

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 18th November, 2010

The House met at 2.30 p.m.

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

PRAYERS

NOTICES OF MOTIONS

ESTABLISHMENT OF WATER SERVICES BOARDS IN NORTH RIFT

Mr. Kaino: Mr. Temporary Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, aware that the power to establish water service boards vests in the Minister for Water and Irrigation; concerned that the entire North Rift, inhabited by millions of people residing in urban centres such as Eldoret Municipality and semi-urban and rural areas, is currently served by a single water board; aware of the need to have an efficient and effective water service delivery and management all over the country; this House urges the Government to establish two water service boards in the North Rift in order to take services closer to the people.

IMPLEMENTATION OF MILLENNIUM DEVELOPMENT GOALS

Mr. M'Mithiaru: Mr. Temporary Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, recalling that ten years ago, world leaders agreed to take decisive action to combat world poverty in its different dimensions using time-bound and measurable targets; further recalling that Kenya is among the 189 countries that signed the Millennium Development Goals (MDGs) in September, 2000, and is committed to the purposes and principles of the charter of the United Nations; concerned that apart from education and possibly HIV/AIDS, Kenya has fallen behind in the race and has not made sufficient progress towards meeting the MDGs; concerned that at the current pace of development with limited resources, Kenya may not meet most of the goals by 2015; convinced that parliamentary engagement on the MDGs will accelerate progress to achieving the MDGs; this House urges the Government to take concrete measures towards achieving MDGs

and report its implementation status and challenges if any, including remedies within the next six months and at such regular intervals thereafter.

QUESTIONS BY PRIVATE NOTICE

UPSURGE OF INSECURITY IN KOGONY WARD

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

(a) Is the Minister aware of the current unprecedented increase in incidences of robberies, burglaries, housebreakings and other forms of attacks in Kogony Ward in Kisumu Municipality whereby properties have been lost and serious injuries caused to residents?

(b) Is he also aware that on the night of 2nd November 2010, homes of Messrs Philip Amburo Ngadi, Joseph Sao Ombam, Odipo Samuel and Dennis Odawo Olilo were attacked, residents severely injured and property stolen and that the culprits have not been apprehended to date?

(c) What urgent steps is the Ministry taking to establish a Police Patrol Base at a central point in Kogony Ward to facilitate detection and prevention of crime and overall police patrols in the ward since Kisumu Police Station is not able to reduce the incidences?

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

(a) I am aware that on 3rd November, 2010 at about 1.00 a.m. within Kogony Ward, Riat Area of Kisumu Town West Municipality, about 10 kilometres from Kisumu Police Station, an unknown number of thugs armed with crude weapons attacked residents demanding money. The residents raised an alarm and confronted the thugs. During this incident, the following persons were injured: Philip Amburo Ngadi, Joseph Awodo Ofafa and Lucas Auma. The area in question has not experienced any form of crime or violence for the last six months except that incident.

(b) I am aware that on 3rd November, 2010, Messrs. Philip Amburo Ngadi, Joseph Awodo Ofafa and Lucas Auma were injured when they confronted an unknown number of thugs who attacked the villages with intent to steal. During the incident, nothing was stolen but the above-mentioned residents were seriously injured and were admitted to the New Nyanza General Hospital. Other villagers who were slightly injured were treated and discharged. Following the incident, police launched investigations and a criminal case No.627/618/2010 was opened and investigations are on-going, with a view to arresting the culprits.

(c) Following that incident, the following measures have been taken.

(i) Patrols have been intensified. I have given a new motor vehicle registration number GK A430D which is deployed in the area for patrol purposes.

(ii) A team of police officers under the command of a Chief Inspector has been deployed in the area as a temporary measure while a permanent solution is being sought.

(iii) There are plans to upgrade Riat Patrol Base to a full police post to effectively police the area.

(iv) Consultations are also at an advanced stage with the local administration to get a piece of land in order for me to establish the police post.

Mr. Temporary Deputy Speaker, Sir, I urge the Questioner to help us get a piece of land in order for me to ferry some uni-huts so that I can post some personnel with immediate effect.

Mr. Olago: Mr. Temporary Deputy Speaker, Sir, the answer by the Assistant Minister should be satisfying and I accept that steps have been taken. However, he should know that this is the area whose residents gave up their land for the construction of the international airport. So, the people need to be protected.

The Assistant Minister has said in the last answer that consultations are also at an advanced stage with the local administration to get a piece of land in order for him to establish the police post. I wish to confirm to him and the House that I am fully aware that land is available in Kogony Ward for construction of the police post. I will take the challenge up so that uni-huts can be taken there immediately.

Mr. Ojode: Mr. Temporary Deputy Speaker, Sir, if, indeed, it is true that land is available, I urge the Questioner to come and see me in the office on Wednesday, next week in order for me to give him the uni-huts and then deploy personnel with immediate effect.

Mr. Olago: Mr. Temporary Deputy Speaker, Sir, I take up the challenge. On Wednesday, I will go to the Assistant Minister's Office for the uni-huts.

DEMONSTRATION AGAINST RESETTLEMENT OF IDPS IN MAU NAROK DIVISION

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

(a) Is the Minister aware that a group of more than 400 people demonstrated against plans to resettle Internally Displaced Persons (IDPs) on a piece of land acquired by the Government at Tipis Center in Mau-Narok Division of Njoro District on 6th November, 2010?

(b) Is he also aware that the same group has planned to sabotage the ongoing survey process on the land earmarked for resettlement of the IDPs?

(c) What steps has he taken to ensure the planners and financiers of the demonstration are arrested and charged, and that the resettlement plans are not interfered with?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, if you look at the Question, you will realise that it does not belong to my Ministry. The Question asks whether I am aware that more than 400 people demonstrated against plans to resettle---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Assistant Minister, are you answering the Question or what are you doing?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, we have written to

the Clerk of the National Assembly to redirect the Question to the Ministry of State for Special Programmes.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Kiuna, what do you have to say to that?

Mr. Kiuna: Mr. Temporary Deputy Speaker, Sir, I do not see any reason why the Assistant Minister is refusing to answer this Question and yet it involves his Ministry. There are some people who have invaded private property which is supposed to be protected by his Ministry. So, he is the one who is supposed to answer this Question.

The Temporary Deputy Speaker (Mr. Imanyara): What the Assistant Minister is saying is that if you look at the Question in totality, you will realise that it falls more under the Minister of State for Special Programmes to whom he has written. Your Question will obviously be covered by that Minister. That includes the security aspect that needs to be attended to. Are you happy that the matter be referred to the other Ministry at a specific time?

Mr. Kiuna: Mr. Temporary Deputy Speaker, Sir, I am not satisfied. This Question falls under his Ministry because it is his Ministry which is supposed to provide security.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, let us just dwell on what the fellow wants. First, the Questioner talks about resettlement of the IDPs. Secondly, he asks whether I am aware that some people have planned to sabotage the on-going survey process on the land earmarked for the resettlement of the IDPs. This is a Question about the resettlement of the IDPs.

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Assistant Minister! Mr. Kiuna, I am satisfied that this is a matter that should be handled by the Ministry concerned. I will, therefore, defer this Question. Mr. Kiuna, what time will suit you next week?

Mr. Kiuna: On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like the Assistant Minister to read part “c” of my Question and state whether it does not fall under his Ministry.

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Kiuna! I direct that the Assistant Minister consults with his colleague on who will answer this Question on Thursday at 2.30 p.m. so that part “c” of the Question that relates to possible arrests can be addressed. Mr. Kiuna, you will then pick up the matter from there. I defer the Question to Thursday, next week at 2.30 p.m.

(Question deferred)

DISPOSSESSION OF MAZIWA
MARKET TRADERS LAND

Mr. Mbugua: Mr. Temporary Deputy Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) Under what circumstances was the unsurveyed parcel of land along Jogoo Road occupied by Maziwa Market Traders taken away from them?

(b) Is the Minister aware that the said traders were allocated the parcel of land by the late President Jomo Kenyatta and they have been paying rates to the Nairobi City Council?

(c) What action is the Minister taking to ensure that the said parcel of land reverts to the traders who have been operating from the land for over 32 years?

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

(a) Land Reference No.209/1209 Nairobi, along Jogoo Road, was allocated to Lucy Jepkemoi Ruto on 16th July, 1993 as an unsurveyed plot for a Petrol Service Station and registered on 12th August, 1994. At the time of allocation, the land was uncommitted Government land.

(b) I am not aware that the land had been allocated to the traders by the late President Jomo Kenyatta and that they have been paying rates to the council.

(c) The land is not developed and there is no evidence that the grantee has submitted in triplicate to the City Council of Nairobi, plans, drawings, elevations and specifications of the buildings the grantee proposes to erect on the land and the approval thereof by the council. The same has not been submitted to the Commissioner of Lands. In the circumstances, the grantee is in breach of the conditions of the lease. I have, therefore, directed the Commissioner of Lands to re-enter into the land. Upon that entry by the Commissioner, the grant will cease and revert back to the Republic.

Mr. Mbugua: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for doing justice to the small traders of Jogoo Road. There are over 3,000 traders in that market who were forcefully ejected and teargased. I want to thank the Minister for the action he has taken. However, I would like the Minister to give an undertaking to this House as to when the 3,000 traders will go to his office to collect the grant.

Mr. Orengo: Mr. Temporary Deputy Speaker, Sir, first, the hon. Member has got to make me aware that they want the plot. You may just want to squat there but you need to convince me that you want to be on the land and do something with it. Once I am convinced that there are adequate and appropriate plans for the use of that land, then, I will do the needful. But I also want to say that in view of what he had said about evictions, we are trying to develop some guidelines for evictions in terms of the new Constitution. It is not enough that somebody gets an order from court and mobilizes policemen who then go and shoot people and burn houses for purposes of eviction. If you have let people squat or settle in your land for ten years without removing them, part of the problem is on your part because you have not been using that land. So, even if you have got a court order, you must make sure that, that process of eviction is done in a humane and dignified manner in terms of the Constitution of Kenya.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, when we used to be at the University of Nairobi, we remember with nostalgia how we used to go to this market and buy a plate of boiled chicken heads at 30 cents. So, we know for a fact that these traders own this place. They have been there for all these years.

My question to the Minister, who is a prominent lawyer in this country is: Since you know that we have the law of adverse possession of land, can you confirm to this House that when hon. Mbugua comes with the list of these traders, you will automatically apply the law of adverse possession and issue them with the documents so that they possess the land?

Mr. Orenge: Mr. Temporary Deputy Speaker, Sir, you have to usurp that right. You must convince me that you have been there for more than 12 years and, probably, you need a court order to vest you with those rights. But as Minister for Lands, I will always operate on the basis of recognizing the rights of people who are already on the land and are using it. Unfortunately or fortunately for the hon. Member, he used to go there to buy chicken heads, but two weeks ago, I was there and bought a very nice piece of chicken. I am sure, hon. Khalwale being who he is, would have enjoyed that meal with me.

Mr. Gunda: Mr. Temporary Deputy Speaker, Sir, the hon. Minister has said that they are in the process of developing modalities of stopping those who get court orders and evict people who are squatting on land which has not been developed by whoever owns the title deed. Until such time that those modalities are in place, what can the *wananchi* do in the meantime when they are faced with a situation where somebody has come with a court order and the Administration Police or regular police and they are torching houses and harassing them?

Mr. Orenge: Mr. Temporary Deputy Speaker, Sir, if you read the Constitution, it requires everybody to act in accordance with the Constitution. Every organ of State and individual is supposed to respect the Constitution. I am saying without fear of contradiction that if you have to carry out an eviction and have a court order, which means it is a lawful eviction, you must do it in accordance with the law and Constitution. The moment you start beating up people and burning houses, then you must know that you are doing something wrong. Even if you are a police officer, you stand the danger of being sued in terms of enforcement of the rights under the Constitution. I think this is a very difficult rule to apply but we have elected to live by the new Constitution. Even hon. Ojode knows that they are working on new legislation that will ensure that we have police reforms, so that when they have to do anything involving people's rights they should do it in accordance with the Constitution. So, rest assured that in liaison with the appropriate Ministry, I will make sure that the guidelines we are developing are used by all organs of state and individuals who want to carry out forceful evictions. This is because we have been doing it in a way that shows anarchy rather than obedience and compliance with the rule of law.

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, could the Minister explain what measures his Ministry is taking to protect other traders from other market areas facing similar problems?

Mr. Orenge: Mr. Temporary Deputy Speaker, Sir, with Questions, I can only deal with specific issues. If you bring it to me and looking at the nature, I will be able to respond. The other side of the coin must also be taken into consideration. There are some people who have taken the licence to move on any land without any rights and then expect that they cannot be evicted from those pieces of land. But if you have any specific Question regarding any Kenyan or group of Kenyans in any part of the Republic, if you bring it to my attention, then I will do the needful.

Mr. Mbugua: Mr. Temporary Deputy Speaker, Sir, if you allowed me, I would hug Mr. Orenge and congratulate him for the work that he is doing for this country. Indeed, this is a working Minister unlike others. However, the Minister did not give a firm undertaking as to when I am going to take a piece of chicken to him and take the title.

Mr. Orenge: Mr. Temporary Deputy Speaker, Sir, I am very much aware of the Powers and Privileges Act, Chapter 6 of the Law of Kenya. If at all I submit to your inducement, I may end up before that Committee. I may be summoned and grilled. However, if you are in the habit of going to this market to buy chicken to eat like I am, possibilities are that we may meet there as customers. I encourage hon. Khalwale to come along because now he can afford a full chicken instead of *kichwa cha kuku*.

The Temporary Deputy Speaker (Mr. Imanyara): Next is Member for Likoni, Mwalimu Mwachima.

ENCROACHING OF MTONGWE LAND BY NYS

(Mr. Mwachima) to ask the Minister for Youth Affairs and Sports:-

(a) Is the Minister aware that the National Youth Service (NYS) has illegally encroached on and fenced off land belonging to 250 families in Mtongwe in Likoni?

(b) Is he also aware that the community has lived in that area for 200 years and that the National Youth Service has only been here for 40 years?

(c) What steps will he take to ensure that the National Youth Service does not encroach the community land? Could the Minister assure the House that the fence will be moved to the previous boundary?

The Temporary Deputy Speaker (Mr. Imanyara): Where is he? I will come back to that Question later.

ORAL ANSWERS TO QUESTIONS

Question No.549

DEMOLITION OF CITY COUNCIL OFFICES IN HARAMBEE WARD

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

(a) under what circumstances the City Council offices in Harambee Ward of Makadara Constituency were demolished and the offices transferred to Jericho;

(b) to state why the land meant for the said council offices is currently occupied by a private developer; and,

(c) what action the Ministry is taking to ensure the land reverts back to the public.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Deputy Prime Minister, will you answer the Question?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I am sorry I took time to come forward. I was consulting with my colleagues and did not hear you when you called me.

Let me take this opportunity, first and foremost, to apologize to my colleagues because I should have answered this Question previously. However, I was not available when the hon. Member asked the Question. I hope that the apology is accepted.

I beg to reply.

(a) The land formerly housing the City Council offices in Harambee Ward, Makadara Constituency, was re-planned by the City Council Planner through a part development plan titled "Proposed Amendment Commercial and Residential Plots Harambee Estate off Rabai Road" which was generated in 1997 and approved by the Commissioner of Lands on 12th April. After the replanning, the plots were then allocated to private developers.

(b) With regard to Part (b), I will lay the plan in question on the Table.

(Mr. Mudavadi laid the document on the Table)

My Ministry has never approved the sub-division and alienation of the City Council offices land and allotment of the same to a private developer. As far as the Ministry is concerned, the private developer is illegally occupying the land.

(c) The Ministry has directed the City Council of Nairobi to repossess the council offices land forthwith, and I have a letter here which is addressed to the City Council from the Permanent Secretary, Office of the Deputy Prime Minister and Ministry of Local Government, requesting for the repossession.

Mr. Mbuvi: Mr. Temporary Deputy Speaker, Sir, I appreciate the positive answer by the Deputy Prime Minister and Minister for Local Government. However, could he explain to this House what measures his Ministry is taking to ensure that people from the areas which are affected like Buru Buru and Harambee do not continue to suffer as they continue to seek council services?

Mr. Mudavadi: Mr. Temporary Deputy Speaker, Sir, the first thing we have done is to give direction to the City Council of Nairobi to repossess the offices. Through that repossession, they will make sure that they evict the persons who are occupying the offices illegally so that they can revert back to the City Council and, therefore, serve the people of that area.

Mr. Mwangi: On a point of order, Mr. Temporary Deputy Speaker, Sir. You have heard the answer given by the Deputy Prime Minister and Minister for Local Government. He has said that the land was illegally given out. Is he in order to say that he was given the letter without stating the action that was taken against the officers who gave out public land to private developers?

Mr. Mudavadi: Mr. Temporary Deputy Speaker, Sir, there will be a consequence for that. The question at hand is what we are doing to repossess the land. That is what I was responding to and naturally, the officers who were behind the illegal allocation will be dealt with in accordance with the law.

Mr. Shakeel: On a point of order, Mr. Temporary Deputy Speaker, Sir. Could the Deputy Prime Minister and Minister for Local Government be very clear when he says that the officers will be dealt with?

The Temporary Deputy Speaker (Mr. Imanyara): Are you rising on a supplementary question or on a point of order?

Mr. Shakeel: I am rising on a point of order.

The Temporary Deputy Speaker (Mr. Imanyara): What is your point of order?

Mr. Shakeel: My point of order is that the Deputy Prime Minister was not very clear as to what action he will take.

The Temporary Deputy Speaker (Mr. Imanyara: Order! That is not a point of order! That is a supplementary question but I will allow you.

Mr. Shakeel: Mr. Temporary Deputy Speaker I would like to know from the Deputy Prime Minister and Minister for Local Government what action he will take against the officers involved. Are those officers going to be recycled and sent to Kisumu or other places to continue with the same games?

Mr. Mudavadi: Mr. Temporary Deputy Speaker, Sir, the action is very clear. Under the Local Government Act, the regulations provide for a surcharge or a dismissal and, indeed, depending on the nature of involvement of the individual; even charges can be preferred against them. However, that has to go through the process of proper scrutiny to establish the role of each individual who was involved in the scam.

Mr. Mbuvi: Mr. Temporary Speaker, Sir, could the Deputy Prime Minister give an undertaking that such an incident will not occur again, not only in Makadara Constituency, but in the entire Nairobi County?

Mr. Mudavadi: Mr. Temporary Deputy Speaker, Sir, I just want to state, for the general information of the House that, indeed, we have issued a circular to all local authorities. I have repeated this publicly, that we should not at any one time be involved in the transfer or alienation of any local authorities' properties without following the proper procedure of having the approval of the Commissioner of Lands. So, we are very clear that this will not happen again and a circular is already out to all local authorities.

Question No.425

REMAINING LEASE PERIOD FOR
FOREIGN-OWNED TEA ESTATES IN KERICHO

The Temporary Deputy Speaker (Mr. Imanyara): Is Dr. Kones not in? I will give him a second chance later.

Question No.429

KENYA SUGAR BOARD SUPPORT
TO CANE DEVELOPMENT

Dr. Khalwale asked the Minister for Agriculture:-

(a) whether the Kenya Sugar Board (KSB) supports sugar-cane farmers in cane development in this country;

(b) whether she could provide a list showing the amounts of money expended by KSB towards cane development, indicating the amount allocated to each Sugar-cane growing zone per annum since 2005; and,

(c) whether she could also provide a list showing the amount of sugar produced by each zone since 2005.

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

(a) The Kenya Sugar Board (KSB) has supported and continues to support the sugarcane farmers in cane development in the country through the disbursement of the Sugar Development Fund amounting to Kshs5,049,946,231.75 since 1992.

(b) I hereby table the list of expenditure by the KSB towards cane development indicating the amount in Kenya shillings and the sugarcane zone per annum since 2005.

(c) I hereby also table the list showing the amount of sugarcane produced in metric tonnes by each zone since 2005.

(Mr. Ndambuki laid the documents on the Table)

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, according to the statistics of production, the combined production between the factories of Nzoia, West Kenya and Mumias account for over 80 per cent of all the sugar that is produced in Kenya. The same factories receive less than 40 per cent of the money from the KSB to enable farmers in these areas to do cane development. Since this is farmers' money, could he tell us why money earned by farmers of Nzoia, West Kenya and Mumias is used to develop cane for sugar factories in Nyanza, namely, SONY, Muhoroni, Chemelil and Miwani, as if this is their money? This money belongs to the farmers of the three factories in Kakamega and Bungoma districts.

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, those factories apply for the money and they are given. We do not just give those factories money before they have applied for it. There are some years when some of those companies the hon. Member has talked about, did not apply for the money. I would ask the hon. Member to tell them to apply for the money because the KSB has money to loan.

Mr. Washiali: Mr. Temporary Deputy Speaker, Sir, you have heard the answer that the Assistant Minister has given in response to Dr. Khalwale's Question. The Question is very clear as to whether the KSB supports the sugar cane farmers in this country. However, from his answer, he did not indicate how farmers receive the money. He has talked about disbursing the money to the Sugar Development Fund, but has not indicated how this money eventually gets to the farmer. It is in the HANSARD that I asked a Question in this House demanding for Kshs500 million that was supposed to be loaned to farmers. To date, the money has not reached the farmers.

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, once a factory applies for a loan from the KSB, it is supposed to on lend the money to the sugar farmers. That is what really happens. The factories have to apply for the money. The KSB cannot just give the money. The money is there and the factories should apply.

Mr. Washiali: On a point of order, Mr. Temporary Deputy Speaker, Sir. The money for sugar cane development is supposed to come directly from the KSB to the farmers. The Assistant Minister is talking about the factory lending money to the farmers. Is he in order to mislead this House?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I am not misleading the House. It is the factories that are supposed to apply for the money from the KSB. Once the money is advanced to the factories, they are supposed to on-lend it to the farmers. That is exactly what happens.

Mr. Kombo: Mr. Temporary Deputy Speaker, Sir, part “a” of the Question is very clear as to whether the KSB supports sugarcane farmers in cane development in this country. Does the Board have any policies to support the farmers? The farmers do not have to apply for the money if the Board has policies to support farmers in cane development. Why would the Assistant Minister insist that the factories have to apply for the loans?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, the growers meet and look at their demands and authorize the factory to apply for the money. Then the KSB advances the money to the factories for on-lending to the cane farmers.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. We should not allow the Assistant Minister to get away with this. The *modus operandi* is such that when the funds with the KSB are supposed to be released, they are taken directly to the miller. They are not taken to the farmer. Therefore, for him to come here and say that the money goes to the farmers is misleading the House. Why is he misleading the House?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I am not misleading the House. I am only telling the House the procedure of getting the money from the KSB.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, I will follow him up on that, so that I can show him how our farmers are short-changed. Because the money is taken directly to the millers, they end up charging interest to the farmers who partake of that money at a rate of 18 to 24 per cent. The KSB negotiated for a facility with the Equity Bank. The bank accepted to on-lend this money to farmers at an interest rate of 5 per cent. The KSB wrote to the Ministry of Agriculture and the Office of the Deputy Prime Minister and Ministry of Finance to give consent, so that money from the KSB could go directly to Equity Bank for on-lending to farmers and not millers. The Office of the Deputy Prime Minister and Ministry of Finance and the Ministry of Agriculture have refused to the extent that today, Kshs500 million, meant to help farmers of Mumias, Nzoia, West Kenya and Butari factories has not been accessed.

When will the Assistant Minister give the consent, so that the money goes directly to Equity Bank for onward lending to the farmers who would access it at an interest rate of 5 per cent rather than 18 to 24 per cent, which is charged by those millers who are ripping off our farmers?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I am hearing this for the first time. I would like to go back to the Ministry and check whether it is true there is such a negotiation. If there is, I will bring the answer to the House.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): But he is telling you that he has just learnt of that, and he wants to go back to the Ministry to establish whether, in fact, that is the situation and come back to this House. What is wrong with that?

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. Because this is a very practical and very serious point, kindly allow the Question to be deferred.

The Temporary Deputy Speaker (Mr. Imanyara): That is precisely what the Assistant Minister is suggesting. That you give him time to go back to the Ministry to establish the facts as you allege and he will come back to this House.

Dr. Khalwale: Thank you so much, Mr. Temporary Deputy Speaker, Sir. I will also come with other authentic documents to give him just in case he is misled by the senior officers.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Assistant Minister, how much time do you require?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I would just like to confirm that I will only come back to the House on that element between the Ministry and Equity Bank. This is not the first time the Ministry has done something like this. We have done it before. I do not see where the problem is coming from.

The Temporary Deputy Speaker (Mr. Imanyara): When do you want to come back with the answer?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, next week.

The Temporary Deputy Speaker (Mr. Imanyara): Thursday, next week?

Mr. Ndambuki: Thursday, next week, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Dr. Khalwale, is Thursday, next week, okay with you?

Dr. Khalwale: Most obliged, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): That Question is deferred for the limited purpose of the Ministry establishing the facts as alleged by Dr. Khalwale.

(Question deferred)

Question No.460

CATTLE RUSTLING IN ISEMBE/TIGANIA

Mr. M'Mithiaru asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he is aware that the security situation in the Northern Grazing Area (NGA) of Isembe and Tigania has not normalised despite the disarmament effort owing to frequent cattle rustling in the area;

b) how many animals have been recovered to date following the handing of a memorandum to the Minister by herders from Isembe North in 2010, and where their stolen livestock have been traced to; and,

(c) when the government will establish an Anti-Stock Theft Unit (ASTU) base at Bulu, considering that the entry and exit points of cattle rustlers have been in Bulu area of the NGA.

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

(a) I am not aware that the security situation in the Northern Grazing Area (NGA) of Isembe and Tigania has not normalised owing to frequent cattle rustling in the area. However, I am aware of isolated cases of highway banditry, targeting vehicles travelling between Garbatula and Isiolo North, carrying passengers and livestock. This menace was started recently---

The Temporary Deputy Speaker (Mr. Imanyara): Assistant Minister, the Question is not about Garbatula. It is about Isembe North and Tigania.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, that is why I am saying that I am aware of some banditry activities within the main highway. So, the menace, which started recently, is being dealt with.

(b) Details of recovered animals to date are as follows:-

<u>Type of Livestock</u>	<u>Number Stolen</u>	<u>Number Recovered</u>
Cows	754	500
Goats	157	157
Donkeys	11	11
Camels	<u>20</u>	<u>20</u>
Total	<u>942</u>	<u>688</u>

Out of a total of 942 animals which had been stolen, we have so far succeeded in recovering 688 animals, which is a good number.

(c) The Government did not establish an ASTU camp at Bulu because the area is adequately covered by Gaturu ASTU Camp, Kinita General Service Unit (GSU) Camp, Gambela Police Patrol Base and Bataru Administration Police (AP) Outpost along the Gambela-Dumuru Road. In addition, the highway is being patrolled effectively by officers from the regular police and the AP.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. M'Mithiaru: Mr. Temporary Deputy Speaker, Sir, whereas I thank the Assistant Minister for attempting to answer this Question, the issue of cattle rustling in Igembe and Tigania has been rampant for the last two years. This Question was specific on the cattle that were stolen from May, 2010, when the herders of Igembe and Tigania delivered a memorandum to the Minister of State for Provincial Administration and Internal Security, detailing locations where the animals were. What I wanted to know, under part (b) of the Question, is how animals have been recovered. What he has given are the animals that have been recovered for the last two years. So, my question is specific: What is the Minister doing to fast-track recovery of the animals that the herders themselves traced and requested assistance from the Government, so that those animals can be brought home?

Mr. Ojode: Mr. Temporary Deputy Speaker, Sir, the figures I have given are of those animals which have so far been stolen and those which we have recovered. I did indicate to the Questioner that he should come, so that we can agree on which ones are still missing in order for my officers to fast-track the recovery process. I am also ready to help in fast-tracking the issue of recovery. We agreed that he should come to my office, so that we can increase the personnel in order for us to fast-track the recovery bid.

Mr. Bahari: Mr. Temporary Deputy Speaker, Sir, this Assistant Minister must exercise due care when he makes public statements. In answering this Question, he said that the Isiolo-Garbatula highway is effectively patrolled. In the same area, on Monday, 15th November, 2010, four constituents of mine were ambushed by bandits. One was killed; another one was injured, and is in hospital. The others managed to escape. In that incident, five donkeys were taken away. This is the same area where we have the GSU Camp he has talked about.

In the last four months, I have had more than three deaths, all of which have been reported to the police. Along Isiolo-Archers Post-Marsabit Road, similar incidents have happened. So, the issue has not been addressed in the whole zone. Can he explain what he means by “effective patrol” and “coverage by security forces”? Is it just lumping together of all sorts of security forces there?

Mr. Ojode: Mr. Temporary Deputy Speaker, Sir, the reason as to why we are having patrols along that road is because of the banditry menace. If we withdraw the patrol vehicle, that road will not be passable. They should thank me for deploying a number of police officers to patrol that area. If there is any need to increase the officers, I will do exactly that. Do you know why we have a 24-hour patrol on that road? It is because of the problems people there are facing. I have promised that we will increase security officers within that area. I also want him to know that as we speak, there is a disarmament exercise going on. So, the presence of the police officers on the ground is being felt.

Mr. Bahari: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to threaten that he can withdraw the police from that area?

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Bahari! I was listening to the Assistant Minister very carefully. He simply said that you should thank him for giving you the patrol.

Last question, Mr. M’Mithiaru!

Mr. M’Mithiaru: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister mentioned that besides the cattle rustling that is rampant in our area, there is also a recent emergence of – I would not call it “highway” because there is no highway there but just roads – highway robbers between Mutuati-Kachuru and Isiolo-Garbatula Roads. He has said that there is police patrol. About two weeks ago, a Land Rover vehicle was attacked between Mutuati and Kachuru, and somebody was killed. It took a day for the police to respond. One of the reasons given was that there was no transport in our police stations. When is he going to provide the police with the requisite tools, in terms of transport, so that they can have a rapid response mechanism?

Mr. Ojode: Mr. Temporary Deputy Speaker, Sir, as at now, the police patrol in that area is effective. If there is any need of increasing the number of patrol vehicles, I will do exactly that. As at now, I am happy with the work the police officers are doing in that particular area. The reason as to why we are patrolling that area on a 24-hour basis is because we have banditry menace in that particular area. So, if there is any addition that is required, I am ready to give it.

The Temporary Deputy Speaker (Mr. Imanyara): Very well!

Next Question, Mr. Yusuf Chanzu!

Question No.491

DELAYED RELEASE OF ECONOMIC
STIMULUS FUNDS TO SCHOOLS

Mr. Chanzu asked the Minister for Education:-

(a) to explain why there have been delays in the release of the Economic Stimulus Funds to some schools in the country; and,

(b) to explain the delay in the release of the funds, particularly to Madangi Primary School of Vihiga Constituency.

The Minister for Education (Prof. Ongeru): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I have confirmed that all the Economic Stimulus Programme (ESP) funds were electronically disbursed to schools upon receipt from the Treasury in three tranches in April, May and June, 2010. However, I acknowledge that the disbursement of ESP funds to some schools delayed due to submission of wrong bank account numbers.

(b) Records in my Ministry indicate that Mazugi and Chambithi Primary Schools, and not Madangi Primary School of Vihiga Constituency, are beneficiaries of ESP funds. The delay in the release of ESP funds to Mazugi Primary School was due to submission of wrong bank account, A/C111396185, which was corrected after the District Education Officer (DEO), Vihiga, submitted the correct bank account, A/C1113936185. The hon. Member would have noted there was one digit – digit three – which was missing in the middle in the initial account number that was submitted to the Ministry. The Ministry is currently processing the disbursement of the funds to all the affected schools, including Mazugi Primary School.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister, but with a bit of reservations because up to now, the money has not been received.

Mr. Temporary Deputy Speaker, Sir, this is not the first time we are raising issues on delay of disbursement of funds. About two months ago, I raised the issue of delay of disbursement of funds for Free Primary Education (FPE) and Free Secondary Education (FSE). I have spoken to three officers in the Ministry, Mr. Mwaura, Mr. Kanani and even the PS's office does not know who is dealing with this matter.

The Temporary Deputy Speaker (Mr. Imanyara): The Minister is here and you can ask him.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I would like the Minister to confirm whether he is sure that this money has gone to the bank and when it went to the bank because that information is not there.

Prof. Ongeru: Mr. Temporary Deputy Speaker, Sir, hon. Chanzu wrote to me on 13th October, 2010, requesting to know the fate of the constituency fund, particularly Mazugi Primary School. You realise in the Order Paper, it is not talking of Mazugi, but Madangi Primary School, which does not exist.

Secondly, I have in my possession, the schools that were recommended from Vihiga Constituency for support from the headquarters. Again, if the hon. Member wishes, I can table that document. With regard to Western Vihiga, Mazugi Primary School, the bank account number was given and the branch was created as Mbale. The account is No.111396185. You will notice that this is information that was given by the headteacher through the Education Officer to Nairobi. Therefore, the delay has not been occasioned by inactivity in my Ministry, but it originated by, first of all, filing the wrong numbers from that level.

Having said that, I have also gone a step further and discovered that out of the entire list that we were given, the Kenya Commercial Bank (KCB), particularly changed their account numbers from 14 digits to ten digits. Therefore, one of the problems was to do with the bank itself because they changed their procedures.

Our Accounts Department has been able to streamline that and now there are only four secondary schools that have not received their money. I can assure the hon. Member that the mistake has been rectified. We do not just send money without getting a written reply from the ground that this is the actual account for accounting purposes. I want to assure him that, indeed, I have received from the District Education Officer a letter dated 3rd of November, 2010, confirming that, that is the true account for those schools, so that somebody is held accountable for any loss of any funds. The money will be there.

The Temporary Deputy Speaker (Mr. Imanyara): When will the money be there? That was the question.

Prof. Ongeri: Mr. Temporary Deputy Speaker, Sir, once we detect this kind of thing, the procedure is that this account is verified. It has been verified by the officer in charge. In the case of primary schools, it is the officers in the basic directorate who are in charge of processing these accounts. In the case of secondary schools, it is the Director of Secondary Schools and his officers. This has already been done. The Accounts Department has also verified. We will match this with the bank, the CBK and the Treasury, so that we synchronize these lists. I think by next week, these funds should be there.

The Temporary Deputy Speaker (Mr. Imanyara): Member for North Horr Constituency.

Mr. Chachu: Mr. Temporary Deputy Speaker, Sir, I represent North Horr, the largest constituency in the Republic of Kenya in this House.

Under the Economic Stimulus Package (ESP), the Ministry of Education was to put up centres of excellence in all the 210 constituencies in Kenya. Most of these schools are now almost complete. I want to know the plans the Ministry has to ensure that these new schools are facilitated to enrol form one students next year.

Prof. Ongeri: Mr. Temporary Deputy Speaker, Sir, first of all, I am aware that one of the areas where the ESP has worked extremely well is in Western Province. They have achieved 95 per cent target in building these schools. I want to congratulate you for reaching that level.

When these institutions which are centres of excellence are complete, you should then generate through the DEB the requests, so that come January, these schools should be properly staffed and be given the necessary support. We want them to act and behave like centres of excellence.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister. But for record purposes, it is Mazugi Primary School. I think it was a typing error from the Clerk's Office.

I would like him to do slightly more than this because I have just talked to the DEO and there was no indication of the funds being released. I would like him to assure the House that he will make sure---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Chanzu! The Minister has assured you that the money will be there in a week's time. What other assurance do you need?

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, these are the stories we get all the time. I have been following these things for the last three months.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order! If a weeks passes without the money, then you know what to do. However, you cannot seek for further assurances other than what he has given you.

Next Question!

Question No.519

LOW WAGES FOR KENYANS WORKING
FOR CHINESE CONTRACTORS

Eng. Gumbo asked the Minister for Labour:-

(a) whether he is aware that Chinese Contractors are paying Kenyan workers poor wages which are below the recommended daily rates; and,

(b) what steps he is taking to ensure all Kenyan labourers employed by Chinese Contractors and other foreign contractors are paid recommended wages, treated with dignity and ensured access to all their rights as provided in the new constitution.

Eng. Gumbo: Mr. Temporary Deputy Speaker, Sir, even though I have not received a written answer, I am comfortable to proceed.

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

(a) I am aware that many Kenyans have been employed by Chinese contractors in various parts of the country. However, there have been no cases of payment of poor wages because the existing legislation that guides payment of wages and terms and conditions of employment is applied.

Mr. Temporary Deputy Speaker, Sir, workers' wages are paid according to the Legal Notice No.98 of 1st May, 2010 for the regulation of wages (general amendment order, 2010) that stipulates the following minimum rates.

In all cities, workers are supposed to be paid Kshs324.40 per day. In all municipalities, they are supposed to be paid Kshs298.15 per day. In all other areas, they are supposed to be paid Kshs182.35 per day. Further, Legal Notice No.94 which is the regulation of wages in the building and construction industry order, 2008, stipulates the following minimum rates.

In all cities, the minimum wage to be paid for a worker is Kshs224.85 and in all municipalities and other areas, it is Kshs221.80. These orders are used interchangeably, whichever is more favourable to workers.

(b) Regarding what steps the Minister is taking to ensure all Kenya labourers employed by Chinese contractors and other foreign contractors are paid recommended wages; the Ministry conducts regular work place inspections to ascertain that the terms and conditions of employment as stipulated in Section 35 of the Labour Institutions Act are adhered to. Requisite remedial action is taken where contractors and other employers are found to be flouting the law.

Also, the contractors are advised to apply the Building and Construction Industry Order, 2004 as read with the Legal Notice on the regulation of wages (general amendments) order of 2010.

Eng. Gumbo: Mr. Temporary Deputy Speaker, Sir, I wish to thank the Assistant Minister for the answer but you will realise that he has not tabled any payroll from any of the Chinese contractors. So, his claims that they are not under-paying our people cannot be verified. I hope that he will take steps to rectify that. It is known all over Africa, for example, in Kenya, Zambia and Mozambique that where Chinese presence is most felt, they have been accused of many things which include routine violation of labour laws, occasional exhibition of extreme cruelty to the local workers and locals in general and their tendency to import virtually everything from China even those things that can be sourced locally. The Assistant Minister is also aware that the Chinese have made very little attempt to transfer their skills and we saw this recently when we did repairs at Kasarani. It has almost been impossible to repair that stadium for over 20 years. The question that is being asked in many countries in Africa is whether China is a blessing or a curse to Africa.

The Temporary Deputy Speaker (Mr. Imanyara): What is your question?

Eng. Gumbo: Mr. Temporary Deputy Speaker, Sir, I was just building up the question. Most of the works being undertaken by the Chinese contractors are heavily mechanized and we know that the biggest problem in this country is youth and unemployment. What steps has the Ministry taken in liaison with the relevant Ministries where the Chinese contractors are most engaged like roads and public works to ensure an optimal balance between man and machine so that we can have most of our unemployed youths engaged on these projects?

Mr. Ojaamong: Mr. Temporary Deputy Speaker, Sir, the hon. Member based this question on the plight of the employees but now he is talking about the creation of employment. These people are investors and they want to maximize on profits. So far, we do not have a policy where we can compel an investor who has come to make money to create employment opportunities for the deserving people. We have not yet reached that stage.

Eng. Gumbo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to suggest that it is not the business of his Ministry to look for ways to create employment for our people while, to me, that is the key mandate of the Ministry?

Mr. Ojaamong: Mr. Temporary Deputy Speaker, Sir, I do not think it is our key mandate to create employment. Basically, our duty is to look at the plight of the workers in their work places and the employers wherever they are. Ours is to create good labour working relationships in the country. We do not create employment. This is created in various sectors.

Mr. Letimalo: Mr. Temporary Deputy Speaker, Sir, I am aware of Kenyan labourers working with Chinese contractors along the Isiolo-Merile Road. There are those who suffered injuries while at work. What mechanisms has the Government put in place to ensure that the labourers who sustain injuries while at work get compensation?

Mr. Ojaamong: Mr. Temporary Deputy Speaker, Sir, the Work Injury Benefits Act and the previous Workman's Compensation Act give us clear guidelines on how you can claim for compensation in case you are injured at the work place. The first thing in case of injury is to report the accident to the labour officer, fill the forms and the Government will take up the matter in order to be compensated adequately.

The Temporary Deputy Speaker (Mr. Imanyara): Eng. Gumbo, ask the final question!

Eng. Gumbo: Thanks, once again, Mr. Temporary Deputy Speaker, Sir. It has been reported many times that in most of the Chinese firms, African and Chinese workers doing similar work are not paid the same wages. Most African labourers in Chinese firms are generally paid lower wages than their Chinese counterparts for similar work. It is also known that many Africans working in the Chinese firms are treated as casuals and are not documented. What steps has the Assistant Minister taken to ensure that Chinese contractors document their Kenyan workers so that they are not merely treated as casuals who have no entitlement to corporate benefits like insurance, allowances and paid vacations?

Mr. Ojaamong: Mr. Temporary Deputy Speaker, Sir, first of all, our Constitution outlaws discrimination. Our labour laws also outlaw discrimination. So, if there is any firm that pays Africans different wages from the Chinese, then the hon. Member is at liberty to report that organization to us so that we deal with it accordingly. We are currently undertaking a comprehensive labour inspection on the Chinese firms, which the hon. Member has brought up. I thank the hon. Member for doing this. There are about 20 Chinese firms in Kenya. We are undertaking a comprehensive inspection to find out whether there are any irregularities or they have gone against the labour laws so that we can take appropriate action in order for our workers to enjoy the fruits of their hard work.

Mr. Yinda: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Assistant Minister to conclude his answer without telling us the position and the situation of our dogs in the areas where the Chinese contractors work?

The Temporary Deputy Speaker (Mr. Imanyara): Order!

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

Question No.545

DELAYED PAYMENT OF DUES
TO KCC RETRENCHES

Mr. Kioni asked the Minister for Co-operative Development and Marketing whether he could explain why Kenya Co-operative Creameries (KCC) retrenchees have not been paid their dues even after a court order on the same was issued.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Temporary Deputy Speaker, Sir, I seek the indulgence of this House to be given until 30th November, 2010 to bring a tangible answer to this Question, considering the problems that these retrenchees have undergone.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Kioni, what do you have to say about that?

Mr. Kioni: Mr. Temporary Deputy Speaker, Sir, we had consulted and I consent to that request.

The Temporary Deputy Speaker (Mr. Imanyara): I defer the Question until 30th November, 2010.

(Question deferred)

Question No.551

MEASURES TO ADDRESS THE PROBLEM
OF COUNTERFEIT DRUGS

Ms. Chepchumba asked the Minister for Medical Services:-

(a) to inform the House the plans the Government has put in place to ensure that there is a comprehensive national campaign on the dangers posed by substandard medication which has resulted in growing resistance to drugs in the Kenyan market;

(b) to clarify to the House whether the Government has adequate testing machines and specialists to curb sale of counterfeit drugs in the country; and,

(c) whether he could inform the House the extent to which the Pharmacy and Poisons Board has worked to arrest this situation and whether the Government could consider decentralizing the services of the Board so that Kenyans in rural areas are also protected.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The Government recognizes the dangers posed by counterfeit and substandard medicines, one of which is a growing resistance to genuine products. As part of a comprehensive campaign against counterfeits and substandard drugs, the Ministry, through the Pharmacy and Poisons Board is pursuing the following interventions.

1. Training and sensitization of health personnel across the country on pharmacovigilance to enable them detect and report any quality problems, adverse drug reactions or suspicious products as they interact with patients. About 600 personnel have undergone training and over 5,000 have been sensitized at all levels of service provision.
2. airing televised messages in the media;
3. maintaining an interactive face book account for Pharmacy and Poisons Board for audit;
4. open access and communication at the Pharmacy and Poison's Board website.

Mr. Temporary Deputy Speaker, Sir, in addition, the Board has also started regular consultations with stakeholders as a means of encouraging better communication, collaboration, and compliance.

(b) Regarding part "b" of the Question, the Government has adequate testing facilities and specialists. Currently, the National Quality Control Laboratory is the technical body that conducts most of the laboratory tests. The National Quality Control Laboratory is a World Health Organization prequalified laboratory and was the second public laboratory prequalified in Africa. The Government is keen on continuing to build and sustain its capacity to a regional centre of excellence. In addition to the National Quality Control Laboratory, there are other laboratories which are of international standards. These include: The Mission for Essential Drugs Supplies (MEDS), which is also the WHO prequalified and a drug analysis research unit at the University of Nairobi. Both are available to provide extra capacity whenever needed. On a decentralized level,

the Ministry has provided mini labs and trained technical staff in Kakamega, Kisumu, Eldoret, Mombasa, and Nairobi. This is being expanded consistently to cover all gazetted ports of entry and regions of the country.

(c) The Government has put many measures in place to deal with the problem of counterfeits and substandard medicine and is continuously improving on them to ensure that medicines in the country are safe and effective. These measures include the following but not exclusively:

(1) Ports of entry for medical products have been gazetted.

(2) More pharmaceutical inspectors have been trained and deployed.

(3) Other Government officials such as from the police and customs have been trained on matters of counterfeit drugs so that they can assist in detection and enforcement.

(4) There is regular post-market surveillance and pharmaco-vigilance aimed at early detection and reporting of corruption.

(5) All ports of entry have been equipped with mini labs for testing.

Ms. Chepchumba: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for the answer he has given to this House. However, could he tell this House what measures are in place to regulate herbal medicine since rogue herbalists are passing concoctions of conventional medicine for herbal remedies?

Prof. Anyang-Nyong'o: Mr. Temporary Deputy Speaker, Sir, together with the measures that the Pharmacy and Poisons Board has taken, it is now a requirement that herbal medicines be inspected by the Pharmacy and Poisons Board. We are encouraging herbal medicine men and women to seek the legal support of the Pharmacy and Poisons Board not to fall into the tragedy of sometime dispensing herbal medicines which are harmful to the population. At the international level, Kenya associates itself with prevention and control efforts and has been carrying out joint operations with other countries against counterfeit medicine, including herbal medicine. So far, we have carried out two joint operations under the WHO impact project with the support of Interpol Operation Mamba II that was carried out in 2009 and Operation Mamba III that was concluded in August, 2010. This is also in collaboration with our neighbours where herbal medicine is practiced and we are seeking an East African-wide convention for the use, control in terms of quality and use of herbal medicine.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, I also want to thank the Minister for such a candid and satisfactory answer. In view of the fact that now we are operating in the East African Common Market, the precautions which they have made at the port of entry into Kenya, could he confirm to the House that they also have a tool which they use to ensure that generics and counterfeits do not enter through other ports of control outside the Kenyan borders but still within the East African Community? Because of the Protocol on Trade that allows for free movement of goods, how do we ensure that as the goods move freely, they are moving within the framework that he just explained to the House?

Prof. Anyang-Nyong'o: Thank you very much, Dr. Khalwale. First, in the East African Convention, we must all agree on what counterfeit medicine is and what the generics are. I think in the East African region, we have agreed on what standards to use to distinguish between counterfeit medicine and generic medicine. Quite often, the international companies try to group generic medicine with counterfeit medicine which is

wrong because most of the medicine we use in this country is generic, anyway. In brief, counterfeit medicines are those drugs that are deliberately and fraudulently mislabeled with regard to identity or source. Generic medicine or generic drugs, on the other hand, is a legitimately produced medicine. That is the same as the original brand name product. It contains the same active ingredients but it is not made by the same companies that first developed, marketed and often patented the drug. So, generic medicine is not in anyway any different from the original medicine, only that they are cheaper and more accessible to developing countries like ours.

Regarding exactly how the East African Countries make sure that medicine move across the borders without being taken as counterfeit medicine, what we have agreed at least in Kenya is that all the medicines that enter the public domain must be embossed with the insignia of the Kenyan Government up to the drug level.

On the issue of medicine entering Kenya, we are now in the process of making sure that all that medicine has some identifiable bar coding which cannot be broken into to make sure that this medicine is *bona fide* medicine. We are encouraging our neighbours in East Africa to join us in this venture so that we are all safe from untoward drugs. I have just come from a meeting in Kigali last week where we discussed some of these measures. I hope as the health secretariat in the community gets strengthened, we shall all be reading from the same page.

Thank you.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, we have very many Ministerial Statements; I cannot exceed 4.00 p.m., on Questions. So, Ms. Chepchumba, ask the last question.

Ms. Chepchumba: Mr. Temporary Deputy Speaker, Sir, I am satisfied with the answer given by the Minister and I want to thank him.

The Temporary Deputy Speaker (Mr. Imanyara): Thank you. Next Question by the Member for Baringo Central!

Question No.553

STALLED ELECTRICITY SUPPLY WORKS
AT KIBAGENGE SCHOOL

Mr. Mwaita asked the Minister for Energy:

- (a) why electricity supply works for Kibagenge Primary School of Marigat District and its environs stalled; and,
- (b) when the works will be completed.

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

(a) Electricity to Kibagenge Primary School of Marigat District has stalled because of the delay in granting the way-leave for the project by the Kenya Forest Service.

(b) The issue of way-leave is being addressed by both the Rural Electrification Authority (REA) and the Kenya Forest Service. It is expected the project will be completed by 31st January, 2011.

Mr. Mwaita: Mr. Temporary Deputy Speaker, Sir, I wish to thank the Assistant Minister for the short and brief answer. However, I wish to ask him whether the REA have adequate staff to prosecute the question of way-leaves in this country.

Eng. M. M. Mahamud: Mr. Temporary Deputy Speaker, Sir, this particular project is passing through the Mau Forest and that is why we are dealing with the Forest Service. But we had no problems acquiring the Way leave.

The Temporary Deputy Speaker (Mr. Imanyara): Last question, Mr. Mwaita!

Mr. Mwaita: Thank you, Mr. Temporary Deputy Speaker, Sir. Maybe, you need to clarify; it does not pass through the Mau Forest. It is actually passing through Marmanet Forest. However, he has given the deadline of 31st January, 2011. I hope by that time, Mr. Assistant Minister, electricity will have been supplied to Kibagenge Primary School.

I have no further question.

Eng. M. M. Mahamud: I hope also so, Sir.

Question No.425

REMAINING LEASE PERIOD FOR FOREIGN-OWNED
TEA ESTATES IN KERICHO

Dr. Kones asked the Minister for Lands:-

(a) to state the land lease period remaining for the foreign-owned tea estates (i.e. Unilever Tea (K) Ltd., George Williamson and James Finlays (K) Ltd). in Kericho;

(b) what measures he is putting in place to ensure that the local community benefits from the properties on expiry of the leasehold periods; and,

(c) what measures he has taken to ensure that the people living in Chepchapas Village, who originally lived in the area owned by James Finlay Ltd., will benefit from the intended disposal of Bondet and Chemamul Tea Estates.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I was requested by the Minister for Lands to ask the Chair to defer this Question to Wednesday afternoon. Indeed, he did inform me that he has already consulted the questioner.

The Temporary Deputy Speaker (Mr. Imanyara): Is that the position, hon. Member?

Dr. Kones: Yes, indeed, Mr. Temporary Deputy Speaker, Sir. The Minister has requested for more time to get a more adequate response to the Question. We agreed that the Question should be answered on Wednesday afternoon.

The Temporary Deputy Speaker (Mr. Imanyara): Very well! The Question is deferred to Wednesday afternoon.

(Question deferred)

Next Question by Mwalimu Mwahima!

ENCROACHING OF MTONGWE LAND BY NYS

The Temporary Deputy Speaker (Mr. Imanyara): Is hon. Mwahima not here? For the third time; the Question is dropped!

(Question dropped)

Next Order!

MINISTERIAL STATEMENTS

MURDER OF 10 SIAKAGO RESIDENTS

The Assistant Minister, Ministry of Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, on the 11th of November, 2010, hon. Lenny Kivuti, the honorable Member for Siakago, rose on a point of order to seek a Ministerial Statement from my Ministry with regard to the killing of ten people in Siakago.

In the Statement, the hon. Member requested for a clarification as follows: Where were the police during the massacre, considering that there is a police divisional headquarters? What steps is the Government taking to compensate the families of the victims? When the compensation will be forthcoming, the amount of money to be compensated and the steps the Government is taking to stop or curb any recurrence of such incidences.

Mr. Temporary Deputy Speaker, Sir, on 7th November, 2010, Administration Police Constable (APC) Peter Karanja P.No. 8860 and APC Antony Kariuki Njagi P.No.2008045502 reported on guard duties at the District Commissioner's residence within Siakago District in Mbeere North District. APC Peter Karanja was armed with a G3 rifle while APC Antony Kariuki Njagi was armed with a G3 rifle No.403927. Each rifle had 20 rounds of ammunition of caliber 7.62 millimeters.

At about 2210 hours, APC Peter Karanja excused himself and informed his colleagues that he was going to answer a call of nature at a facility which is 50 meters away from their area of duty. At about 10.25 p.m., the other officer, Antony Kariuki Njagi heard the first gunshot from the direction of the township. When he heard the second gunshot, he immediately alerted his colleague about the absence of the officer and the gunshots. Later, it was established that the assailant, APC Peter Karanja, after excusing himself from his place of duty, went straight to Coconut Bar, which is about 300 meters from the DC's residence, where he inquired about his estranged girlfriend, Flora Wanja Njue alias Marigu. When he failed to trace her, the officer went on a shooting spree, killing the following persons at the Coconut Bar - it is quite unfortunate that this incident happened - Domiano Mutira, aged 53 years, Espantus Musyimi Munyi aged 20 years and Rael Muthoni, a female adult.

The assailant then walked 100 meters from Coconut Bar to Wakiai Bar and shot dead Augustino Kinyua Kithumbi, aged 28 years. He again walked to another club, the Shrek, which is 60 meters from the police station and killed the following: Antony

Mwaniki Nyagah aged 71 years, George Ng'ang'a aged 24 years, Kennedy Nyamu aged 20 years and Lydia James, a female adult.

Mr. Temporary Deputy Speaker, Sir, as the shooting was going on, two administration police officers based at the DCs office confronted the assailant at the Shrek Club, about 200 meters from the police station. They were shot dead as well, unfortunately, while trying to calm down the assailant. The two officers who were shot dead were APC Wilfred Gitonga, aged 38 years and APC Fredrick Okwako, aged 22 years.

After the assailant exhausted his ammunition, he walked to the Siakago Police Station after having tried to shoot himself and realizing that he had run out of the ammunition. He was disarmed and arrested at the police station at 10.40 p.m.

When the first gunshot was heard, the OCPD mobilized all available police officers and immediately blocked all escape routes from Siakago Town with firm instructions that no vehicle, motorcycle or any other person should be allowed to leave the town without thorough check up and identification. The officers took positions in strategic places while others combed the entire town for the assailant. The shooting took only 15 minutes within which period the assailant surrendered to the police. After the officer was arrested, a murder file No.4B2/379210 was opened. The suspect has since been arraigned before a court of law.

Mr. Temporary Deputy Speaker, Sir, to prevent the recurrence of a similar incident, the Government is taking the following steps: One, officers with signs of mental instability will be identified and retired under medical grounds immediately. Continuous guidance and counseling for officers will also be undertaken. Close supervision of officers on duty and monitoring those off duty will also be undertaken. Facilitating officers to take leave and off duty from work will also be done. Assisting those with personal problems where possible and providing recreational facilities for officers working under stressful conditions will also be undertaken.

It is not possible to compensate the families of the victims until the criminal case is heard and determined. Even so, compensation can only be done by an order of the court as the law requires. However, the Government met all the burial expenses for the 10 victims.

The Temporary Deputy Speaker (Mr. Imanyara): Any clarifications to be sought on that Statement? I think it was requested by Mr. Kivuti.

Mr. Kivuti: Mr. Temporary Deputy Speaker, Sir, I would like to make only a few comments, following the Statement from the Office of the President.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Kivuti, it is clarifications that you are seeking, and not comments.

Mr. Kivuti: Mr. Temporary Deputy Speaker, Sir, the clarifications I would like to seek from the Assistant Minister, are mainly three. One is on compensation; we know that even if the Government does not wish to give the compensation, we could go to a court of law, but it may not be necessary to do that. Could the Assistant Minister clarify why he asserts that they will not give compensation because this should be done in this particular case, the crime having been committed by somebody on duty using Government bullets to kill our people?

Two, I would like a clarification on how this kind of matter will be put to rest, particularly to avoid a recurrence in view of the fact that a lot of officers who are posted

to Siakago, happen to pending disciplinary cases. When they come there, it is like a dumping ground. Could the Assistant Minister clarify what steps the Ministry will take to avoid a recurrence of such a case, either in Siakago or anywhere else in this country?

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister clarify how many psychiatrists are in active service to undertake mental check-up of these officers every year? When he recruits officers, do they only undergo a physical examination, or are they also subjected to psychiatric evaluation? These are people who handle guns and we wonder what is happening right now, because this incident is not isolated. How many psychiatrists do you have and how can you assure this country that you will undertake the psychiatric evaluation within your force, so that we do not have a recurrence of this incident?

Mr. Kabogo: Mr. Temporary Deputy Speaker, Sir, I would seek to get a clarification from the Assistant Minister. In as far as the compensation is concerned, he says it can only be done after the case is concluded. We know that there is no doubt that it was the police officer who killed these people. Why do the relatives of those victims have to wait for a case to drag on for five years?

On the other issue of medical challenges---

The Temporary Deputy Speaker (Mr. Imanyara): Could you seek one clarification at a time?

Mr. Kabogo: It is just a small rider, just to confirm that this will not be used by senior officers to victimize and remove junior officers, who look as if they are crazy one way or another. What is the measure that they will use to understand who is nuts and who is not nuts?

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, in the course of executing its security duties, the Government supplies ammunition to police officers, knowing very well that they are used on civilians. So, there is already evidence on record, and maybe the Assistant Minister will confirm this, that this officer was actually diagnosed as suffering from a dangerous condition. Does the Government not have a policy of regularly checking the medical condition of its various officers, so that it can identify at what juncture they may become dangerous when handling weapons? To fail to maintain such a policy is great negligence to the people, because the negligence inevitably leads to this kind of incident.

The Temporary Deputy Speaker (Mr. Imanyara): Let us have Dr. Laboso, then the Assistant Minister will respond. I will then take the next lot after that.

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, we are informed that this unfortunate incident happened because of some love gone sour. Could the Assistant Minister clarify about the living conditions of these officers, because they are always not sure of the safety of the people they leave behind? What is he doing to take care of their conditions, so that they can lock their loved ones in the houses and be sure that they will find them there when they come back?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, this was a sad story; I lost officers and we lost innocent Kenyans. It is a sad day for us to come before you and talk about innocent Kenyans having lost their lives as a result of the actions of a rogue police officer.

Mr. Kivuti asked about the compensation. I will combine Mr. Kivuti's and Mr. Kabogo's questions. According to the law, the Government cannot make any payment through a payment voucher without any order from the courts. So, once a court directs the amount of compensation---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Assistant Minister. The question was; why do you have to go to court when it is self-evident that this happened in the hands of a police officer, and you have, in fact, taken steps to pay for the funeral expenses for all these people? Why do you have to wait for these people to go to court? That is the issue.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, that is true, but there is Government procedure to be followed when you pay a certain amount of money. So, who will determine how much compensation will be paid to the widows? It becomes very difficult---

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to say that the Government will only pay against a court order when he knows that the Government can actually authorize ex-gratia payments in appropriate circumstances?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, this is a sad issue. I do not want to dwell on it. But we will check with the Attorney-General and see if there is any possibility of making payments without going through the courts.

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Ojode. I would like to pursue that; if you are going to take instructions, or the opinion of the Attorney-General, when will you come to the House with the opinion you will have received from the Attorney-General?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir that to me is not an issue. Once we have an opinion of the Attorney-General, I will avail it to the House.

The Temporary Deputy Speaker (Mr. Imanyara): What time frame do you require?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Give me two weeks because the Attorney-General is out of the country.

The Temporary Deputy Speaker (Mr. Imanyara): We expect that in two weeks time. You can go to the other clarifications.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Mungatana asked us to adopt medical options, and how many doctors we have to test these officers. Right now, we have agreed that apart from the Government doctors, at the time we do recruitment, we will hire doctors to help us in the institution. So, that will be taken care of at the time when we undertake recruitment.

Mr. Baiya asked about the medical conditions of the employees. We recruit doctors into our institution; we are also building our hospital for the police. We will subject our police officers to use of the facility; among the things we will check will be some of the diseases related to the brain.

Dr. Laboso asked whether it is the living conditions which are bad. This is not really the case. We have tried very much to avail housing units to every police officer. The situation is not as it was before, when they were sharing a one-roomed house. We are trying to ensure that every officer has his or her own room; we do not want to house them together as has been the case in the past.

We have used a lot of money. We have used close to Kshs298 million in rural areas.

We have also used Kshs780 million to construct housing units for police officers in Nairobi and we are extending to other cities like Mombasa and Kisumu. So, as a Ministry, we are trying to make sure that each and every police officer retains his or her own private house.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, while I thank the Assistant Minister for making a very satisfactory response to this Question, I wish to remind him that it is in the public domain that, that Administration Police (AP) was pursuing a bar lady or girlfriend. We would like the Assistant Minister to indicate to this House what active steps he is taking to make sure that the life of that lady is not threatened by the aggrieved families.

Mr. Letimalo: Mr. Temporary Deputy Speaker, Sir, if I got the Assistant Minister correct, he said that if he finds any police officers suffering from mental disturbances, he will sack them immediately through the medical examination board. My clarification is: Is the Assistant Minister suggesting that, that is not the first incident of that nature? If not, why are they contemplating to take that measure now and not before?

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, Members of the Ninth Parliament will recall that there was a populist move by the then Vice-President to recruit street boys into the Administration Police. Could the Assistant Minister tell us if he has any information on how much that factor has contributed to the indiscipline within the AP? That is because the problem seems to be more on the AP side rather than the regular police. What is he doing to ensure that the top management of the AP is held responsible for the indiscipline within that force?

Mr. Mwaita: Mr. Temporary Deputy Speaker, Sir, since the problem is rampant among the APs, could the Assistant Minister clarify whether, maybe, certain officers overstay in certain stations and become frustrated? How often do they transfer them?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I will start with Mr. Njuguna's question. Yes, we will take care of the girlfriend of that fellow. We need to do thorough investigations to know whether, indeed, it is true that, that lady was a girlfriend of that particular guy.

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

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Why do you not let me finish?

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Assistant Minister!

Mr. Kigen: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Assistant Minister has simply said that they will take care of the girlfriend, but he is not telling us how he will do that.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Continue Mr. Ojode!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, that is a frivolous point of order! I have said that we will investigate the matter, first of all, to find out whether that lady was, indeed, the girlfriend of that guy. We will investigate! We cannot rely on speculation. Again, Mr. Letimalo asked whether that is the first time. Incidences of that magnitude are isolated and we are going to make sure that all recruits must undergo the test. Some of them are going for these minor ones but we are now going to put stringent measures so that they undergo complete medical checkups.

Dr. Khalwale talked about the reforms. I want to say here that the reforms are underway. We have started and quite a number of rogue officers will be sent home.

(Applause)

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Assistant Minister! He had referred you to the top management.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, before I come to the top management, I want to say here that, as from this week, all police officers in uniform must also have name tags as part of their uniform. That way, it will be easier for you and I to identify the officers by names in addition to the personal numbers they are wearing. If that can be implemented as from this week, it can help us.

(Applause)

Mr. Mwaita talked about officers overstaying in a given station. We have said that any police officer who has stayed for three years and above must be transferred to another place, if he has done a good job in that particular area. But if he has not done any good job, the only thing to do is to ask him to go home. That is because I do not want to transfer a problem from Dr. Khalwale's place to Mr. Mwaita's place. Those are some of the measures which we are going to take and some of them will take effect from midnight.

(Laughter)

The Temporary Deputy Speaker (Mr. Imanyara): Order! Next Statement, please! We have eaten into the time meant for Motion very much!

STRIKE BY TEA WORKERS

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Temporary Deputy Speaker, Sir, on 27th October, 2010, Mr. Wamalwa sought a Ministerial Statement from the Ministry of Labour regarding the then ongoing strike by the Kenya Tea Growers Association in protest against the introduction of tea picking machines in Sotik, Kericho and other tea growing areas. From the Statement, the hon. Member wanted to know whether I was aware that, after the promulgation of the new Constitution, every worker has a right under Article 41(2) to go on strike and participate in activities of a trade union

and pursuant to the said provision and that of Section 76 of the Labour Relations Act, a strike was declared after seven days notice was issued on 11th October, 2010 by the Kenya Plantation and Agricultural Workers Union.

Secondly, he sought to know whether I was aware that in total violation of the said worker's right to strike, the Government sent police officers to arrest union leaders at Sotik Tea Company, harass and intimidate the workers generally in order to frustrate and unlawfully break the strike.

Thirdly, he also sought to know whether the Government is aware that the intended mechanization of tea picking in that region has deprived and put a risk to thousands of jobs by Kenyans, hence the protest.

Mr. Temporary Deputy Speaker, Sir, I beg to reply as follows: I am aware of the Constitutional provision on the right to strike which is contained in Article 41(2) of the new Constitution which grants workers the right to strike. I am also aware that the Labour Relations Act, 2007, Section 76(c) allows participation in a strike upon the seven days written notice given to the other party and the Minister which the Kenya Plantation and Agricultural Workers Union adhered to. The Kenya Plantation and Agricultural Workers Union issued a seven days strike notice on 11th October, 2010 demanding that the employer withdraw tea plucking machines. I am further aware that the employers whose assets were to be affected by the Union's strike filed a constitutional petition in the High Court on 14th October, 2010 seeking injunctory order to restrain the union and its agents from effecting, inciting or calling workers out in the intended strike. Conservatory orders issued by the High Court under High Court Case No.64 of 2010 in the matter between the Kenya Tea Growers Association and the Kenya Plantation and Agricultural Workers Union imposed injunction on the union or its agents from inciting or otherwise calling for a strike in the tea zone.

Mr. Temporary Deputy Speaker, Sir, it is to be noted that on the 18th October 2010, the union officials proceeded to call out tea pickers in the various tea estates in Kericho and Nandi Hills to strike. The employer proceeded to serve a notice of contempt proceedings against the union.

(iii) I am further aware that as a development of the above events, two officials of the Kenya Plantation and Agricultural Workers Union, namely; Mr. Makoma Sire who is the union Deputy Secretary-General and Mr. Begi, the union area secretary were arrested on 25th October 2010 by the police within an estate of Sotik Tea Company Limited and taken to the police station but were released without being taken to court.

Following a subsequent industrial court ruling under case Industrial Court No.1281 of 2010 on the 1st November 2010, an order restraining employers from suspending, dismissing, locking out or evicting workers on account of the strike was issued. The court, indeed, by order did call off the strike to allow for dialogue between the parties.

The above being the circumstances of the tea pickers strike, I would like to confirm that no worker was arrested or harassed or charged in a court of law on account of the strike. However, police officers were deployed in the various estates as a security measure over the period.

Given the circumstances of the concerns which have recurrently arisen over mechanization of tea picking in the tea zone, there is evident need for the matter to be addressed decisively and with full participation of all the stakeholders. The union and

investors in the sector hold divergent views over the issue of mechanization of tea picking processes. A balance needs to be struck between the interest of the trade, investment and labour.

Mr. Temporary Deputy Speaker, Sir, I am aware of the worker's apprehensions over job security. I have also taken key note of the investors concerns and the policy framework on which their position is premised. There is need for consultations and dialogue over this issue. The Agricultural Wages Council will soon address this issue with stakeholders and advice on measures which can best address issues.

As matters stand today, the strike was called off by the union Secretary-General on 1st November 2010, following the Industrial Court order and the Labour Commissioner, acting on the further orders of the court, arranged for a reconciliation meeting to ensure unconditional resumption of operations in the estates which were affected by the industrial action.

The parties met on 9th November and gave assurance that the strike ended and workers who may have been on intended disciplinary action are being absorbed as and when they report.

Thank you.

Mr. Wamalwa: Mr. Temporary Deputy Speaker, Sir, I am surprised to hear the Assistant Minister in an earlier question say that job creation is not the business of the Ministry of Labour. I do not know whether the Ministry has a policy on job creation and job loss. The mechanization of tea picking actually puts at risk thousands of jobs in Sotik, Nandi Hills, and Kericho. However, since the strike started, I would like the Assistant Minister to tell the House what he has done as the regulator between the employer and employees to ensure that we do not have job losses?

The Temporary Deputy Speaker (Mr. Imanyara): I will take two more; Mr. Mungatana and Dr. Laboso!

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, just yesterday we were talking about the problem of unemployment in this country. Kenya has an unemployment rate of 40 per cent. It is 118th in the world ranking as far as unemployment is concerned. It is at the same level as Afghanistan which is forever in political problems and other small countries like the Kingdom of Swaziland.

We know for a fact that 70 per cent of the labour force is absorbed in the agricultural sector. Could the Assistant Minister clarify why they would even consider allowing these tea picking machines to operate and thereby create further unemployment in all those regions? If it happens, what is he going to do about the young people who are going to be left unemployed?

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, mine is to reiterate what Mr. Mungatana has said. There is high level of unemployment in the country.

Secondly, my area Sotik is the most affected. Some of the companies around Sotik use machines for 60 per cent to 70 per cent for tea picking at the moment. Could the Assistant Minister clarify, what is he doing about these two gentlemen who were arrested? What is he doing to ensure that we do not continue with the strike over the question of use of machines? It is a very sensitive matter and so many young people have lost their source of livelihood as a result of the machines. Could the Assistant Minister clarify what they are doing as a Ministry, to ensure that we do not continue to get further losses of jobs?

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Temporary Deputy Speaker, Sir, Mr. Mungatana sought clarification on what we are doing to ensure that there are no job losses. We have talked to the people from that region. We are not going to sideline technology always when it comes in favour of the very old traditional methods. We have also looked at the investors. These people have seen the advantages of using machines. All the same, we have initiated dialogue between the parties. We are saying that these people whose jobs will be taken over by machines are going to be retrained and put into other sectors. We have just initiated dialogue between all the concerned parties. The Ministry is very active on this.

Dr. Laboso asked about the officials who were arrested; they are free. The Labour Commissioner is there and we assured them that all the workers would go back to work. Nobody will be victimized. So, we do not have any problem.

Mr. Wamalwa: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead the House that all the workers have been reinstated when in fact, one of the companies; the James Finley Tea Company, has refused to reinstate the employees who were actually barred from accessing the factories after the strike?

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Temporary Deputy Speaker, Sir, as far as we are concerned, these employees are still employees of James Finley Tea Company because you cannot ignore a court order. An Industrial Court Order No.1281 of 2010 was delivered on 1st November 2010. It was an order restraining employers from suspending, dismissing, locking out or evicting workers on account of the strike. The Labour Commissioner is there dealing with the issue. The people will be paid their full salaries---

Mr. Jirongo: On a point of order, Mr. Temporary Deputy Speaker, Sir. You have heard what the Assistant Minister has been talking about. He is referring to James Finley and other colonialist who came and took land in this country for free as investors. He is talking about striking a balance. The natives lost their land. The natives are saying we have left you the land, now allow us to work. Is the Assistant Minister in order to continue misleading this House? Instead of protecting workers in this country, he is protecting people who first of all, looted land from the natives and continued to suppress our people to date.

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Jirongo! The Assistant Minister has clearly given you the orders of the court restraining the dismissal. How can that be encouraging dismissals?

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. I agree with you that the Assistant Minister is reading the court order, but hon. Wamalwa has just confirmed that the workers of Finley Company are yet to be reinstated. They are being locked out. Could the Assistant Minister confirm or deny that those workers are yet to be reinstated? That was the point of order.

The Temporary Deputy Speaker (Mr. Imanyara): I think the issue being raised is that if there is a restraining order, any dismissals would be contrary to the order and you would have an obligation to ensure that, at least, the court order is obeyed, so that no worker is dismissed by James Finley or any other firm. Mr. Assistant Minister, you have an obligation to tell the House what you are doing to ensure that the court order is

complied with and that these workers are not dismissed contrary to the court order. That is the clarification that is being sought.

The Assistant Minister for Labour (Mr. Ojaamong’): Mr. Temporary Deputy Speaker, Sir, as I had admitted earlier on, our Ministry is very much on the ground. A meeting was called on 9th November between the parties and there was assurance for everybody to go back. In case anybody has been locked out, they should report to the Ministry and we will take decisive action. So, there is no compromise about this because the law is the law.

(Several hon. Members stood up in their places)

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

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order, hon. Members! I will take the last Ministerial Statement now. Hon. Wamalwa, please, we have taken so much time. It is getting to 5.00 p.m. and we still have business.

Proceed, Mr. Minister!

LAUNCH OF ROAD SAFETY WEEK

The Assistant Minister for Trade (Mr. Ogari): Mr. Temporary Deputy Speaker, Sir, I wish to make the following Statement on the launch of the Road Safety Week that begun on Monday 15th November, 2010 to 21st November, 2010.

Mr. Temporary Deputy Speaker, Sir, during the week, there will be a series of awareness activities on road safety across the world. These activities are aimed at sensitizing world citizens and the motoring fraternity on road safety. The climax of these activities will be the World Remembrance Day which is dedicated by the United Nations to---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Minister, you can summarize that Statement and then table it because I can see it is quite lengthy.

The Assistant Minister for Trade (Mr. Ogari): Mr. Temporary Deputy Speaker, Sir, in brief, the Statement is all about the road safety week which was launched by the Minister for Roads, hon. Franklin Bett, in conjunction with the Minister for Transport. We are using the Floor of the House to try and bring more awareness and request the hon. Members to take it upon themselves because we all know the issues of road crashes we have had. We also know the causes of road crashes which have mainly to do with human error – more than 85 per cent. So, we are trying to appeal through the Floor of the House that hon. Members take part, especially during the Remembrance Day itself, which is on Sunday 21st November, 2010, at the KICC. It is commencing at 10.30 a.m., with an interdenominational prayer service and a one-minute silence shall be observed countrywide. So, the hon. Members can help us to do that sensitization.

(Mr. Ogari laid the Statement on the Table)

The Temporary Deputy Speaker (Mr. Imanyara): I direct that a copy be made available to every hon. Member because you have not read the entire Statement. So, the

Clerks-at-the-Table should ensure that a copy of that Ministerial Statement is circulated to every hon. Member.

We have a Statement from the Ministry of Foreign Affairs. If it is lengthy, please, do what your colleague has done.

SAFETY OF KENYANS IN SOUTHERN SUDAN
AFTER 2011 REFERENDUM

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Temporary Deputy Speaker, Sir, the Statement was asked by hon. Mungatana who wanted to know how many Kenyans are resident in Southern Sudan, how many Kenyan business investments exist in Southern Sudan, what preparations are there to protect Kenyans and their property in the event of post-referendum civil unrest and lastly, the diplomatic efforts that the Kenyan Government is making to reduce the tensions between the north and south so that our people are protected.

Mr. Temporary Deputy Speaker, Sir, the number of Kenyans who are in Southern Sudan is between 30,000 and 65,000. These are individuals who are working there as business people running their own private companies. We also have individuals who have been working for the Ministry of Education as teachers. Some of them are individuals who have been seconded as top Government officers. For example, in the Ministry of Finance, the planning and budgetary boss is a Kenyan. Also, the individual handling procurement and investiture in Southern Sudan is also a Kenyan. There are many other officers who are in those capacities.

Mr. Temporary Deputy Speaker, Sir, the Kenyan companies that are in Southern Sudan are very many also. I will just give a few examples. They are: Kenya Commercial Bank, Equity Bank, UAP Insurance, Kenya Airways, Jetlink East Africa and many private companies that fly individuals there. We also have many private companies that are doing consultancy work in that country.

Mr. Temporary Deputy Speaker, Sir, the preparations which the Kenyan Government has made are that we are actually carefully observing and watching the development in Southern Sudan. As you are aware, our President is engaged. Also, the African Union (AU) and IGAD are engaged to make sure that whatever eventuality and takes place in Southern Sudan is handled and managed in such a way that will have a peaceful endeavour at the end of the execution of the Comprehensive Peace Agreement (CPA).

Mr. Temporary Deputy Speaker, Sir, the last point that I wanted to raise is on what would happen if there were any problems after the Referendum. The position of the Kenyan Government is that we will not speculate because, first, we believe and hope that we will have a peaceful completion of the CPA, but in case anything happens that will require Kenyans to be evacuated, the Kenyan Government is ready and prepared. Because of security reasons, I cannot divulge the details.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Assistant Minister, you will also table the Statement because you have not read the whole of it. I direct that copies be made available to all hon. Members.

(Mr. Onyonka laid the Statement on the Table)

Mr. Mungatana, I will allow you just one clarification. I will give each of you two minutes.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, what are the security arrangements that have been put in place for Kenyan businesses which are operating there? I know, for instance, that owners of petrol stations have been expropriated by Southern Sudanese citizens. I also know for a fact that one salon operator, for example, as soon as the business was doing well, was expropriated again. What is in place to secure Kenyan businesses in Southern Sudan today?

The Temporary Deputy Speaker (Mr. Imanyara): I will take Dr. Khalwale, hon. Wamalwa, hon. Kiuna, Member for Lari and then end with hon. Ethuro, and then the Minister can respond.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, my respect for the Kenyan business people who have chosen to invest in the volatile environment in Southern Sudan. However, I am equally concerned about our brothers – the young Government in Southern Sudan. What is the Kenyan Government doing to protect the young Government in Southern Sudan from some unscrupulous Kenyan businessmen, some of them politicians, who go there and con the young Government off millions of dollars and then disappear without honouring their contracts?

Mr. Kiuna: Mr. Temporary Deputy Speaker Sir, while I thank the Assistant Minister, I am worried that very many Kenyans who have invested heavily in Southern Sudan are complaining of discrimination and harassment by security personnel. If you consider the way countries protect their people when they are in foreign countries, I would like to seek a clarification on what mechanism the Kenyan Government has put in place to make sure that all Kenyans who are working in Southern Sudan are safe and free to transact their business.

Mr. Wamalwa: Thank you, Mr. Temporary Deputy Speaker, Sir. There is steady violence against Kenyans who are in Southern Sudan. In my constituency, we have had about five families who have been affected. As we speak, there is one at Moi Referral Hospital in Eldoret. The wife who is an Early Childhood Development (ECD) teacher told me that they have a bill of close to Kshs1 million. The young man was a businessman. He was shot and all his teeth removed. What is the Government doing to monitor the situation there and to protect Kenyan businessmen who are being violated?

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, it is in the public domain that pupils from Southern Sudan sit for Kenya Certificate of Primary Education (KCPE) and Kenya Certificate of Secondary Education (KCSE) examinations locally. How are those students levied by the Kenya National Examinations Council and how do we benefit from that outcome?

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I will first seek some clarifications and then end up with a point of order which will be directed to you. First, we have just returned from a trip to Juba. We are proud, as a nation, to have brought the Comprehensive Peace Agreement (CPA) to Southern Sudan. However, the Assistant Minister and the Government do not seem to really appreciate the peace deal from Southern Sudan. What is he doing for the Kenyan investors to access the Southern Sudan

market by ensuring that the Kapenguria-Lodwar-Lokichoggio Road is tarmacked so that our Kenyan investors can access that area?

The Kenyan Government, in appreciation of the peace process that we helped the Southern Sudan to achieve, must also ensure that the Southern Sudan does not harass Kenyans who are working there. As we speak now, there is one, Mr. George Ekapol who is being detained in a cell.

The Temporary Deputy Speaker (Mr. Imanyara): Surely, we are seeking clarifications!

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I am on a point of order now.

The Temporary Deputy Speaker (Mr. Imanyara): I am aware about your point of order. However, let the Assistant Minister first respond to the issues.

Mr. Ethuro: No, this is about him. Let me just explain.

On a point or order, Mr. Temporary Deputy Speaker, Sir. Standing Order No.80 talks about matters which are *sub judice* or secret. This is subject to paragraph 5 which says:-

No Member shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.

He said that he cannot tell this House some things because they are secret in nature. I would like to challenge him to tell us under what written law he will not tell us those things because they are secret in nature.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Temporary Deputy Speaker, Sir, I will start with the last one. I did not say that it was a secret issue. I said that it was a security issue. The simple reason being that if we were to come out and start discussing that Kenya is ready with 400 trucks which will carry individuals or we have 15 aeroplanes which will carry Kenyans coming from Southern Sudan, that would be basically alarmist. I raised these issues by saying that the details of what will take place in case of any eventuality, the Kenyan Government has systems and interventions in place to deal with the situation. I hope that my colleague will sympathize with me on that one.

The point I wanted to raise is that before I go straight into answering the questions that my colleagues have asked, indeed, we went to Juba. For me, historically, it was the first time that Kenyan Members of Parliament had gone to Juba. They were 30 of them and it was a wonderful experience and many of us came back different. We had gone there on a fact finding mission. We were briefed and when we came back, we were better.

Hon. Mungatana raised a very critical issue. I would like to tell my colleague, Mr. Mungatana, that he is right. The reason why many of these issues have been taking place is because Kenya, as a Government, did not sign any joint commissions or any basic agreements on privileges or any other issues. We have been operating on auto-pilot and we are praying and hoping that once the referendum is over, whatever the eventuality, the Government will come up with mechanisms so that we have joint commission agreements on what takes place when a Kenyan opens a business in Juba or when a Southern Sudanese opens a business here.

The point I would want to emphasize is that when we, as a team, went to Juba last week, many of us learnt that the Southern Sudanese people mean well for our country. The scenes and events that have been taking place in terms of Kenyans being killed or

harassed are most probably based on ignorance rather than a deliberate attempt by the Sudanese people to try and chase away Kenyans. Kenyans are very welcome. The Southern Sudanese believe in us. We are the ones who brought the CPA and they respect the positions we have taken in terms of our engagement with them. They have promised us that immediately the referendum is over, whatever decision they take, they are willing to come and we engage each other so that we put mechanisms in place to deal with each other as colleagues and friends and not as adversaries. I promise, hon. Mungatana, that immediately we are a little bit free in the Office, Prof. Saitoti has agreed that we will start drafting JCCs that will be brought in immediately to make sure that the issue of Kenyans being denied opportunities to run their businesses or Kenyans being harassed--- Kenyans are, indeed, supposed to pay either US\$40 or US\$50 every three months. When a Kenyan goes to Juba, he has to go to the border every three months and yet when a Southern Sudanese is in this country, we do not harass them. We do not ask them to pay that duty or taxes. We are saying that we need reciprocity and I promise that we will achieve those results very soon.

Dr. Khalwale asked about the issue of unscrupulous businessmen running outfits in Juba. That is true but this is not really a uniquely Kenyan phenomenon. I believe that you are aware that in the world all over, you always have those unscrupulous business people who engage in different activities in different countries. Indeed, when we were there, we were informed that many of our people – some of who are prominent - went there, started businesses and took money and yet they did not perform as expected. However, there are also very many Kenyans who are sincere, have worked very hard and are achieving the results and are trusted very highly because Kenya's manpower is considered to be very highly trained and appreciated.

The MP for Molo, my friend, asked about the issue of how we can provide security and make sure that our people are not harassed. The Kenyan Government is directly engaged with the Southern Sudanese Government. We raised this issue as Members of Parliament when we were there and the Southern Sudanese Government has promised us that in case we have any issue that touches on security, they will immediately engage us and make sure that we move quickly to ensure that we stabilize the situation. That also follows on what hon. Wamalwa has raised; that, there are individuals in his constituency who have suffered the same fate. However, I would like to assure him that those events will decline because we are now directly engaged and we are seized of the situation in Southern Sudan. The message we gave is that for a long time, Kenya has been on the periphery.

When Uganda moved in, Eritrea also moved in and Ethiopia too has also moved in and yet, we are the ones who gave birth to the CPA. So, immediately we went to the periphery, our people became vulnerable. We were told by the Kenyans who live there that they need Kenyan doctors because of the Kenyans who live there. They also need a Kenyan lawyer who will be defending them in a court of law. We are proud that the Kenyan Government has seconded three magistrates who will be running the courts in Juba. We believe that the magistrates will be showing what justice is because we believe that our system is much fairer and reasonable.

The last issue is the one that my colleague has raised - why Sudanese students are being taught to do Kenyan examinations. The Southern Sudanese love Kenya and they respect Kenya. They believe we are the best country they can benchmark. They believe

that it is only us who do not see our excellence. They believe that they want to build their country along the Kenya model. I believe that when those students sit their examinations, they will be the best Kenyan ambassadors.

The Temporary Deputy Speaker (Mr. Imanyara): Any other requests for Ministerial Statements before we allow hon. Ethuro to raise his point of order?

The Temporary Deputy Speaker (Mr. Imanyara): I will allow hon. Ethuro to raise his point of order, then Dr. Khalwale and then finish with hon. Kiuna.

POINTS OF ORDER

DETENTION OF MOTHERS BY HEALTH FACILITIES

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Public Health and Sanitation. Last Monday, she ordered that all health facilities should not detain mothers who have given birth for the inability to pay maternity fees as a result of poverty. She also ordered for their immediate release. While appreciating this announcement, especially recognition of the fact that 7,000 women lose their lives when giving life at birth. Maternal mortality is at 4,800 per 100,000 live births and infant mortality is at 79 per 1,000 live births. In places like Turkana, the statistics are worse with infant mortality at 150 per 1,000 live births. Could she state the exact measures she has taken to ensure that her directive is being followed and that she was not being popularist and acting in vain? Has she issued a circular to that effect and when? She should tell us when she issued the circular? Could she table the same circular in this House? Could she also give the list of the health facilities that were holding the mothers and their children? Could she tell us the number of mothers and children who were being held in those facilities before her directive? She should also give a list of the mothers and children who were released after her directive. What cost has been incurred by the relevant health facilities and how the Government proposes to compensate the cause of deliveries in future in these health facilities? Finally, what other measures has the Government taken towards the realization of the Millennium Development Goals (MDG) number four and five, which are the promotion of reducing child mortality and promotion of maternal health?

The Temporary Deputy Speaker (Mr. Imanyara): Who on the Front Bench undertakes to convey that to the Minister? Mrs. Ngilu, would you undertake to convey that to your colleague? When can we expect the Statement?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Temporary Deputy Speaker, Sir, may I promise on Thursday, next week, so that I can get the right offices?

Mr. Temporary Deputy Speaker (Mr. Imanyara): Mr. Ethuro, is that okay?

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, that is okay. However, I suspect that the Minister may not be ready. I am even willing to give another two weeks.

The Minister for Water and Irrigation (Mrs. Ngilu): That is good enough. Thank you so much.

IDPs TREK FROM GILGIL TO NAIROBI

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, mine is very brief. I notice that the Assistant Minister, Ministry of State for Special Programmes is seated here. Yesterday, I sought a Ministerial Statement, a matter which is going to be addressed on Wednesday. However, a humanitarian crisis is building out of that Statement, namely; Kenyans are trekking from Gilgil to Nairobi so as to be addressed by the Minister. Right now, they are somewhere between Naivasha and Kinungi. Could he comment as to whether they have made any humanitarian intervention, including food, drugs and transportation?

The Temporary Deputy Speaker (Mr. Imanyara): In other words, you are seeking the Ministerial Statement to be brought forward to today?

Dr. Khalwale: No, Mr. Temporary Deputy Speaker, Sir. It had five points. The one I am talking about, which has the humanitarian aspect could be addressed now and then the Statement comes next week. I can see the Assistant Minister is here.

The Assistant Minister, Ministry of State for Special Programmes (Mr. M.M. Ali): Mr. Temporary Deputy Speaker, Sir, I am aware that this Ministerial Statement is due on Wednesday and we are making all efforts to make a comprehensive Statement at that time. However, in view of what Dr. Khalwale has raised, I want to report to the House that this problem has got the attention of the Government and has been resolved. The IDPs have been encouraged to go back to their camps. The Government has given them transport back to the camps. Three members of the IDPs have been selected, so that they can seek audience with the Ministry officials on Wednesday, next week. The District Commissioners (DCs) and our regional co-ordinators are making all efforts to ensure that the humanitarian aspect of it has been taken care of. Therefore, the situation is under control and no Kenyan is suffering out there. They reached Kinungi this afternoon and they agreed to go back to their camps.

INVASION OF TIPI CENTRE BY WARRIORS

Mr. Kiuna: Mr. Temporary Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Ministry of State for Special Programmes. I would like to request the Minister to state whether she is aware of what is going on in Tipi Centre in Mau Narok Division in Njoro District. There is an invasion by some warriors from outside Nakuru County. I would like her to clarify whether she is aware that these warriors have been imported from outside my constituency by influential senior Government officers to come and disrupt the peace which is prevailing there. Lastly, what steps has the Government taken to ensure that these financiers, however mighty or strong they are, are arrested and brought back?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Temporary Deputy Speaker, Sir, I undertake to convey this to the relevant Minister. Maybe, again, you give us until Thursday, next week, for the Statement to be delivered.

The Temporary Deputy Speaker (Mr. Imanyara): Minister, it is eminent and there is a threat to lives and I think Thursday next week is too far away. Could it be delivered on Tuesday, next week?

The Minister for Water and Irrigation (Mrs. Ngilu): That is okay, Mr. Temporary Deputy Speaker, Sir. I will convey that to the relevant Minister this afternoon and I hope she can deliver the Statement on Tuesday.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Kiuna, do you think Tuesday, next week, will be all right?

Mr. Kiuna: Mr. Temporary Deputy Speaker, Sir, this situation is very sensitive.

The Temporary Deputy Speaker (Mr. Imanyara): That is why I am asking that it be brought as soon as possible. So, Tuesday, next week!

Mr. Kiuna: Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Very well. Hon. Ethuro, you had intimated that you are rising on a point of order and I am allowing you this opportunity.

NON-ISSUANCE OF STATEMENT BY LEADER
OF GOVERNMENT BUSINESS

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. I rise on a point of order under Standing Order No.36(4). It says:-

“The Leader of Government Business shall, every Thursday or the last sitting day of the week before commencement of business, for not more than fifteen minutes, present and lay on the Table, a Statement informing the House of the business coming before the House in the following week.”

I have the Order Paper here and it says that the commencement of business is after the Ministerial Business, namely; Order No.7 on the Order Paper. I do not see the Leader of Government Business, the Deputy Leader of Government Business or even an Assistant of the Leader of Government Business who is not even a Member of the House Business Committee. This is not only for today, but even yesterday. The Standing Order No.40 on the Prime Minister’s Time states that:-

“Notwithstanding the provisions of Standing Order No.36 (Order of Proceedings), there shall be time, to be designated the Prime Minister’s Time, commencing at 3.00 p.m. every Wednesday”.

The operative words here in both cases are “shall” and “shall”. I am just wondering whether there is a conspiracy by the Executive not to obey the Standing Orders and to discharge its responsibility to this House. Does it mean that the Government has no business for the following week, and that is why the Leader of Government Business is not here to present it?

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Ngilu, do you have anything to say on behalf of the Government?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Temporary Deputy Speaker, Sir, first, I am a Member of the House Business Committee. The House Business Committee meets every Tuesday after the rise of the House. We plan business for up to the following Tuesday. So, I am sure we have business for next Tuesday.

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Speaker, Sir. The issue is not, and has not been, whether the House Business Committee meets or not. Hon. Ethuro was very clear that there is a breach on the face of the record of the Standing Orders by both the Prime Minister and the Leader of Government Business. Those are two senior officers of the Front Bench and the Executive. It borders on contempt of

Parliament. We wanted to request you to issue a considered opinion on this matter because if it does not get addressed, the House is going to be taken for granted.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Bahari: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to thank hon. Ethuro for raising this issue, because at the end of the day, if Standing Order No.36(4) has not been complied with, it will be contentious, or breach of the rules, for anybody to bring any Government Motion next week. That is why it is extremely important that you give direction on how we are going to proceed.

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. I also wanted to bring to your attention the status of the purported response by the Minister for Water and Irrigation. The issue that I raised on the Standing Order has nothing to do with the membership of the House Business Committee. The only thing I mentioned is that the Leader of Government Business has incorporated one Deputy, who is not even a Member of the House Business Committee. That is not even for today, I was just wondering. If they could have gone to that extent and still fail to perform the duties they are already supposed to perform in this House, then there is a serious breach of the rules of the House.

We need your direction, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, indeed, the Standing Orders are clear. I will restrict myself to the issue relating to the Leader of Government Business. Of course, the matter touching on the Prime Minister ought to have been brought up during yesterday's proceedings. Had it been brought up yesterday, I am sure the Chair would have made the necessary ruling. For now, I find the Leader of Government Business to be not only in gross misconduct, but he acted in complete contempt of the House for absenting himself from complying with the mandatory requirement of the Standing Order. Sanctions will follow, but because he is not in the House, these will be announced on Tuesday by the Chair.

(Applause)

Next Order!

MOTIONS

ADOPTION OF REPORT ON NOMINEES TO POLITICAL PARTIES DISPUTE TRIBUNAL

Mr. Namwamba: Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Nominees to the Political Parties Dispute Tribunal laid on the Table of the House on Thursday, 4th November, 2010.

The Committee brings this Report in exercise of its mandate as set out in Standing Order No.198(3), which includes overseeing all matters relating to political parties as well as the Ministry of Justice, National Cohesion and Constitutional Affairs, the State

Law Office, the Judiciary, the Kenya Anti-Corruption Commission, the Interim Independent Electoral Commission, and the Interim Independent Boundaries Review Commission. Its mandate also touches on constitutional affairs, administration of law and order, public prosecution, selections, integrity and anti-corruption.

Mr. Temporary Deputy Speaker, Sir, the Tribunal is extremely significant, and is established by the Political Parties Act. The nomination of the Chairman and the Members of the Tribunal is an exercise which has been delayed considerably and, therefore, this is a matter which I think this House can dispense with expeditiously.

The Political Parties Act, 2007, establishes the Political Parties Dispute Tribunal, consisting of a chairman and two members. The three nominees are supposed to be appointed upon approval by this House. In the exercise of its mandate of vetting the nominees to this Tribunal, the Committee held three sittings to consider the nominations done by the Chief Justice, in accordance with the law. At a meeting held on 22nd April, 2010, the three nominees, namely Messrs. Peter Simani and Chacha Odera, and Rev. Jessie Mutura, appeared before the Committee physically and were vetted in accordance with the criteria established by the parent statute, and in accordance with customs set by the Committee.

Mr. Temporary Deputy Speaker, Sir, let me register the Committee's acknowledgement of the support given to it by the Offices of the Speaker and the Clerk of the National Assembly. It is, therefore, my privilege to commend this Report to the House for adoption.

Let me start off by giving a background to this whole matter, and remind the House that Section 5(1)(ii) of the Political Parties Act, 2007, establishes the Political Parties Tribunal and outlines both the leadership and membership of that Tribunal. Section 5(1) says:-

“There is established a Tribunal to be known as the Political Parties Disputes Tribunal. The Tribunal shall consist of the following members appointed by the Chief Justice, subject to approval by Parliament-

(a) a chairman who shall be a person qualified to be appointed as a Judge of the High Court;

(b) two other members of high moral standing and integrity, one of whom shall be an Advocate of the High Court of five years' standing”.

Mr. Temporary Deputy Speaker, Sir, the same Act goes on to indicate the term of office of the members of the Tribunal. At Section 5(4), the Act says:-

“A member of the Tribunal shall hold office for a term of five years and shall be eligible for appointment for a further term of five years.”

Section 6 sets out the purpose of this Tribunal, which is important for the House to note. It says:-

“The Tribunal shall determine disputes between members of a political party, disputes between political parties forming a coalition, or appeals from decisions of the Registrar, under this Act”.

Mr. Temporary Deputy Speaker, Sir, in exercise of his nomination mandate, and vide a letter dated 18th August, 2009, the Chief Justice, acting pursuant to Section 5(2) of the Political Parties Act, appointed three persons to the Political Parties Disputes Tribunal, subject to approval by this House. The three were Mr. Sankale ole Kantai, who

was nominated for the position of chairperson; Mr. Chacha Odera and Rev. Jessie Mutura, as members of the Tribunal.

On Tuesday, 1st September, 2009, the Minister for Justice, National Cohesion and Constitutional Affairs tabled in this House the three nominees for approval, subsequent to which the list was referred to the Committee. Following the appointment of Mr. Sankale ole Kantai as the Judge on the Interim Independent Constitutional Disputes Resolution Court, he withdrew his candidature for the position of chairperson of the Political Parties Disputes Tribunal vide a letter Ref. No.SOK/PPDT/2009, dated 21st October, 2009. Subsequently, vide a letter received by the National Assembly on 22nd December, 2009, the Chief Justice nominated Mr. Peter Simani to replace Mr. Sankale ole Kantai as the nominee for the position of Chairman of the Political Parties Dispute Tribunal.

Mr. Temporary Deputy Speaker, Sir, in conducting the vetting process, the Committee examined the candidates against the following criteria, amongst others. The Committee looked at their education, employment record, professional affiliation, published writings, potential conflict of interest, knowledge of the relevant statute and overall suitability for the position. At a meeting held on 22nd April, 2010, the Committee conducted oral interviews for all the three nominees. At the conclusion of the vetting exercise, the Committee made the following observations:

(a) With regard to Mr. Peter Simani, the Committee notes that the nominee for Chairman is academically and professionally qualified for the position. He is an attorney of repute with considerable experience and proven service to justice and rule of law. His moral standing has not been called into question nor can he be said to hold any known partisan political persuasions.

(b) With regard to Mr. Chacha Odera, the Committee notes, he is similarly qualified on the basic evaluation ground of academic qualification, professional competence, moral probity and apparent political non-partisanship. He is also an attorney of repute with considerable experience and proven service to justice and the rule of law.

(c) With regard to Rev. Jessie Mutura, the Committee noted that, though not an attorney, the Committee found this particular nominee for membership of the Tribunal to possess other attributes. The Reverend's background as a religious leader serving ordinary Kenyans would particularly make her a balancing influence on the Tribunal considering that the Chair and the other nominee are both attorneys of law. She possesses the requisite capacity, competence, moral probity and political balance.

The Committee also made observations with regard to the general question of representation on the tribunal. The Committee noted that the law limits membership of the Tribunal to only three persons. It observed that although the Constitution encourages aspiration to the idea of representing the face of Kenya in public institutions, this should not be misconstrued to mean that what has come to be known as ethnic or regional balancing will be a mandatory consideration all the time everywhere even for institutions of limited membership like the Tribunal.

Further, this consideration, the Committee noted, must not be used to discriminate against qualified candidates. The Committee concluded that for good reasons, future considerations could be given to expanding the Tribunal membership as circumstances may deem necessary.

Mr. Temporary Deputy Speaker, Sir, subsequent to the foregoing the Committee makes the following recommendations:

(1) That pursuant to Section 5(2)(a)(b) of the Political Parties Act, No.10 of 2007, this House approves the following three persons for appointment by His Excellency the President to the Political Parties Disputes Tribunal:

- i. Mr. Peter Simani, Chairperson.
- ii. Mr. Chacha Odera, Member
- iii. Rev. Jessie Mutura, Member

(2) That this House urges the Attorney-General to consider proposing in future, under circumstances he may deem necessary, appropriate amendments to the Political Parties Act, No.10 of 2007, and related statutes to provide for expansion of the membership of the Tribunal to not more than five members.

Mr. Temporary Deputy Speaker, Sir, it should be noted by the House that this process has taken a bit of time. It is obvious that from 2009, when this process commenced, it is now over one year down the road. There were a number of issues that arose in the process of conducting this vetting. One particular issue is one that the Committee wished to bring to the information of this House. At some point in the process of dealing with this matter, the Committee had made an attempt to vary the nomination process outlined above. This resulted from concerns that had been expressed by certain members that both Mr. Simani and Mr. Odera traced their roots to one half of the country and seemed to be of similar philosophical persuasion. Further because Rev. Jessie Mutura was not an attorney and did not possess post-graduate qualifications, it was at some stage resolved that the Chief Justice be requested to provide two new nominees to replace Mr. Odera and Rev. Jessie Mutura. This was, indeed, done.

Mr. Temporary Deputy Speaker, Sir, I must stress that this is a matter that we are bringing to the House for information, in the interest of openness, transparency and accountability in the manner in which this Committee conducts its business. However, following further deliberations within the Committee that found the initial concerns unmeritorious, and with the subsequent guidance of the House Legal Counsel, that indicated that the said earlier resolution was unprocedural, the Committee at its meeting held on 16th September, 2010, rescinded its earlier decision and resolved to table a report based on the list tabled in the House on 1st September, 2010. This resolution of the Committee, I must stress was unanimous.

Therefore, the recommendations as contained in this Report made by the Committee are unanimous recommendations by the Committee and I take this opportunity to urge the House to adopt this Report and approve the nomination of Mr. Simani, Mr. Odera and Rev. Mutura, so that this Tribunal can take off.

Mr. Temporary Deputy Speaker, Sir, the absence of this Tribunal has left a serious lacuna in the manner in which we have dealt with disputes arising between and within political parties and the speedy constitution of this Tribunal will enable the country to move forward and start dealing with those disputes in accordance with law.

With those few remarks, I beg to move and my able deputy in the Committee, hon. Baiya will second the Motion.

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I rise to second this Motion and thank my Chairman, hon. Namwamba for moving the Motion as ably presented.

Mr. Temporary Deputy Speaker, Sir, in supporting this Motion, I wish to highlight to this House that these nominations are being brought as part of the political reform packages that started with the Political Parties Act, which was enacted in 2007. It was made operational in 2008. Among the objectives of the Political Parties Act is to regulate the business of political parties in the country. One of the role in this regard for the Tribunal is to assist in management of disputes in the political parties among members of the political parties. That is Section 6. Also disputes between political parties forming the same coalition and also to deal with appeals arising from the decisions of the Registrar of Political Parties under this Act. So, it means that while we have not appointed this Tribunal, decisions made by the Registrar of Political Parties are not being appealed against. No appeals are being filed with this Tribunal. They are instead being filed in the High Court.

There are disputes which have already been filed at the High Court. This contributes more to the backlog in our court system.

Mr. Temporary Deputy Speaker, Sir, we are aware of political disputes in this country. Political parties have formed coalitions or entered into arrangements only to end up disagreeing and affecting this country in a very substantial way. For instance, in 2002 we had a Memorandum of Understanding that had been written, was subsequently disregarded and became the basis for poisoning the political relationship in this country. It also contributed to a lot of damage in this country. Even now, we still have a coalition Government and you can hear murmurs or complaints about how some parties' rights or promises are not being fulfilled. Some of these disputes by their very nature are not suitable for litigation in our very congested judicial system. Therefore, there is need to create a specialized arbitration or court system to be dealing with this. That is precisely the role that this tribunal is meant to fulfill. So, the absence of this tribunal is a big gap in terms of creating institutional framework and structure to address political party disputes among political players.

I am very sure that if you look at some of the problems and behaviour of our political parties particularly during nomination, you will find that they engage in unacceptable behaviour merely because they know their members have no access to quick redress. A tribunal like this will deal with disputes that arise during the nomination process. This Tribunal is, therefore, long overdue and its presence and responsibility will be helpful in containing some of these problems which ultimately affect all political players. The Tribunal will reduce duplicity of political parties because Kenyans feel that once their rights have been violated and they have no court to seek redress, they would rather join other political parties. These practices contribute to the enormous number of political parties in this country. So, it will be the responsibility of the Political Parties Act to create and control political parties so that we can bring sobriety and sanity within our political systems.

Mr. Temporary Deputy Speaker, Sir, I would also like to point out that the Chairman has explained why the process was delayed. The delay was not intentional because the vetting process was only beginning to be exercised in this country. So, we were trying to deal with the challenges. We were venturing into uncharted waters and the errors that were made were expeditiously resolved and we are now able to present before this House a team of appointees who have gone through the vetting process and have been unanimously accepted. I have in mind the three nominees, that is, Peter Simani,

Chacha Odera and Jessie Mutura. They all meet the various qualifications that are needed. They constitute a team which we assure this House will meet the expectations required of them under this Act.

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

(Question proposed)

Mr. Bahari: Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to support this Motion because this is a very important institution that we are trying to establish. We are a democratic society and in such a society, while the individual liberties are very important, we need to be organized. In the political set up, a political party is one of those institutions that organizes political aspirations so that the country can be run better. We know that in this country, political parties did not mean much until today when some of these institutions are being put in place. There have been a lot of interference in the activities of political parties by the Executive in order to undermine the activities of what was perceived to be their competitors and disorganise them completely, and in the process undermine the democratic process. Some of these institutions that are being put in place will enhance democratic culture because, as the Chairman, Mr. Namwamba has said, it will reduce the cost of resolving disputes and encourage democracy.

Mr. Temporary Deputy Speaker, Sir, you must have seen in this House that many hon. Members are from different political parties. In fact, the trend in Kenya has been that one owns a political party, unlike in a civilized society where we have only very few political parties because of the solid nature in which political parties have been run. There are internal democratic processes.

It is equally important, and I hope the Committee has ensured that people who are appointed to these positions are persons of high integrity who cannot be influenced or visited by external hands to influence their decisions in order to affect the democratic process. This is an institution that is long overdue and I hope the membership of this Committee has seriously considered this as a matter of great national importance. Therefore, I hope that they will live up to the expectations of Kenyans so that we move away from a culture commonly referring to "*chama ina wenyewe*". The party should belong to the entire membership and not to a few people as it has been presented in the past.

With those few remarks, I beg to support.

Mr. Mungatana: Thank you, Mr. Temporary Deputy Speaker. I really want to stand here and support this Motion very strongly. NARC(K) is one of those political parties, and I speak as the Secretary-General, that has written consistently to the Chief Justice to ask what has happened to the Political Parties Tribunal. This is because we have really been affected. We have had intra and inter-party political disputes. Within the coalition that we used to belong to, we have filed two major cases in court. One of them revolves around the decision by the Registrar of Political Parties to try and put the money that is supposed to be divided, in the hands of a new political party called "Party of National Unity" which was not part of the coalition in the first place. Almost all the money went to the PNU. You can imagine that we are now fighting in court for something close to Kshs29 million. The amount of money that we have to spend on the lawyer alone is a lot. Since these are political parties, it has been very difficult and costly.

We do not wish the same thing to happen to other political parties which may have disputes.

We are also disputing the ownership of councillors, who initially belonged in NARC(K) and they moved to the PNU. This matter is also in court because it raises the question of who has the power to nominate. When you look at these two disputes, the cost of money that the party has incurred is enormous and it is very unfair. It should not have happened if the Political Parties Disputes Tribunal was in place.

Mr. Temporary Deputy Speaker, Sir, we are very apprehensive because if you look at the time that has also been taken in the court in terms of setting hearing dates, adjournment of hearings and all that, it is a lot. Money is put aside for these issues, and sometimes financial years come to an end before disputes are resolved. So we sincerely support the formation of this Political Parties Disputes Tribunal and we want it to happen as soon as possible. We want to urge the President to quickly move in as soon as we pass it here. Appointments should be gazetted with speed like they have done with other commissions that we have approved in this place.

Mr. Temporary Deputy Speaker, Sir, this Tribunal is going to be very critical particularly now looking forward. In future, in this country, we are going to have presidential elections at two levels. We will have the first round and the second round. The likelihood of coalitions is going to be there because once political parties lose elections in the first round, they may want to consider supporting either of the top two candidates. Whatever agreements they may have, they could be subject to disputes. It is obviously true that if this Tribunal is not set up in good time and the rules of operations and engagements are not put in place in time, we may have serious problems in future.

Mr. Temporary Deputy Speaker, Sir, also looking at the future, it is not enough to have these three people. We need to make serious amendments to the Political Parties Act. I say this not only focusing on expansion of membership but on other issues as well. We are going to have inter-party problems. Right now, political parties in their various forms are having rebellions, counter-rebellions, coups and counter-coups, planning and plotting, everything is going on. Definitely, three people are not going to be enough and I agree with the recommendation that we need to expand the membership of the Tribunal and structure it appropriately.

Mr. Temporary Deputy Speaker, Sir, some of the things that we need to think about are: How do we want the Office of the Registrar of Political Parties to operate? We need to look at this Act seriously. I want to say it on the Floor of this House that if we do not fix the Political Parties Act in good time, it is us, the political players, who are going to pay a big price. Right now, the Registrar of Political Parties operates like an *addendum* of the Interim Independent Electoral Commission (IIEC). It was a struggle to even get an office for her. They tuck her somewhere in Anniversary Towers. In the hierarchy of the IIEC, the Registrar of Political Parties is even lower than a Deputy Director of the IIEC and yet this is the person who makes decisions on millions of shillings involving parties. On the way political parties must operate, this is the person we expect to give direction when we have issues within political parties.

Mr. Temporary Deputy Speaker, Sir, if political parties are the ones that form governments, we cannot allow the Registrar of Political Parties to be so demeaned in the way they have structured her position, yet it is that person who is supposed to be the referee when we quarrel.

We have definite provisions in the Constitution on how political parties will operate. This time, we made sure we put it there, the same way we put for KACC, Central Bank of Kenya and other institutions. We must now think seriously of bringing amendments to this House to strengthen the office of the Registrar of Political Parties so that it can operate at the same level with KACC. There must be a board, Registrar of Political Parties, Deputy Registrar in charge of disputes, Deputy Registrar in charge of finances and Deputy Registrar in charge of registration of political parties. We must create something that we can live with and something that is above there. We must give it independence. We must give it strength and it must not be subordinate to the IIEC, the way they have treated that office.

Mr. Temporary Deputy Speaker, Sir, it is in our power to create laws that are going to serve us. I think, Members of Parliament, now we have to be selfish about organizing our election laws. We should be organized for the next Parliament. We are talking about restructuring the Provincial Administration and so many other things - those are executive matters – but what about ourselves? What laws are we putting in place to organize our politics? I think it is time we brought serious amendments to that Act so that we can live with it.

Lastly, Mr. Temporary Deputy Speaker, Sir, I wanted to say that I am happy with the names that have been proposed here and I support all of them, but I wanted to also mention one thing. It is not fair for us to inundate all commissions with lawyers, and in particular lawyers who have not participated in political actions. I am of the view that this is one of those committees that should have been inundated with retired politicians who know the exigencies of the moment, who will not take too much time on procedure and forget that we have to nominate. We need people who have been, maybe former Members of Parliament. They know all these problems that we undergo before we get our nomination certificates. Maybe a chairman should have been one of those people who have been rigged out in a previous nomination. That would be a very good qualification to be a chairman of the Political Parties Tribunal. When we put lawyers, they will come with nice procedures, argue and so on. This is politics, it is not law! Unfortunately, many of us who are lawyers take such a long time to make that shift that politics is different. It is not procedural and things change all the time.

So, I wish we had more politicians, more people who have served in offices such as ours, they would have helped us. When I go to a former Member of Parliament and tell him that certain people are “sitting” on me, that there is a plot hatched in the boardroom to deny me nomination, they understand that language because they know what we are doing. But a lawyer will ask you to give him evidence, produce tapes, SMS and so on. Then, they dismiss your case just like that. This is the first one but I hope in the expanded commission, when we do real amendments, we must think about giving old or retired politicians jobs. They will help us. I urge the House to have that in mind but for now, it is a good start and because we need this Tribunal in place, we support it.

I beg to support the Motion.

Mr. Wamalwa: Thank you, Mr. Temporary Deputy Speaker, Sir. I also rise to support the Motion for the adoption of this Report.

I also belong to a political party that has had problems in the past. The party of FORD(K) is one of the parties whose matters are pending before Registrar of Political Parties for arbitration. However, there has not been a tribunal in place to arbitrate

between members of this party and we are very glad to note that, finally, we have an effort towards putting this tribunal in place. Looking at the names presented, they are very, very qualified Kenyans of high integrity; they are lawyers that have practised for many years and have an impeccable record that I know of personally. Peter Simani and Chacha Odera, I have no doubt that they will very ably discharge the functions that will be bestowed upon them by law.

Mr. Temporary Deputy Speaker, Sir, it is also very important that we have in place a dispute resolution mechanism that can expedite the resolution of disputes. Speaking about my party, we have been to court many times and many of the disputes before the High Court, because of the heavy backlog of cases, we have taken years to complete. However, Section 7 gives a maximum period within which a dispute can be determined by the Tribunal that we are putting in place.

Under Section 7 of the Political Parties Act, any dispute presented before the Tribunal must be determined within three months. That is the maximum. Indeed, looking at what has happened in this country before, political disputes are very hot matters that need to be resolved. Unless they are resolved, they can resort to violence and chaos and, therefore, having put this Tribunal in place, we would avoid chaos in this country. Anyone aggrieved either within the party or between parties will now have a tribunal and a forum to go and ventilate and have their disputes resolved.

Mr. Temporary Deputy Speaker, Sir, most importantly, we are looking at the future of political parties in this country under the new political and constitutional dispensation. Looking at Article 4 of the Constitution, you will appreciate the importance of political parties. Article 4 provides that:-

“The Republic of Kenya shall be a multi-party democratic State founded on the national values and principles of governance referred to in Article 10.”

Indeed, this is the democracy, as provided under Article 4 that must be founded on national values. When you go to Article 10, you will find the national values that have been set out on which political parties will be based. Under Article 10, the political parties will be vehicles through which, as a society and as a nation, we shall realize our national values and aspirations.

Mr. Temporary Deputy Speaker, Sir, as we talk about political parties, we will know that under the new Constitution, new political rights have been provided for the citizen under Article 38 which can be realized through political parties. However, these rights will, definitely, not be guaranteed unless we provide mechanisms, where the rights are violated, we can have the disputes resolved. It is these political parties, under Article 99 of the Constitution that will nominate Members of Parliament; will nominate Senators, Governors and county representatives. So, under Article 99, if it is the political parties which will make the nominations, then expect that there will be disputes regarding the nomination process of many political parties. Therefore, we will need a system through which these disputes can be ventilated.

Under Article 108 of the new Constitution, you will find that we will now be having in the House the Majority Party Leader and the Minority Party Leader. Even the manner in which the Majority Party Leader and the Minority Party Leader will be picked under Article 108, we will definitely have disputes arising from this nomination process and, therefore, this Tribunal will be necessary to resolve the disputes arising from Article 108. And, ultimately, under Article 187, you will find that for one to be President, one of

the qualifications is for one to be nominated by a political party. It also provides for an independent candidate, but many of those who will be vying for the presidency, including myself, will definitely have to go through a political party and there will be disputes on the nomination to the highest office in the land.

Mr. Temporary Deputy Speaker, Sir, indeed, you will appreciate that when we have this process in place, we will be able to resolve these disputes and we will be able to have a more freer society that will not spend much time to resort to courts.

With those few remarks, I beg to support.

Mr. Midiwo: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support the Motion. First of all, I want to begin by thanking this Committee for a good job done over the last three years. I think when the time comes, history shall remember you and you shall be judged right.

I support the list of the nominees because the whole idea of dispute resolution is a very welcome idea and it is in line with changing times of our society, especially in the light of the new Constitution.

Mr. Temporary Deputy Speaker, Sir, there have been conflicts in political parties and, usually, the answer is that people run away and go to the Registrar of Political Parties to register another political party. I think over almost 20 years, the end result is that we have not been able to force democracy from within political parties. So, this Tribunal, alongside the Political Parties Act, is going to rid this country of briefcase parties and the one-man-show political parties. I think that democracy is needed. I do not think the answer is always running away; the easy way out of undemocratic scenarios is to run away and go to the one which you think you can control and further the undemocratic tendencies. So, I think this will force people to talk and something in the middle is what I think will suffice in our political parties.

Mr. Temporary Deputy Speaker, Sir, we have too many political parties. I meet some of them even in corridors – the briefcase party holders – you talk to them about ideologies of their parties and there is nothing! They are vehicles to intimidate the electioneering process when the time comes. You meet many of them when you are going to present your papers wherever you present them in your constituencies, and you find somebody standing there with certificates which are blank. I say this as somebody who has gone through this experience. In the last elections, we went through nominations and the same people you defeated in one nomination are the same people you meet when the official campaign period begins. So, what is the strength of even going through nominations and everybody knows so well that elections are so expensive?

So, I thank this process and I think the introduction of Political Parties Act is one step forward, but I think this takes it to the next level, so that if you feel aggrieved, there is a way out.

Mr. Temporary Deputy Speaker, Sir, the repugnant court system which has been used for years and years in this country just to deny people their individual democratic rights is one which we must find a way from and I think this saves us a lot. Because what has so far happened in the last so many years is that people run to courts to stop democracy.

People run to court to deny others their rights, and not to seek justice. As we legislate, I want to agree with Mr. Mungatana that there may be shortfalls, but as we move forward, we will mitigate against them.

Mr. Temporary Deputy Speaker, Sir, I want to tell this Committee that the many people whom we shall vet in this process, the implementation of the Constitution, must be people of integrity. I think this country is asking that of us.

Let me clarify something here. This list has been before the House Business Committee now for many months. The reason why it could not come here was because some hon. Members felt that because some innocent Kenyans may have been related to a person in Parliament--- I think it is a very bad trend. When John F. Kennedy was made the president of the USA, the first person he made the Attorney-General was his own brother. Just before that, his father was the ambassador to England. That did not affect him.

Kenyans must be judged on integrity. I say this with a lot of humility, because the other day I heard it being raised here that since somebody is married to my sister - and he is not even my relative, and is an educated Kenyan of integrity - he must not get a job. He just fell in love with my sister and they got married. I find that really below this House. We cannot deny any person a chance because her name indicates that she is related to a Minister; people are saying that another person could be related to somebody in State House. State House never came here to apply for jobs for people. I think right is right, and wrong is wrong. It is good always to say the truth, because I am sure the truth shall set you free.

Mr. Temporary Deputy Speaker, Sir, I want to end by saying that now we have the Oversight Committee on Implementation of the Constitution, and I see that the hon. Members of that Committee are here. They happen to be the same hon. Members on this side and some are also on that side. We want to say, as a House, that we shall not allow you to overstep your mandate. Your role is oversight, and keep it that way for the sake of separation of powers, so that we can vet people appropriately and Kenyans can get good people to lead them. I am saying this because people are already calling us, and I sit in the Finance Committee, to talk to them on how we will vet certain members of commissions that fall under us despite the Speaker's ruling and direction. That is not something this country is looking forward to and we will not allow it.

I beg to support.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I beg to support. In supporting I want to say that Mr. Midiwo's sister has a right to fall in love. It actually helps in the development of the country because then we can have children.

Mr. Temporary Deputy Speaker, Sir, in supporting this Motion I wish to say that as a country we need discipline in our political parties, especially because of the issue of the marginalized. Political parties will play a very significant role, especially in appointments to certain positions, or in election to positions; an example is the case of the senate where women will be appointed from a party list. Unless we have party discipline, we will have a situation where women, who come in, may not necessarily represent the agenda that the women of this country have fought for. That is why it is good for us that as a Parliament we are already moving in that direction.

*[The Temporary Deputy Speaker
(Mr. Ethuro)Left the Chair]*

[The Temporary Deputy Speaker

(Dr. Laboso) took the Chair]

Madam Temporary Deputy Speaker, the other reason why I support this Motion is that we actually need, as the other hon. Members have said, a very quick and efficient method of dispute resolution in our parties. As a country, we have achieved a lot. I know a lot of times we actually challenge ourselves, but we have done a lot as a country, by creating a lot of democratic space; we need to guard that space very jealously. That is why we need a quick means of settling disputes, especially within parties. This will also ensure that the sort of scenarios that we have seen in the past within our parties will be a thing of the past.

Madam Temporary Deputy Speaker, I would want to also say that the persons who have been nominated are persons of integrity. Even though I agree to some degree with what Mr. Mungatana has said, I would also want to say that we also need persons who do not come with political background. Sometimes I feel that as a House we are not too sure of what we want. When we have Mr. Ligale chairing something then we say: "We should not have appointed a politician" what are we doing? When we bring in persons who do not come with political baggage, we say: "We should have appointed a politician".

We must be very sure. Perhaps, that is one of the reasons why our Committee has recommended that we have two more slots in a future amendment, so that we can have diversity. This will ensure that persons who come in with political experience and knowledge can be tempered with persons who come with a very professional approach. The lawyers who come in, come with a very high level of integrity. If you evaluate one of the persons who is nominated, even in the election of the Law Society of Kenya for the Judicial Service Commission position he was number two, meaning that he has the confidence of lawyers across the country.

I am also happy that, as a country and a House, we are very careful about constitutional provisions; we have lived up to the requirement for gender parity. However, I would want us to have a situation where three commissions conform to the gender parity in the opposite direction. It is not only the women who must be at the tail end of the one-third. As the party whips go to look at the Revenue Allocation Commission, can we for the first time have more women? Or, in the Commission on Implementation of the Constitution, can we for the first time have more women, so that we have the one-third---

Mr. Midiwo: On a point of order, Madam. Temporary Deputy Speaker. Is the hon. Member in order to mislead the House, and the country, one that we are not sensitive? Two, she is a lawyer who was working on this Constitution which says that one third must be either gender; she is insinuating that we are not always looking at either gender. Is she in order?

Mr. Muthama: On a point of order, Madam Temporary Deputy Speaker. Is the hon. Member in order to state that the Whips must make sure that gender balance is achieved, yet she knows that the Revenue Allocation Commission, which will be set up--
- At the KIA, where she chaired a meeting, it was agreed that an open advertisement inviting applications should be put out. If she knows that, what power do the Whips have to go out and encourage women to apply?

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, I am in order and I will explain why I am in order. When I was speaking, the hon. Members were consulting loudly and so, they did not hear what I said. I have said that this House is very sensitive; we have followed the Constitution and we have ensured the one-third representation except--- Can we, for the first time, other than the Commission on Cohesion and Integration which has majority women, all the other commissions, the one-third is presumed that the tail end must be---

(Mr. Imanyara stood up in his place)

Madam Temporary Deputy Speaker, can I be protected!

The Temporary Deputy Speaker (Dr. Laboso): Mr. Imanyara, allow her to finish, please.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, I am responding to a point of order. I shall not be intimidated with my one-third of the tier.

(Mr. Ethuro stood up in his place)

The Temporary Deputy Speaker (Dr. Laboso): Mr. Ethuro, allow her to finish, please.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, I want to say - and I want to repeat - that if you actually see the record in this House, we have done well by providing one-third constitutionally. However, we must inculcate in ourselves that the tail end of one-third does not always mean women. So, I am pleading that this time round, when we are appointing the Commission on Revenue Allocation---

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Dr. Laboso): Your point has been made, Mrs. Odhiambo-Mabona! Can you allow Mr. Ethuro?

Mr. Ethuro: On a point of order, Madam Temporary Deputy Speaker. I was more than ready and willing to abide by your ruling to allow the hon. Member to continue but, is she in order to continue misleading the House that we should improve the ratio so that men are the minority when the fundamentals of the new Constitution have the fact that women are a minority and that is why we are giving them affirmative action?

(Applause)

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, hon. Members have raised points of order and if you would allow me, I can very ably respond to them. That is because I came to this Parliament on a one- third representation. What I am saying is that even though I am happy with our men especially in this Parliament because they are sensitive, that tail end must reverse so that the two-thirds should also be women this time. I am also saying that the Whips--- All of us know that the Whip should whip so that your party members--- While you are whipping them, whip them in a gender sensitive manner.

Finally, I would like to say that we have also taken account of the younger generation - not youth but younger - younger is very close to youth.

With those few remarks, I beg to support.

Mr. Imanyara: On a point of order, Madam Temporary Deputy Speaker. Clearly, you can see that there is nobody opposing this Motion and we are now moving to the realm of irrelevant material. So, I am asking whether it is in order for you to ask the Mover to reply.

(Applause)

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

Mr. Namwamba: Madam Temporary Deputy Speaker, let me thank hon. Members, most sincerely, for their overwhelming support for this process. Let me just clarify a couple of things without taking too much time. Indeed, the Tribunal has met the one-third requirement and I heard some hon. Members wondering whether there was a female representative on this Tribunal and let me confirm, for the record, that Rev. Jessie Mutura is, indeed, a lady of high standing. Therefore, the one-third requirement is fulfilled.

Secondly, maybe, to reiterate that, of course, political parties are indeed building blocks of any democracy and the concerns of hon. Members to have an entire bureaucracy put in place to anchor operations of political parties cannot be gain-said. It is essential! The other day, we were in Tanzania as a Committee to observe the Tanzanian elections and we were impressed by the efforts that, that country has made to build a bureaucracy that provides support to political parties. I want to assure hon. Members that looking at the law that establishes this Tribunal, many of the concerns that hon. Members have raised here; disputes within political parties and even disputes arising from decisions of the Registrar of Political Parties fall in the mandate of this Tribunal as well set out in Section 6 of this Act; that the Tribunal shall determine disputes between members of a political party, disputes between political parties forming a coalition and appeals from decisions of the Registrar under this Act. So, indeed, even decisions made by the Registrar with regard to any dispute will be subject to intervention by this Tribunal.

Again, let me remind hon. Members that we need to take comfort in Section 7 of the Act that provides a time limit that the Tribunal shall take to determine disputes and Section 7(1) provides that the Tribunal shall determine any dispute before it expeditiously, but in any case shall determine a dispute within a period of three months from the date the dispute is lodged and that the decision of the Tribunal shall be final. So, indeed, the concern to have a process that is expeditious; a process that is affordable is a matter that this Tribunal shall certainly respond to very effectively. The question of having politicians to populate a tribunal of this kind is a matter that the law has addressed itself to. When you look at Section 5(3) of the Political Parties Act, a person shall not be qualified to be appointed as a member of the Tribunal if that person is a member of the Public Service or takes an active part in the activities of a political party. Therefore, the law itself is very clear that persons who are actively involved in political play are not

permitted to be part of this Tribunal. Of course, we need to think about this issue broadly as a House because we seem to be criminalizing our own career. In the Constitution, if you look at the manner of putting in place various commissions, many of our laws now specifically bar anybody who has had a career in politics from serving. So, this is a matter that the House needs to deliberate on, whether we are not legislating ourselves out of any future career prospects after this career.

Finally, I want to urge the three nominees; Mr. Peter Simani, Mr. Chacha Odera and Rev. Jessie Mutura (Ms) that if this House approves their nomination to this Tribunal, they will be taking on a very historic responsibility. Their task is well cut out and I would urge them to serve this country fairly, justly in a manner that can assist in the process of reforming our political structure and in a manner that can aid the deepening and entrenchment of the new dispensation.

With those few remarks, I beg to move.

(Question put and agreed to)

ADOPTION OF REPORT OF THIRD SESSION
OF SECOND LEGISLATURE OF PAP

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

THAT, this House adopts the Report of the Third Session of the Second Legislature of the Pan-African Parliament held from 4th to 14th October, 2010 in Midrand, South Africa laid on the Table of the House on Wednesday 10th November, 2010.

Madam Temporary Deputy Speaker, the Pan-African Parliament was established in the Protocol to the Treaty establishing the African Economic Community (AEC).

Article 2 of the Protocol provides that Member States hereby establish a Pan-African Parliament the composition, functions, powers and organization of which shall be governed by the present Protocol. The ultimate aim of the Pan-African Parliament shall be to evolve into an institution with full legislative powers whose members are elected by universal adult suffrage.

The Pan-African Parliament mandate and objectives in accordance with Article 3 of the Protocol is to *inter alia* facilitate the effective implementation of the policies and objectives of the OAU/AEC and ultimately of the African Union (AU); promote the principles of human rights and democracy in Africa; encourage good governance, transparency and accountability in member States; promote peace, security and stability in Africa; facilitate cooperation and development in Africa; strengthen continental solidarity and build a sense of common destiny among the people of Africa.

Madam Temporary Deputy Speaker, this House as you will recall elected five Members to the Pan-African Parliament as an electoral college. The delegation to the Third Ordinary Session of the Second Parliament of the Pan-African Parliament comprised the following:-

- 1.Hon. Gitobu Imanyara, MP – Leader of delegation.
- 2.Hon. Abdul Bahari, MP.
- 3.Hon.Gideon Mung'aro, MP.

4.Hon. Musa Sirma, MP.

The delegation fully participated in the deliberations of the Ordinary Session and the sittings of the permanent committees of the Pan-African Parliament.

Madam Temporary Deputy Speaker, the delegation is grateful to the office of the Speaker for providing the necessary facilitation and the technical support to enable it participate in the deliberations of the Pan-African Parliament.

However, as we were preparing this Report the office of the Speaker informed us that the office had received a letter from Mrs. Rachel Shebesh, MP, who has resigned her membership of the Pan-African Parliament. We call for her replacement. I wish to point out that the Protocol establishing the Pan-African Parliament requires a minimum of one woman in the national delegation and the nominating parties are notified that Mrs. Shebesh will have to be replaced by another lady Member.

Madam Temporary Deputy Speaker, going to the details of our activities at the Pan-African Parliament on the opening session, Parliament received messages of solidarity from various institutions. These included among others, the former President Hassan Mwinyi, the New Partnership for Africa's Development (NEPAD) Director, the Minister for International Corporation of South Africa and the Governor of Gauteng Province where the Parliament sits. These messages of solidarity are a support to this young Parliament which is the Second Parliament of the Pan-African Parliament. It continues to give guidance and provides for integration of Africa.

One of the key activities of the Pan-African Government in this session was the celebrations of the 50th anniversary of a number of African States which I would like to list given that we were colonized for a very long time by the powers that you very well know. A number of countries like Benin, Burkina Faso, Cameroon, Central Africa Republic, Republic of Congo, Democratic Republic of Congo, Cote de' Voire, Gabon, Madagascar, Mali, Niger, Mauritius, Senegal, Nigeria, Somalia, Chad and Togo did celebrate their 50th anniversary of independence.

Madam Temporary Deputy Speaker, you know Kenya has three years or so to celebrate that 50th anniversary. As we celebrate this and as Kenya approaches that day we will celebrate the 50th anniversary of independence, we now need to reflect on what our achievements have been in terms of improving the lives of our people. This is because that is the key objective for fighting for Independence. However, as you will realize, Africa is still inflicted with the worst cases of poverty, high infant mortality rate, high maternal mortality rate and persistent conflict which is not what we aspired to achieve at the time we were fighting for Independence.

Some of the activities that the Pan-African Parliament also undertook as one of its core responsibilities was to ensure or make sure that the treaties that AU member States sign are ratified. One of those key treaties is the Charter for Democracy and Elections in Africa. As you will realize, this is key because every African State claims that they are democratic yet the culture of democracy has not sunk very well. In the end, you find situations where elections are not properly conducted and we end up having organized elections as opposed to a proper democratic electoral process.

Madam Temporary Deputy Speaker, the latest is Conakry Guinea where after going through a very hard process and a run-off, the opposition won and there is already a curfew in that country. We have very serious conflicts and this is not in the interest of democracy. I think Kenya is in the process of ratification but has not deposited the

instruments of ratification yet. Therefore, as a country it is important that we bind ourselves through this process of ratification to ensure that we comply with the African Charter on Democracy and Elections.

Pan-African Parliament carries out election observer missions as a process of enhancing democratic process to uphold the wishes of its citizens. However, this has been limited by lack of financial resources and decisions of the AU which have hampered independent election observer missions.

Equally, in this session the Parliament looked at the budget for Pan-African Parliament which amounts to US\$131 million.

Madam Temporary Deputy Speaker, because this is the Second Parliament an evaluation report of the First Parliament has been put in place. This is basically because it was important to know where we have come from and now that Pan-African Parliament is in the process of becoming a legislative Parliament, a quick evaluation process was undertaken and the report discussed.

A report on peace and security in Africa was also discussed at length. The issues of Conakry Guinea, Somalia, Niger and Nigeria were discussed.

With those few remarks, I beg to move and ask Mr. Musa Sirma to second.

Mr. Sirma: Madam Temporary Deputy Speaker, thank you for the opportunity to second this Motion which has been ably moved by Mr. Abdul Bahari.

First and foremost, the Pan-African Parliament stands for the position of the African people and their needs. Kenya being one of the members is now short of one lady. I wish to say we still need Rachael to rescind her decision so that Parliament can nominate her back to Pan-African Parliament because she is an asset.

Madam Temporary Deputy Speaker, the Pan-African Parliament is involved mainly in observer missions in democratic processes in many countries. Of late, the AU has usurped the responsibilities which we debated as a Parliament.

This is because during the last one in Ethiopia, Members of the Pan African Parliament were mistreated. They were not given the opportunity to have their own report because ambassadors came in and decided to make a report on behalf of the observer missions, yet Members who participated in those observer missions actually saw a lot of flawed processes in elections in that country.

Madam Temporary Deputy Speaker, the reports we get on conflicts in Africa are enormous. We have cited them in this Report so that hon. Members can see what happens in other country. There are issues of Chad, Congo and Central African Republic. At length, we really deliberated on the issue of Somalia having a transitional Government, the *Al Shabaab* threat and the peace in that country which has not been achieved for many years. These issues were really looked at by the Pan African Parliament. The issue of Saharawi, a country which Morocco has oppressed for many years was discussed. If we were transformed into a legislative body, we would make a difference in Africa.

Madam Temporary Deputy Speaker, democracy is a right of the people. Therefore, the Pan African Parliament stands for the democratic processes to be followed in Africa and be able to embrace all the human rights, especially in the countries where people have been maimed and tortured.

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

(Question proposed)

Mr. Imanyara: Thank you, Madam Temporary Deputy Speaker, for this opportunity to make a contribution on this Report, which I support.

Madam Temporary Deputy Speaker, as the team leader or Chair of the Kenyan Pan African Parliamentarians, let me say that we contribute a great deal to the political unification of the African Continent. The Pan African Parliament was established by the African Heads of State with the sole mandate of eventually replacing the national Parliaments with a continental body. The functions of the Pan African Parliament within the first five years were intended to prepare that ground work. We are now midterm in the review process of the protocol that established the Pan African Parliament, hoping that in the process we will give that Parliament full legislative authority and powers to make laws. In this regard, the Pan African Parliament has been at the forefront of working out a formula and time table within which to achieve this goal of the founding fathers of the African Continent.

Madam Temporary Deputy Speaker, one of the areas that have been stressed during our deliberations at the Pan African Parliament is that the national Parliaments play a greater role in sensitizing the African people of the functions of the Pan African Parliament and, indeed, the bodies set out under the African Union law; one of them being the Pan African Parliament.

Madam Temporary Deputy Speaker, in this last Session of the Pan African Parliament, our hon. Speaker of this National Assembly, was a keynote guest speaker. Speakers of African Parliaments have now set up the Speakers' Conference which brings Speakers of the entire African Continent together for a meeting, at least, once a year to review the role of the national Parliaments in implementing the goals that the founding fathers of the African Union had in mind when they established this Pan African Parliament and other organs of the African Union. This is with a view to bringing people together and closer to the dream of President Kwame Nkrumah when he became the President of Africa's first independent nation and that has been consistently advocated by all subsequent Members of the African Union, including our own---

The Temporary Deputy Speaker (Dr. Laboso): Hon. Imanyara, you have a balance of 17 minutes.

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday 23rd November, 2010, at 2.30 p.m.

The House rose at 6.30 p.m.