areas. If you do that, then you will succeed. Although the new Constitution gives you six months before you lose your job, I am sure the new President will reappoint you if you continue doing a wonderful job like you are doing now.

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

Mr. Muthama: On a point of order, Mr. Temporary Deputy Speaker, Sir. We have been here and have debated this Bill exhaustively. It looks like everybody is supporting it. Would I be in order to request that the Mover be called upon to reply?

The Temporary Deputy Speaker (Mr. Manyara): Yes, indeed, you are right. It is now becoming repetitious and I am hearing only support. So, I think it is only right and proper that we move on to close. So, I am calling on the Mover to reply.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, first of all, I want to thank most profusely all the Members who have contributed to this Bill. They have contributed in a very positive way in that all of them are supporting this Bill.

Mr. Temporary Deputy Speaker, Sir, witness protection is not an easy thing. It is a highly skillful and complicated system which operates to protect witnesses. We are the second country in Africa--- When this Bill was first published, it was not just published out of the blue. As we indicated at that time, it was published as a result of very extensive consultations with the civil society, professional, regional and international bodies. It had an input of the International Criminal Court (ICC), United Nations Office on Drugs and Crime and United States Department.

Mr. Temporary Deputy Speaker, Sir, the Bill that was initially enacted was fully debated in this House. Consequently, nobody should take any blame and ask why the Attorney-General is bringing the amendments when we only enacted the Bill recently, as if there was some defect in the Bill. There were really no defects in the Bill at that time and Mr. Mungatana did contribute extensively. If he had mentioned these ideas at that time, maybe we would have amended it at that time. But the fact of the matter is this; because the Government is committed to putting the witness protection programme in place, soon after the enactment of that Bill we embarked on a very ambitious programme to implement the Bill. During the implementation of the Bill, all the experts, both national and international were present. It is in the process of implementing the Bill that we found some weakness, which in a sense shows that one cannot just import a Bill from the United States of America (USA), Canada or South Africa and think that it can work in Kenya because our system here is different.

Whereas that Act when enacted it was okay, but in our systems here, it could not just work. Therefore, I think it is wisdom itself which says that when you are trying something and it does not work, it is wisdom to accept that you have to change. It will be foolhardy to refuse to change just because you have enacted an Act of Parliament. Therefore, the Government deserves congratulations for having brought these amendments as early as possible, as soon as they realized that there were obstacles and weaknesses in the implementation. The fact that the Government brought these amendments so quickly is in itself indicative of the support the Government has to this programme. Indeed, that is the whole purpose of enacting an Act of Parliament. If you enact an Act of Parliament, it does not remain like that forever and ever. Through

experience, changes in the methodology of doing things or amendments are routinely brought to the Floor of this House to an Act of Parliament. Therefore, nobody should say that there was any mistake done. The Government should be congratulated for bringing the Bill as soon as the weaknesses were discovered.

Mr. Temporary Deputy Speaker, Sir, I want to quickly mention some of the issues that were mentioned. Ms. Odhiambo and Mr. Kabando wa Kabando have brought to our attention the fact that the operation of this Act is going to extend beyond the norm of organized crime. It is also going to benefit the vulnerable groups in our society, that is, the women and children. That, I take. In fact, it is an experience that I have also gone through. I remember undertaking a prosecution of somebody because a clan said they must inherit a widow but she was against it and made statements about it. So, I undertook prosecution. But when it came to the hearing of the case, the clan had prevailed, threatened and intimidated her with excommunication from the entire clan, the land and from the family. So, she felt hesitant to come forward and give evidence. These are the type of people that enactment of this Bill will protect.

Regarding the issue of a comprehensive fund for victims, it is an issue that we can take up. But as far as this Act is concerned, it is dealing with a specific issue and I am very pleased that we have provided, in Clause 31, page 11 for compensation for the victims. I am glad about that. I also want to state, in support of Mr. Wamalwa, that this Bill, when enacted will not just support witnesses. It is a point that has been lost out a bit. It is not just the witnesses who will be protected but also any person who is in danger by virtue of being related to a witness. So, if I am the one being protected and my son, daughter or wife are also in danger for that purpose, the protection will also extend to them. So, we are here to protect not just the witnesses but also any person in danger. It could be his family, a friend or any person who can prove that his life is also at risk.

Mr. Temporary Deputy Speaker, Sir, Mr. Wetangula did speak about the experience in Spain where witness protection programmes are extended to judges and magistrates. I am aware of that and I am also aware that the same pertains to Colombia. In fact, I did go there for a special repertoire and was instrumental in putting in place the protection of judges and magistrates but strangely enough also putting in place the protection of prosecutors and the Attorney-General in that country. We can move there but we start with witnesses. I know in my mind that in due course, it will extend to judges, magistrates, prosecutors and also to the Attorney-General because in the decisions we make, we also create enemies. So, we need protection by the society. Right now, the solace is in the fact that these are state officials and if any one feels threatened while he is still a magistrate or judge, we have to provide security for them. That normally happens as a matter of course.

Mr. Temporary Deputy Speaker, Sir, Mr. Mungatana raised quite a number of good points. He did mention that suppose someone is under protection and commits a crime, what happens? There is no need to introduce any amendments to the Act because the law as it is suffices. In the regulations that have already been made under this law, if such a person commits a crime while under protection, then he loses protection. But there could be a case, like recently in Britain where although not a witness protection but a child protection, a child at the age of seven murdered a child of two. They were two of them and then they were given the necessary protection in jail. After thirteen years, they were released under the protection that pertains in the United Kingdom (UK) where

identity, the name and everything was changed. In the process, that person again committed another offence. So, the Secretary for Home Affairs and the Minister for Justice in the UK refused to disclose the identity. But that did not mean that the person was not going to be prosecuted for the offence that he has committed. He was going to be prosecuted but now under camera. So, there are ways of dealing with these things. There are numerous ways of dealing with these things that some amendments to the Act can take all of them. Those issues are best dealt within regulations that the Minister can make or policies that the agency itself can bring in place. The Agency, under Clause 7 of the Act, says that when a person becomes a protected person, he must enter into a memorandum of understanding between the Agency and himself. In that memorandum of understanding, a number of issues that can lead to the revocation of the protection are put there.

Section 7 reads:

“The Memorandum of Understanding (MoU) shall set out the basis on which the participant is included in the programme, the details of the protection and the assistance which is to be provided.”

It should contain a provision to the effect that protection and assistance under the programme may be terminated if the participant deliberately breaches a term of the MoU or a requirement or undertaking relating to the programme. Therefore, a number of these instances, which have been quoted by hon. Members, should lead to the revocation of protection. There is no need to provide a specific amendment for it in the Act. It will be provided for in the MoU, which will be entered into between the protected person and the Agency. It will further be provided for under the regulations which the Minister will put in place.

Mr. Temporary Deputy Speaker, Sir, an issue was raised about joyriders and people like those. Again, the same will apply. By the way, it is a very rigorous system; for you to actually make it and become a protected person. That system will get rid of joyriders.

Mr. Temporary Deputy Speaker, Sir, I welcome the contribution by hon. Mbadi on these issues, particularly on the issue of the tribunal. I think I have answered hon. Baiya and underlined that the Government is, indeed, very serious in putting this Witness Protection Programme in place. It is because of that seriousness that weaknesses have been identified and the Government has quickly come to Parliament to correct those weaknesses. Hon. Chanzu did raise some good points here, but he should be more specific. If he can come up with more specific recommendations for the Committee Stage, I will be pleased to look at them, particularly with regard to the appointment of the two members of the tribunal. He said we should be more specific, but I think we are specific enough. But if he can be more specific and come up with proposals, then I will look at them very favorably.

Mr. Temporary Deputy Speaker, Sir, hon. Kabando wa Kabando made a very important point here relating to the offence which is provided for under paragraph 30 (c) at page 28. It is, indeed, very true that I do not expect the ordinary Kenyan to be instrumental in carrying out threats of such a nature that a witness feels threatened enough not to give evidence. Mistakes are most likely, going to come from those who are able to; they will be able to because of the financial position or capacity that they will have – most of it ill-gotten. Therefore, it is inherent in them and is part of their culture to

provide threats, intimidation or even threats of death, so that they are not found out. Consequently, for such persons the fine of Kshs500,000 appears to me to be on the lower side; I will be bringing amendments to increase that fine to Kshs1 million. Not only that, I will be bringing further amendments to say that if the same person is found to have threatened on subsequent occasions, the option of fine will not be there. It will only be a custodial sentence.

Mr. Temporary Deputy Speaker, Sir, my learned colleague, hon. Githae, I think, has been heard; I hope that the investigative agencies have heard him. I hope the tax authorities have heard him, so that they can take into account when they operate, what he has told us this afternoon in this august Assembly. Since this is a Witness Protection Programme, I cannot bring in amendments to what you have said. If we were discussing an amendment to the Anti-Corruption and Economic Crimes Act, then I think some of the suggestions you made would be extremely, extremely useful and I hope that they will be on board. When you have ascertained them as amendments in the Bill, those are the type of things that we are going to consider; I thought they were extremely useful.

With those few remarks, Mr. Temporary Deputy Speaker, Sir, once again, let me thank all who contributed to this debate.

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

(Question put and agreed to)

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

MOTIONS

ADOPTION OF REPORT ON STUDY VISIT TO TURKEY/REPUBLIC OF IRELAND/ UK

THAT, this House adopts the Report of the Departmental Committee on Defense and Foreign Relations on the study visit to Turkey, Republic of Ireland and the United Kingdom on 22nd November – 7th December, 2009 laid on the Table of the House on Thursday, 10th December 2009.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, it has been brought to my attention that the hon. Member who was to move this Motion is not ready and, therefore, it is deferred.

(Motion deferred)

ADOPTION OF REPORT ON PROCUREMENT OF CEMETERY LAND

THAT, this House adopts the Report of the Departmental Committee on Local Authorities on the deliberations on the Procurement of Cemetery Land laid on the Table of the House on Thursday 4th March, 2010.

The Temporary Deputy Speaker (Mr. Imanyara): Also, hon. Members, with respect to Order Number 10, there have been developments – the matter is in court and the Speaker is making inquiries from the Attorney-General’s Office before making a ruling as to whether this Motion should be debated.

(Motion deferred)

ADJOURNMENT

Therefore, hon. Members, that being the case, we will adjourn our business until tomorrow, Wednesday the 7th of April, 2010, at 9.00 a.m.

The House rose at 6.22 p.m.