

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 2nd June, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATIONS FROM THE CHAIR

Mr. Speaker: Hon. Members, I have two Communications to make.

MEMBERS CONSULTATIVE WORKSHOP ON STRUCTURES OF DEVOLVED GOVERNMENT

The Office of the Deputy Prime Minister and Ministry of Local Government has organized a one day consultative workshop for all Members of Parliament to facilitate the task force on devolved government to present to Members its interim report on the structures of the said government. The workshop will be held on Monday, 6th June, 2011 at 9.00 a.m. at the Kenya Institute of Administration (KIA), Kabete. All Members are, therefore, invited to attend.

VETTING OF NOMINEES FOR POSITIONS OF CHIEF JUSTICE DEPUTY CHIEF JUSTICE\DIRECTOR OF PUBLIC PROSECUTIONS

Hon. Members, you will recall that on 18th May, 2011, I informed the House that His Excellency the President had, after consultations with the Right Hon. Prime Minister, nominated persons for approval by the National Assembly for the positions of the Chief Justice, the Deputy Chief Justice and the Director of Public Prosecutions, pursuant to the provisions of Articles 166(1)(a), 262 and 157(2) read together with Section 24(2) of the Sixth Schedule of the Constitution.

The House Business Committee (HBC), during its meeting held on Tuesday, 31st May, 2011 observed that while efforts were being made to address the matter of the Departmental Committee on Justice and Legal Affairs, the option of having appointments considered by the Constitutional Implementation Oversight Committee (CIOC) should be explored. The Committee requested the Speaker to consider the proposal and give appropriate directions in keeping with the letter, spirit and intent of the Constitution, in particular the provisions of Article 259(1).

In dealing with this matter, I wish to address the role of Committees in Parliamentary business and the need for Parliament to discharge the responsibilities bestowed upon it by the Constitution. Hon. Members, Parliamentary Select Committees perform specific functions which the House itself, by reason of the manner it is set up and

how it deliberates its business, is not suited to do, like examining witnesses and sifting evidence. Committees are creatures of the House from which they derive their authority. The House appointed Members of the CIOC to perform certain tasks on its behalf pursuant to the provisions of Section 4 of the Sixth Schedule to the Constitution.

(Several hon. Members stood at the Bar)

I will pause there for a moment so that hon. Members at the door can walk in.

(Several Members at the Bar entered into the Chamber)

Hon. Members, while we acknowledge that some Members of this Committee are Cabinet Ministers, it is worth noting that they were appointed by virtue of being Members of Parliament and not in their capacities as Cabinet Members to perform a specific constitutional duty for the Legislature and not the Executive (that is emphasized).

By practice, Ministers have not normally served on Committees other than the Procedure and House Rules Committee; the Speaker's Committee; the Committee on Privileges; and the Pensions Management Committee. However, we are aware that Ministers have served in the previous Parliamentary constitutional review committees where they did commendable work on behalf of the House. Thus, it is my considered view that notwithstanding the presence of Members of the Executive in the CIOC, this Committee has mandate and responsibilities as spelt out under Section 4 of the Sixth Schedule of the Constitution to ensure full implementation of the Constitution.

In light of the above and with the concurrence of the HBC, I direct that the three nominees, namely, Dr. Willy Muniyoki Mutunga for Chief Justice, Ms. Nancy Makokha Baraza for Deputy Chief Justice and Mr. Keriako Tobiko for Director of Public Prosecutions together with their curriculum vitae be referred to the CIOC for consideration.

Given the provisions of Standing Order No.180 which allows public access to Committees' proceedings and, in order to comply with the provisions of Article 73(2)(d) of the Constitution which underscores accountability to the public for decisions and actions taken, the Chair urges members of the public who may wish to submit memoranda to the Committee in respect of the three nominees to do so not later than Tuesday, 7th June, 2011.

Due to the urgency of the matter, the Committee should table its recommendations in the House by Wednesday, 8th June, 2011.

PAPER LAID

The following Paper was laid on the Table:-

Judiciary Budget Estimates for MTEF 2011/2012 to 2013/2014.

(By Mr. Mbau)

Mr. Mbau: Mr. Speaker, Sir, may I notify the House that the Budget Estimates for the Parliamentary Service Commission were also Tabled in this House on 28th April,

2011. The Estimates by the Office of the Deputy Prime Minister and Ministry of Finance were also submitted by 31st of May, 2011 except for the fact that only five sets of the copies were submitted. By the time that happened, it was not possible to transmit them to the Committee on Budget for the necessary review, discussion and approval to be tabled in this House.

Mr. Speaker, Sir, it is anticipated that the same will happen on Tuesday, 7th June, 2011 for onward laying on the Table.

Thank you.

Mr. Speaker: Order, Mr. Mbau! While you resume your seat for a moment, I approved the laying of these documents on the Table on the strength of your authentication that they were, indeed, from the Judiciary. However, I have looked through the documents which were annexed to your authentication and found that they are lacking in certain material respects. If you can, maybe you will confirm, because I laboured under the impression that the documents you would table would, in fact, be authenticated by the relevant Government department or arm of Government. Now, my perusal of this document annexed to your authentication reveals that none of them is signed. So, I do not know unless you satisfy me now, where these documents have come from. They may very well have come from River Road but I do not know. Can you satisfy me that these documents are, indeed, prepared by the Judiciary?

Mr. Mbau: Mr. Speaker, Sir, indeed, I want to confirm that the document you are holding was submitted about three weeks ago from the Judiciary to the Committee. The Committee has discussed and minuted them to be the correct position as Estimates of Revenue and Expenditure by the Judiciary.

Mr. Speaker: Mr. Mbau, I am afraid I am still not satisfied. You will have noticed that when the Parliamentary Service Commission (PSC) tabled its Estimates, those Estimates were, in fact, signed by hon. Kenneth Marende as the Chairman of the PSC. So, these documents ought to be signed by any of the three persons that have authority to sign on behalf the Judiciary. I am afraid that is not apparent from the documents that you have tabled in the House. If you are unable to do better than you have done so far, then, I am afraid that I will disallow these documents until you bring signed estimates of the Judiciary by duly authorized signatories of the Judiciary.

(Applause)

Mr. Mbau: Mr. Speaker, Sir, I oblige and respect your indulgence. We have signed copies and we shall ensure that the same are tabled on Tuesday.

Mr. Speaker: Very well, make sure you do so because if you know that there are signed copies, then you have no reason bringing unsigned copies to the House, therefore, putting them in the public domain when they are not signed. You understand the import of that matter! These documents are supposed to be then immediately made available to Members of Parliament who will take them to be original documents from the Judiciary and I am afraid these are not, up to where we are. So, I will then allow you until Tuesday next week to table duly signed Estimates by the Judiciary.

NOTICE OF MOTION

BANNING OF INDIGENOUS LANGUAGES IN
PUBLIC OFFICES AND NATIONAL INSTITUTIONS

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

THAT, noting that Article 7, Sub article 2 of the Constitution recognizes Kiswahili and English as the official languages of the Republic of Kenya; aware that this position will adequately address ethnic disharmony in public offices if implemented to the letter; appreciating that Article 7, sub-section 3 of the Constitution requires the state to promote the diversity of language of the people of Kenya; concerned that the use of indigenous languages in public offices and national institutions is a major contributor to disharmony, suspicion and discomfort in public offices in the country, this House urges the Government to ban the use of indigenous languages in all public offices except by Government field officers at the level of sub-locations and locations in public *barazas* where it is expected that nearly all of the audiences understand the local language used.

QUESTIONS BY PRIVATE NOTICE

KILLING OF KENYAN FISHERMEN IN UGANDA

Mr. Namwamba: Mr. Speaker, Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Under what circumstances were three Kenyan fishermen, namely, Mr. Lucas Odinga, Mr. Godfrey Egesa and Ms. Maria Girigori, all of Gauze Village in Budalang'i, killed in Maning Village in Sigulu Island, Uganda on 18th April 2011 at 3.00 a.m.?

(b) Has the Kenya Government contacted the Government of Uganda over the matter and what measures have been taken to ensure justice for the deceased and compensation to their families?

(c) What measures has the Government taken to guarantee the safety of Kenya citizens trading on the waters of Lake Victoria and halt the constant harassment and killings by Ugandans?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, I beg to reply.

The hon. Member for Budalang'i wanted to know under what circumstances three Kenyan fishermen namely Mr. Lucas Odinga, Mr. Geoffrey Egesa and Ms. Maria Girigori all of them from Gauze Village in Budalang'i were killed in a place in Uganda known as Maning Village on Sigulu Island in Uganda on 18th April, 2011 at 3.00 a.m. It is alleged that the three, two fishermen and one lady, as named above, were from Budalang'i and were on a fishing expedition on the waters of Lake Victoria and it is alleged that they were suspected to be part and parcel of a gang which had stolen boat engines that were owned by one Ugandan.

The Kenyan High Commission in Kampala wrote a letter to the Ministry of Foreign Affairs stating that he had received information on the same on 18th February, 2011 at around 5.00 a.m. Three Kenyans were subjected to mob justice in a place called Sigulu Island on Lake Victoria in Bugiri District in Uganda and they were later attacked

by a mob and burnt to death. The Kenyans hailed from Sisenye Sub-location. Their bodies were later collected on 19th April, 2011 by their relatives from Kenya and taken to Budalang'i.

Mr. Speaker, Sir, Mr. Namwamba also wanted to know whether the Kenyan Government had contacted the Ugandan Government over the same matter and whether the outstanding issues and any measures had been taken to ensure justice for the deceased and whether compensation to the families has been provided. The Ministry of Foreign Affairs then wrote to the Kenya High Commissioner in Uganda to raise the matter and our Ambassador in Uganda, Gen. Kanga, formerly established the circumstances under which these deaths had occurred. The High Commission has sought the Ugandan authorities to give us a reply as to what exactly happened to our people. The Ugandan Government has said that investigations are taking place right now as we speak and they will, as soon as possible, make sure that they share the information with us within seven days.

Nevertheless, at the same time, our Acting Permanent Secretary in the Ministry of Foreign Affairs, Ambassador Wamoto and the High Commissioner, Mr. Geoffrey Akanga then visited the Ugandan authorities last week and the Ugandan Government has actually confirmed that they will make sure that justice is done to our people because this matter was raised. We have received the guarantees that in case investigations which are satisfactory are not done, then the Kenyan Government will have to seek us to go and do our own investigations.

Mr. Speaker, Sir, as to whether there is compensation for our people, since the matter is still under investigations, we cannot discuss the issue of compensation until after we have concluded investigations and we have come up with a legal framework under which decisions will be made.

Lastly, the honourable colleague was asking what measures the Kenyan Government had taken to guarantee the safety of Kenyans who are trading on the waters of Lake Victoria. Since this issue has been very sensitive and it is a matter that we take seriously, we have designed a common work plan which is in place right now, to take care of the cross-border issues which are affecting our two countries. We have come up with a scenario where we want to create cross-border commissioners who are going to start holding meetings to address issues arising from these frequent skirmishes and frequent crimes which have been taking place.

The key activities agreed upon are:-

- (i) to have joint patrols;
- (ii) formation of joint security forums between our two countries;
- (iii) we intend to hold regular border security meetings between our security officers in the two countries;
- (iv) we have come up with organizations to create beach management authorities which will be managing our people;
- (v) we are now moving to create organizational and cultural arrangements which will lead to cross-border engagement between our people so that we can reduce any animosity and antagonism which may exist; and,
- (vi) we have come up with strategies on how to start sensitizing our citizens, how and when they can fish in Lake Victoria and how to reduce crime within our waters.

Mr. Speaker, Sir, it is worth noting that since these activities have been initiated, cases of harassment have reduced and we are expecting that these will go a long way to make sure that our two countries which are members of the East African Community can live together harmoniously and peacefully.

Mr. Namwamba: Mr. Speaker, Sir, please indulge me to express my disappointment and annoyance at the very casual manner that this Government treats Kenyans who live along our international borders. First of all, this Question has been lying around for over a month and a half and, one would have expected the Government to come here with a concrete answer. Now the answer is all about investigations still going on, theories, common work plans, empty allegations on stolen engines and so on. How do you say that someone has stolen an engine yet you take two months to locate the exhibit which should be available in a matter of hours?

So that this Government shows seriousness that the lives of Kenyans who live along our international borders are as valuable as any other Kenyan, could he tell this House in very specific terms, what the Government is going to do, because these investigations cannot go on indefinitely? Is there a time-frame within which this must be concluded and what does the Government intend to do if the Ugandan Government continues to play this Russian Roulette with the Kenyan Government as is the habit of this obviously hostile neighbour?

Mr. Onyonka: Mr. Speaker, Sir, within the East African Community protocols, the agreements which the Kenyan Government and the Uganda Government have signed detail that any time a cross-border crime takes place, the host country where the crime took place has to be given substantial time for it to conduct investigations, in order to come up with the way forward. This will help us to find out whether there are going to be prosecutions or if there was an injustice done, so that it can be corrected.

The Government is working very hard because it understands the sensitivity of this matter and I can assure my colleague that we intend to make sure that investigations are complete within the next two weeks as the Ugandan Government has told us. If the investigations are not satisfactory to us, then we have mechanisms on how we can go ahead and conduct investigations ourselves as a country in Uganda. As of now, we have not reached there and we expect the Uganda Government to give us the information which we need and which will make us determine the next course of action.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, Mr. Namwamba is not the only one who is disappointed and annoyed. I am also very disappointed and annoyed because this case is just but one of the very many incidents of Ugandans harassing Kenyan traders and fishermen. On a daily basis, there are reported cases of fishermen being harassed.

Mr. Speaker: Order, Mrs. Odhiambo-Mabona! Mr. Namwamba asked for my indulgence and because he had deep emotions on this, I did extend that indulgence particularly so because he was the owner of the Question. I know the Question now belongs to the House but the rest of us have to obey the Standing Orders and in particular Standing Order No.43. It tells you that you do not take advantage of Question Time to make speeches or addresses.

Please proceed!

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, most obliged. Can I seek your indulgence because this matter also affects me personally?

Mr. Speaker: Like the hon. Member for Ikolomani said, some things we only do once!

So, proceed!

Mrs. Odhiambo-Mabona: So, do I have your indulgence?

Mr. Speaker: No! I cannot repeat it!

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, the challenge is that my question would make sense if I give it a background.

Mr. Speaker: Please do so quickly!

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, what I would like to know from the Assistant Minister, because they have failed to take care of Kenyans on Rusinga Island, Mfangano Island, Remba, Ringiti, Migingo and the ones in Western Province--- Fishermen are killed daily but all we get are these amorphous answers. This is the stuff that leads to militias being formed. Kenyans will form militias to guard themselves if the Government cannot take care of its own people! Does the Ministry of Foreign Affairs of Kenya belong to Uganda or Kenya?

Mr. Onyonka: Mr. Speaker, Sir, first of all, I would like to tell my colleague, Mrs. Odhiambo-Mabona, that setting up a militia would be an illegal venture under our current dispensation. Two, yes, the Government is aware that there has been a lot of cross-border crime whereby, especially Kenyans have been harassed by our neighbours. It is not even just Uganda. I would like to mention here that Members of this House should not look at the events which have been taking place between our people and Ugandans to be the only cases. We have had cases where there have been skirmishes across the waters between Kenya and Tanzania. The position the Kenyan Government would like to take is that right now we are very vigilant and we are trying to come up with mechanisms which are going to make sure that if there will be a necessity for us to have our defence forces go and make sure that we protect our individuals, then I believe the Commander-in-Chief, who is the President of this country, will make that decision when the time comes. For now, we are engaged with our neighbours on this issue. I promise my colleague that we will try and minimize the chances of any Kenyan being harassed, hurt or killed across the border. Again, as I said, this matter is not necessarily that it was Ugandans who attacked Kenyans. Let us find out exactly what happened before we can draw a conclusion.

Mr. Speaker, Sir, what I want to say is that, let us not prejudge what has happened until we get the true position of what actually transpired in Uganda.

Mr. Kabogo: Mr. Speaker, Sir, you have heard the Assistant Minister speak so casually. We are talking about the lives of Kenyans. Yesterday, the Commander-in-Chief said that Migingo is part of Kenya, yet we know we have Ugandan policemen there. What is the Ministry doing about this issue?

Mr. Onyonka: Mr. Speaker, Sir, I would like to emphasize very clearly, again, that even when the Kenyan Government is aware that we have a dispute with the Uganda, over Migingo and Ugingo, the Commander-in-Chief of this country is not going to take this country to war until all diplomatic means have failed. So far, quiet diplomacy has been working; Uganda is our neighbour and we are not going to war over just that.

Mr. Sirma: Mr. Speaker, Sir, I am surprised by the Assistant Minister's statement that we want to deal with this diplomatically, while Ugandans are dealing with

it carelessly! How can you be a Government which is just passive and junior to your neighbour? Could he confirm that the Kenyan authorities have no power over Uganda?

Mr. Onyonka: Mr. Speaker, Sir, let us not forget that we are members of the East African Community!

Hon. Members: So?

Mr. Onyonka: Mr. Speaker, Sir, I need your protection! Let us not forget that we have a country---

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! Order, hon. Shakeel!

Mr. Onyonka: Mr. Speaker, Sir, I would urge my colleagues in the House to realize that we are struggling to become a borderless East African Community, where all our people will be moving from one area to the other. Let us also not forget that we still have Kenyans who have not been harmed in Uganda; they live and eke out a living there. When one or two incidents take place, even when they should not take place, we should allow the law and diplomacy to work before we can get into military engagement.

Mr. Mbuvi: Mr. Speaker, Sir, I will repeat what hon. Odhiambo-Mabona said!

Mr. Speaker: Order, hon. Mbuvi! The Standing Order which I cited earlier does not allow you to be repetitive! Do not repeat!

Mr. Mbuvi: Mr. Speaker, Sir, the issue of attacks, especially the cross-border attacks by our neighbours has become rampant. I think our soldiers are sleeping! I would like the Assistant Minister to know that I have a bomb squad made up of 5,000 youths from each constituency in Nairobi! What we need is the Government to provide us with containers of AK-47 rifles, so that we can protect the lives of innocent Kenyans along the borders!

(Laughter)

Mr. Speaker: Order, Mr. Mbuvi! This is Question Time and you should ask a question, and not make a statement or use this opportunity to deliver an address or make allegations which, perhaps, you may not be able to substantiate, bordering on criminality; that you have a squad of youths with bombs! Are you saying that in the House?

Mr. Mbuvi: Mr. Speaker, Sir, I apologise for that. I was just trying to build my question.

Mr. Speaker: Order, Mr. Mbuvi! That is a very grave allegation. So, you must withdraw it and apologise!

Mr. Mbuvi: Mr. Speaker, Sir, with all due respect, I withdraw and apologise.

My question to the Assistant Minister is: Could he come up with a permanent solution to this problem of cross-border attacks?

Mr. Onyonka: Mr. Speaker, Sir, as I earlier mentioned, I would like to state here categorically that the Ministry of State for Provincial Administration and Internal Security and the Armed Forces of the Republic of Kenya, through the guidance of the Commander-in-Chief of the Armed Forces, are putting in place mechanisms to make sure that our borders are protected, and that hon. Mbuvi does not end up having 5,000 guys with AK-47 guns to go and attack a neighbouring country.

Mr. Sirma: On a point of order, Mr. Speaker, Sir. I thought hon. Mbuvi withdrew that statement and apologized! The Assistant Minister is implicating hon. Mbuvi in having guns!

Mr. Speaker: Order! Hon. Sirma, I do not think you have followed the proceedings accurately! It is actually you who is out of order! The hon. Mbuvi withdrew the part where he claimed that he has 5,000 youths with bombs. So, he did not talk about AK-47 rifles. He asked that they be supplied with AK-47 rifles. So, you are out of order!

Hon. Mbuvi: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Mbuvi! Do not persist! Some of this is not necessary! So, sit down and relax! Mr. Namwamba, last question!

Mr. Namwamba: Mr. Speaker, Sir, now that it is apparent that this Government, by replying to military action through diplomacy, has shown that it will only act after all of us have been killed by Ugandans, could the Assistant Minister inform this House, and the families of Messrs. Lucas Odinga, Godfrey Egesa and Ms. Maria Girigori, that because you are in this tight embrace with Uganda, in accordance with East African Protocol, in the event that Uganda fails to take action to compensate the families of the deceased, the Kenya Government, in the spirit of East Africa, and in accordance with this protocol, will go on to take over that responsibility and compensate the families of these three Kenyans?

Mr. Onyonga: Mr. Speaker, Sir, at the same point, we are discussing the protocols of the East African Community and in case Uganda does not seem to either serve justice or compensate our people, we have the East African Court of Justice where the Kenyan Government can pursue this matter further. But, before we get there, I would like to tell my colleague, hon. Namwamba, that the Kenyan Government will pursue this matter to its logical conclusion. I promise him that we will receive results which will be acceptable to our country. If, indeed, an injustice has been done, we will make sure that our people are compensated. We will ask the Ugandan Government to make sure that, that matter does not occur again.

MEASURES TO REHABILITATE NANYUKI
CCM PRIMARY SCHOOL

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

(a) Is the Minister aware that 16 classrooms in Nanyuki CCM Primary School in Gakawa Location, Kieni East District, have been condemned by the Ministry of Public Works as inhabitable, forcing students to learn in tents and under trees?

(b) What emergency measures has the Ministry taken to remedy the situation?

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that 16 classrooms at Nyanyuki CCC Primary School were condemned by the Ministry of Public Works. However, the pupils were provided with alternative shelter and are not learning under trees.

(b) The school has been provided with tents by the District Education Board to shelter the pupils as learning and teaching is going on. In addition, the school has been advised to make a formal request for emergency support to the Ministry of Education

through the District Education Board (DEB). The parents and managers of Constituencies Development Fund (CDF) have also been requested to assist in providing tents to the school. A team of officers from the Ministry will be dispersed early next week to assess the situation and make further recommendations for consideration.

Mr. Warugongo: Mr. Speaker, Sir, I am very happy because of the answer that has been given by the Assistant Minister. I would like him to tell us how long it will take to construct new classrooms after what he is calling “formal request for emergency support” is received? I know the document he requires is on the way as I speak.

Prof. Olweny: Mr. Speaker, Sir, I cannot tell how long it will take. That is because we have not received the request yet. Once we receive the request--- We know that the classrooms collapsed. We shall act immediately to ensure that pupils have classrooms.

Mr. Pesa: Mr. Speaker, Sir, that is a very serious case. The Assistant Minister must have his personnel on the ground. For all the 16 classrooms to be condemned, what have your officers been doing down there during inspections?

Prof. Olweny: Mr. Speaker, Sir, it is very unfortunate because our officer on the ground did not alert the Ministry Headquarters on what was going on. But right now, we have a team which will go there next week. The team will get all the information that is necessary, so that appropriate action can be taken immediately.

Mr. Pesa: On a point of order, Mr. Speaker, Sir. When he talks about appropriate measures being taken, could he assure this House that appropriate measures will also be taken against his officers who have neglected their duties by not telling the Government what to do?

Mr. Speaker: Order! You stood on a point of order. I am afraid that is not a point of order. Member for Mathira!

Eng. Maina: Mr. Speaker, Sir, the Assistant Minister has admitted that, that is an emergency and he is still insisting that some requests should be forwarded. First of all, the onus to send those requests lies with your personnel on the ground. Since this Government has not returned money to Treasury and we have another one month, could he indicate to this House when he will allocate those emergency funds to the school?

Prof. Olweny: Mr. Speaker, Sir, I will simply repeat what I said. We will do so immediately we get the request. Government money is not given out as gifts. It cannot be given without a formal request. That is because, at the end of the day, we shall be audited for any money that we give out. So, once we receive the request, we shall avail the funds from the Ministry.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to insist that the Government can only act if it receives requests and yet, it has Education Officers on the ground? Is he in order to fail to answer that question? Why can they not go ahead and provide the emergency funds without waiting for some requests from whatever quarter?

Prof. Olweny: Mr. Speaker, Sir, first, we have to know how much is needed. It must be documented through a formal request. It must come from the school management committee to the District Education Officer, who then forwards it to us. So, once we get that, I do not see the problem there. But we cannot just give out Government money, unless it is---

Eng. Maina: On a point of order, Mr. Speaker, Sir. The issue here is that his officers on the ground should have gone to the ground, come up with a report and submitted the necessary documentation to the Ministry. The Assistant Minister has just admitted that his officers did not act as quickly as possible. Is he in order to continue misleading this House with the same excuse that they are waiting for some documentation? I really do not understand---

Mr. Speaker: Order! Order! I think you have made your point. Mr. Assistant Minister, apparently, you have not answered the hon. Member's question.

Prof. Olweny: Mr. Speaker, Sir, even the expenses of Parliament must be supported by a document. There is no way the Ministry can give out money, unless there is a document which will support the expenses. That is what we are waiting for and the area Member of Parliament has said that the documents are coming. So, immediately we get them, we shall help.

Mr. Speaker: Last question, Member for Kieni!

Mr. Warugongo: Mr. Speaker, Sir, we have constructed new classrooms in the area. Most of them cost between Kshs500,000 and Kshs600,000. Since the Assistant Minister is coming to my constituency on 10th for another educational function, could he come with a cheque of Kshs9 million, so that we can start the work immediately?

Prof. Olweny: Mr. Speaker, Sir, I will not commit on the Floor of the House, but I will repeat what I have said. We shall make sure that the school gets the necessary support.

INVASION OF MUCHIRI WA GITHAIGA FARM BY WARRIORS

Mr. Kiuna: Mr. 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 some warriors have invaded Muchiri wa Githaiga Farm in Mau-Narok Division of Njoro District and have destroyed property worth over Kshs.10 million and, if so, what action has the Government taken to arrest the situation?

(b) Could the Minister consider compensating the owner of the farm for the loss?

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

(a) I am aware that Maasai herdsmen have invaded Muchiri wa Githaiga Farm situated in Mau-Narok. On 16th May, 2011, at 10.00 a.m., it was reported by Benson Wambugu, aged 48 years, son to Muchiri Githaiga, the owner of the 649-acre Muchiri wa Githaiga Farm situated in Mau-Narok Division, that Maasai herdsmen had invaded their farm. On receipt of the report, the OCS, Mau-Narok, the District Officer and security personnel proceeded to the farm and found Maasai herdsmen grazing their cattle.

Some of the herdsmen had even put up temporary structures on the farm. Consequently, the following suspects were arrested and charged before court on 17th May, 2011, vide Mau Narok CR No.761/50/2011 and PCR No.93/2011 Court File No.1712/2011.

The following suspects were arrested: Loidon ole Kimwiri aged 62 years; John Kamau Karanja, an employee of the first accused; Michael Leksat aged 25 years and Elizabeth Kamwiri Nterere aged 30 years. The first and the third accused pleaded not

guilty while the second and the fourth accused pleaded guilty to the charge. The second accused is awaiting judgment while the fourth accused was discharged under Section 35(1) of the Penal Code.

(b) No, the Minister cannot compensate the owner of the farm for the loss since the Government is not culpable in this case. However, the complainant may sue for compensation if he so wishes, before a court of law.

Mr. Kiuna: Mr. Speaker, Sir, while I appreciate the answer given by the Assistant Minister, is he aware that there are some political activists, led by senior politicians, some of whom are in this House, who visited that area and incited the community to start invading various farms in that division? Could he confirm to this House that the people who were arraigned in court will be charged? Besides, what measures is the Government taking to make sure that all the militias or warriors who have invaded Mau Division are removed with immediate effect?

Mr. Lesrima: Mr. Speaker, Sir, I am not aware of a senior politician inciting the people in that area, but I am aware that there has been a series of meetings trying to reconcile communities. You will recall that there was an incident of the land that had been set aside for the IDPs, which the Government had bought to settle the Maasais. I recall that the Maasais rejected that particular land and a meeting was held in my office and it was agreed that the land reverts to the Government for research and the ADC instead of settling the IDPs. The Government is trying to encourage dialogue and reconciliation among the communities. The Member asked me what the Government is doing---

Mr. Kiuna: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House that he is not aware of the senior politicians who visited that area and held some rallies inciting some communities and yet he was there? I also attended that meeting. It was agreed that, that farm is supposed to be taken over by the Ministry of Agriculture for research purposes. Is he in order to mislead this House that he is not aware?

Mr. Lesrima: Mr. Speaker, Sir, I will just mention about the Kasuku/Ole Tipis land as a by the way. The matter in question was resolved mutually. We are now discussing the invasion of the farm belonging to Mr. Muchiri Githaiga, a matter that the Government has intervened and arrested the trespassers. The matter is before the court. The important thing is for the Provincial Commissioners in the areas concerned and the leaders from both sides, namely, the Maasais and the Kikuyus, to continue dialoguing to keep the temperatures down. The invaders should be warned and action taken against them, as has happened in this case, to avoid trespassing on people's property. That is the much the Government can do and I seek the co-operation of the hon. Member.

The Minister of State for National Heritage and Culture (Mr. ole Ntimama): Mr. Speaker, Sir, the statement made by the Member for Molo is very malicious. I want him to produce the name of the senior politician he thinks incited the people of Mau Narok. We have lived with these people for years and there has never been a problem until we had the problem of the IDPs. If these people from Molo are not co-operating with the Assistant Minister and everybody else to make peace, then I am sorry. Let him tell us the name of the person he is referring to.

Mr. K. Kilonzo: on a point of order, Mr. Speaker, Sir. While I have profound respect for hon. ole Ntimama, the Minister of State for National Heritage and Culture, is he in order to rise on a point of order to correct an Assistant Minister?

Mr. Speaker: Order! I think hon. ole Ntimama is within the rules. He is challenging the Member for Molo to substantiate a claim that he has made. So, it is quite in order!

Mr. Kiuna: Mr. Speaker, Sir, we were summoned, as senior politicians from that area by the Office of the President and we agreed that, that particular farm, namely, Rose Farm, be reverted to the Ministry of Agriculture for research purposes. We were all there and hon. ole Ntimama was there!

Mr. Speaker: Order! Please, resume your seat for a moment! I am just trying to be helpful! Do not get irritated unnecessarily! Are you, therefore, saying that you did not allege that a senior politician is inciting the residents of Molo or around there? Is that what you are now saying?

Mr. Kiuna: Mr. Speaker, Sir, I said, and I repeat, that some political activists went there and incited the moran community. But in the meeting that we held at the Office of the President, all senior politicians were there and Mr. ole Ntimama was there!

Mr. Shakeel: On a point of order, Mr. Speaker, Sir. Is the hon. Member for Molo in order to continue to mislead the House? Unless my ears heard something else, I heard him say that a senior politician incited the warriors! Could he, please, withdraw and apologize?

Mr. Speaker: Order, Member for Kisumu Town East! The best way to deal with this matter is for me to have time to verify from the HANSARD what the Member for Molo, in fact, said. So, I will defer this Question to Tuesday next week, so that I am able to acquaint myself with the HANSARD.

Member for Kirinyaga Central!

ORAL ANSWERS TO QUESTIONS

Question No.905

SHORTAGE OF POLICE VEHICLES IN KIRINYAGA CENTRAL CONSTITUENCY FOR POLICE IN KIRINYAGA

Mr. Gitari asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he is aware that the Kirinyaga OCPD, OCS and DCIO have to share a vehicle because vehicles meant for the OCS and DCIO are unserviceable;

(b) when the Ministry will avail new vehicles to the station; and,

(c) whether he is also aware that eight people have been killed by criminals in Kirinyaga Central Constituency recently and, if so, what measures the Government is taking to improve security in the constituency.

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

(a) The Minister is aware that the DCIO, Kirinyaga and the OCS, Kerugoya Police Station, are at times forced to use GK A354N, the vehicle which belongs to the OCPD. The DCIO and the OCS have vehicles, namely, GK A082P and GK A211C respectively. These two vehicles are, however, old and break down regularly hence forcing them to use the one allocated to the OCPD. They need replacement or complete overhaul.

(b) The OCPD Kirinyaga, DCIO and OCS Kerugoya, alongside other stations within the division, have been prioritized for allocation of new vehicles once the department receives the new fleet earmarked for purchase during the 2010/2012 Financial Year. The procurement process of those vehicles has not yet been analyzed.

(c) The Minister is also aware that, so far, eight people have been killed by criminals in Kirinyaga Central Constituency. However, police have stepped up foot and mobile patrol within the area leading to reduction of crime levels, particularly murder and robbery, as shown by the crime statistics of the year 2009/2010 and 2010/2011. The statistics indicate that the recorded crime, murder and robbery cases for 2009/2010 is 17 and 2010/2011 is five. Out of the above reported cases, police have managed to arrest and prosecute suspects in 14 cases. In one case of robbery and murder, the suspects were sentenced to death. Only four cases are pending under investigations. That is as a result of efficiency investigations. Crime levels have gone down and that trend is expected to continue in future.

Mr. Gitari: Thank you Mr. Speaker, Sir. While I appreciate the answer from the Assistant Minister, he has said that Kirinyaga Central is one of the districts that will benefit from the fleet of vehicles that will be procured in the 2010/2011 Financial Year. So, noting that we are closing the year, I would like to know whether those vehicles have already arrived. Are we still waiting for them and, if so, for how long?

Mr. Lesrima: Mr. Speaker, Sir, the vehicles are on the way and should be in place in the next one month before the start of the next financial year.

Ms. Karua: Mr. Speaker, Sir, I have heard the Assistant Minister say that crime has gone down. For us to understand what he is saying, is it possible for him to lay on the Table statistics for the various years so that we can, indeed, see that crime has come down? Is he going to ensure that the entire county – not just Kirinyaga Central - gets vehicles because there are no vehicles in the county?

Mr. Lesrima: Mr. Speaker, Sir, at the moment, I have the statistics for Kirinyaga Central. That is where the Question came from. There is shortage of vehicles in other counties in the country. I can lay the statistics for Kirinyaga Central now. Next week, I can lay the statistics for the county in general. I am aware that Ms. Martha Karua has a similar Question on Provincial Administration vehicles next week.

Mr. James Maina Kamau: Thank you Mr. Speaker, Sir. The issue of lack of police vehicles is not only confined to Kirinyaga. In Kandara Constituency, we have been promised a vehicle since last year. However, nothing has been done. As you know, Kabati Police Station, which is on the busy Nairobi-Nyeri Highway, has no vehicle at all. Could the Assistant Minister tell us when he will provide us with the vehicles?

Mr. Lesrima: Mr. Speaker, Sir, I am aware about those promises in the past. However, I can assure you that this time round, the vehicles will be in place in the next one month.

Dr. Nuh: Mr. Speaker, Sir, it has been observed that insecurity in the country is not uniform. There are some constituencies in the country which are insecurity prone and have perennial problems of clashes. I would like the Assistant Minister to tell this House whether there is any affirmative action to provide vehicles to police and administrators in those constituencies, and why that has not been done in the case of Bura.

Mr. Lesrima: Mr. Speaker, Sir, indeed, we will give priority to large districts which are sparsely populated and have serious crimes. In the past, we have not been able to do that due to limited financial resources allocated by the Treasury.

Mr. Gitari: Mr. Speaker, Sir, the Assistant Minister has said that some of the vehicles require an overhaul. However, part of his answer in “c” says that the Ministry has intensified mobile patrols within the district. My question to the Minister is this: Which vehicles are being used for that patrol, while we know that there is only one functioning vehicle.

Mr. Lesrima: Mr. Speaker, Sir, Kirinyaga County has two OCPDs. The two share responsibilities across the four districts of the county. Therefore, there is collaboration in intensifying those patrols. There is also support from the Administration Police Commandant.

Mr. Speaker: Order! Hon. Members, because of the nature of business before the House this afternoon – that is Order No.8 and No.9, I will defer the balance of the Questions to Tuesday next week. They will take priority over Questions which will be programmed to come on that afternoon. So, the remaining Questions are deferred and we will now take the next Order.

Question No.752

NUMBER OF INDUSTRIAL ESTATES IN KENYA

(Question deferred)

Question No.827

STABBING OF BANGI KALUKU MUNUVE

(Question deferred)

Question No.851

LEVEL OF SUCCESS OF TREE PLANTING
EXERCISE IN EMUHAYA CONSTITUENCY

(Question deferred)

Question No.926

LIST OF TENDERS FOR CONSTRUCTION
OF FRESH PRODUCE MARKETS

(Question deferred)

Question No.928

PAYMENT OF COMPENSATION TO
FAMILY OF LATE R.C. LANG'AT

(Question deferred)

MINISTERIAL STATEMENTS

ASSAULT UPON NIGERIAN HIGH COMMISSIONER'S WIFE

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Thank you, Mr. Speaker, Sir, for indulging me. A Statement was requested by the nominated Member of Parliament, hon. Rachel Shebesh who sought a Ministerial Statement from the Ministry of Foreign Affairs on 26th May, 2011, regarding the assault of the wife of the Nigerian High Commissioner to Kenyan with specific reference to:-

- (i) The diplomatic status of diplomats who commit serious crimes in the country.
- (ii) What steps are being taken to ensure that the Nigerian High Commissioner, who was reported to have assaulted his wife and occasioned her grievous bodily harm, is dealt with?

I will first inform this House that the Kenyan Government, guided in its dealing with diplomatic corps by the Vienna Convention on Diplomatic Relations which is Articles 29 and 31--- They state very clearly that the person of a diplomatic agent shall be inviolable. Number two, the Vienna Convention also states that, that person shall not be liable to any form of arrest or detention and the receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack of that person's freedom and/or dignity. However, that immunity of a diplomat from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

Indeed, Article 32 of the Vienna Convention states that immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State. But the waiver must always be expressed.

Mr. Speaker, Sir, lastly, the Ministry of Foreign Affairs in Kenya may ask the home country to waive the immunity of the alleged offender, so that the complaint can be moved to the courts of the sending country. If immunity is not given, then the prosecution of this ambassador or diplomat cannot be undertaken.

Mr. Speaker, Sir, in addition, the diplomat visas can be cancelled or Kenya, as a country, may decide to ask him to leave.

Mr. Speaker, Sir, the second issue that hon. Shebesh asked was what the Kenyan Government has done, since this incident happened.

Mr. Speaker, Sir, I would like to report to this House that, indeed, the Nigerian High Commission assaulted his wife. I wish to inform you that the Ministry of Foreign Affairs on the day before yesterday, had written a note to the Nigerian Ministry of Foreign Affairs. That was on 27th May, 2011. We formed a formal complaint. We then

delivered the complaint, which was given to us by the Kenya Police to the Nigerian Government over the issue.

Mr. Speaker, Sir, the Nigerian Ambassador's wife received injuries which according to the police were quite severe. The wife of the Nigerian Ambassador, Mrs. Tess Iyi Wigwe then sent information to the Ministry of Foreign Affairs as to the consequences of that action by her husband and we carried the investigations. We then sent a note to the Nigerian Government, whereby we were informing them of the events which took place.

Mr. Speaker, Sir, after that, the Nigerian ambassador to Kenya also came to the Ministry of Foreign Affairs where also in the interest of fairness he gave his version of the story. However, since then, events have taken a dramatic turn, where the Nigerian Government has actually recalled the High Commissioner for consultations back to Nigeria, so that he can give them his position of the events, which took place in Kenya. As a result of that, the Government of Nigeria is the one, which will, therefore, inform us, whether there is a need for us to waive his diplomatic immunity, so that we can charge him. Otherwise, unless he comes back, and the Nigerian Government asks us to waive this immunity, we will assume the matter to have taken its natural course.

Thank you.

*(Hon. Odhiambo-Mabona and hon. Shebesh
stood up in their places)*

Mr. Speaker: Very well; we will allow some requests for clarification on this one. But they will be restricted to a maximum of five, beginning with the good lady. Who among you is the good lady?

Mrs. Odhiambo-Mabona: We are all good.

Mr. Speaker: Both of you are good. Okay, hon. Odhiambo-Mabona.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, we are both good, but I am the best.

Mr. Speaker: I have accepted that already. So, do not drag it in.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I want first of all, to congratulate the Assistant Minister that in this one, he has done a very good job by acknowledging that domestic violence is a crime under the penal code. He needs to notice that it is now unconstitutional under the Kenyan Constitution because it provides that we shall protect a Kenya citizen from violence both from private and public sources. Private source is your spouse, if the Members did not know.

Mr. Speaker, Sir, what I would want to ask him to clarify is in relation to the last part of his statement where he said that if it is not withdrawn, then the Government will have no alternative other than to declare him *persona non grata*, and give him 24 hours notice to leave the country.

Could he clarify that should the Nigerian Government, by any reason return him to Kenya, when *prima facie* he has actually assaulted his wife, what they seem to be disputing is the gravity--- But assault is assault; whether minor or grievous. Could he, please, declare him *persona non grata* and order him to leave this country within 24 hours?

Mr. Mbadi: Mr. Speaker, Sir, I want to join my colleagues in condemning acts of aggression whether coming from the husband or wife.

Mr. Speaker, Sir, what I am seeking clarification on from the Assistant Minister is that instead of seeking to waive the diplomatic immunity, knowing very well that the crime was committed in Nigeria, because the embassy is actually a Nigerian territory, why could he not refer this matter permanently to Nigeria, so that they deal with own problems? We are not sure whether it was the husband who assaulted or the wife who assaulted? Either way, it is wrong.

So, instead of putting Kenya into all these problems of handling Nigeria's issues, why could he not leave it to Nigeria to deal with their problems? If anything, it was committed in their territory.

Mrs. Shebesh: Mr. Speaker, Sir, I really want to thank the Assistant Minister for treating this question very seriously as a thing that has lacked when it comes to issues of domestic violence within this Government and, sadly also, within this House.

Mr. Speaker: Order! Hon. Shebesh, are you saying that there has been domestic violence in this House?

Mrs. Shebesh: Mr. Speaker, Sir, I have clearly said that the way the Government and even this House deals and treats the issue of domestic violence has been lacking. That is what I am saying. I can even substantiate if you want me to substantiate. I mean the House---

Hon. Members: Which House?

Mr. Speaker: Okay, proceed. I will give you the benefit of the doubt. But I am clear in my mind that you are not categorical.

Proceed.

Mrs. Shebesh: Mr. Speaker, Sir, I just want to clarity from the Assistant Minister that because the police report clearly said that Mrs. Tess Iyi Wigwe was seriously harmed, what is the Government doing since she is still a state guest in terms of being a wife of a diplomat? What is the state doing about her injuries and even continued safety here, because I know by discussion with those who are looking into these issues that there have been threats for her to keep quiet and there were some form of intimidation?

What is the Ministry doing even as it continues to do a very good job on this issue?

Mr. Speaker: Mr. Assistant Minister, you may respond and that will be it. There will be no further requests for clarification on this matter.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, first of all, I would like to respond to what my colleague, Madam Odhiambo-Mabona had asked about what the Kenya Government would do if the Nigerian Government does not withdraw the immunity of Dr. Wigwe.

Our position is that the Nigerian Government may not lift that immunity, but the Kenyan Government position is that if it is proven beyond reasonable doubt by a court of law that actually this individual assaulted his wife and committed the offence, and it is proven so---

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. Is the Member in order to be misleading us by saying that he will be waiting for conviction from a court of law, when, in his own statement, he says they will not do that? Please, just give the 24 hour notice.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, I do not think I said that we would unilaterally just pick an individual because of the crime

that has been committed. It is the courts that will have to determine, whether actually this crime was committed. The *prima facie* we have is that two adults, who happen to be married, and they are of Nigerian descent, who are both diplomats are involved in a tussle. If court rules that the husband violated the wife, then the Kenyan Government has no choice, but to declare the husband *persona non grata* and the gentleman would have to be given the 24-hour notice. The crime has to be proven.

Hon. Mbadi asked why we should not give this problem to the Nigerians since after all, it is theirs. His prayers have actually been answered because Mr. Wigwe is already in Nigeria. There is the likelihood of him not coming back to Kenya, and the case may be handled in Nigeria, under the international statutes.

Lastly, given the fact that the police report has already stated that Madam Wigwe has been injured, at the end of all this, the court will have to rule in favour of Mrs. Wigwe in order for us to declare her husband *persona non grata*, and give him the 24-hour notice, as earlier stated.

Mr. Speaker: Very well! Yes, the Minister for Education!

TERMINATION OF EMPLOYMENT OF LOW CADRE
STAFF BY MINISTRY OF EDUCATION

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, last week, hon. John Pesa sought a Ministerial Statement to find out the following:-

(i) Reason for rescinding my earlier decision communicated to Kenyans on the Floor of this House on Wednesday, 23rd February, 2011 while answering Question No.1 by Private Notice, where I assured the House that the said staff in the Ministry of Education would not be laid off.

(ii) Tabling of the list of the 837 staff members whose services were earmarked for termination, when they were appointed and the stations where they were working; and,

(c) Tabling of the list of 339 candidates who are supposed to replace them.

Mr. Speaker, Sir, this matter has been a subject of recurrent debate in the House, and I wish to settle it once and for all. Previously, I responded to it through a Ministerial Statement and, subsequently, through a Question by Private Notice filed by hon. Ekwe Ethuro, Member of Parliament for Turkana Central, on Wednesday, 11th August, 2010. I am now responding to it again following a Ministerial Statement sought by hon. John Pesa on Wednesday, 23rd February, 2011.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, once again, I wish to confirm that I have not rescinded my decision communicated to Kenyans on the Floor of the House on Wednesday, 23rd February, 2011. It was not the intention of the Ministry of Education to lay off any employee, who is legally in service. However, the screening exercise conducted in April, 2011 revealed that 837 staff required further evaluation and, pending the outcome of this process, a recommendation is being made to the Ministry of State for Public Service and

the Public Service Commission of Kenya on the best way out of this problem. On the other hand, the other 339 candidates are to be retained in the service, and they are not replacing any candidate as alleged by the hon. Member.

The recruitment exercise was an enormous task involving over 300,000 applicants who, painstakingly, were shortlisted to 12,000 candidates. Having survived the screening process, any action to terminate their services will generate negative repercussions, which will dent the image of the Government.

Finally, as I stated on 11th August, 2010, I want to assure the House that in future, the Ministry will decentralise the recruitment exercise by implementing the Ministry of Public Service Circular on district-based recruitment policy to address the challenges raised by the hon. Member.

Thank you for your attention.

Mr. Chanzu: Mr. Deputy Speaker, Sir, I want the Minister to clarify specifically, on those who were employed last year. Quite a number of them have not been paid up to now, almost a year after their employment.

Mr. Deputy Speaker: Let us have another clarification sought.

Yes, Mr. Pesa!

Mr. Pesa: Mr. Deputy Speaker, Sir, I want to thank the Minister for the good answer he has given today. This is the second time he is responding to the same issue in this House. However, I had some interest in knowing where these people, whose services were to be terminated, come from but the Minister has not tabled the list as I had requested. It appears to me that there are some people who want to ensure that they terminate the services of Kenyans who were employed by the Ministry last year, so that they can employ their own people. Can he confirm or deny this? This matter has come back to the House because there is a letter which had been written from the Ministry of State for Public Service to the Ministry of Education – a letter I cited while requesting the Ministerial Statement. Who is the author of this letter, and who instructed him to write the letter indicating the number of those employees whose services were to be terminated?

Mr. Deputy Speaker: Yes, Mr. Ethuro!

Mr. Ethuro: Mr. Deputy Speaker, Sir, I would like the Minister to clarify the fate of the staff from Turkana, who were interviewed, shortlisted and asked to come and pick their appointment letters, but who up to now have not yet been employed, because the Minister employed people from his own constituency. This is a matter of Kenyans being denied their rightful share of employment. People who were not even interviewed are the ones whom the Minister employed. The Public Service Commission has issued a circular, asking the Minister to revoke the appointments of those who were illegally recruited, and employ the ones who were properly recruited, including the ones from Turkana.

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, I will start with the clarification sought by ho. Ekwe Ethuro. I would like to assure him that I have no intention whatsoever of taking any position of the Turkana people who are employed in the Ministry. The Minister does not take part in the employment exercise. Let him take comfort in that assurance. If you followed my argument in the Ministerial Statement carefully---

Mr. Ethuro: Mr. Deputy Speaker, Sir, the Minister confirmed that he answered my Question on 23rd February, 2011. He said that I should take comfort. Up to today, 2nd

June, 2011, he has not employed those people. What comfort does he want me to take from him? The only time you can comfort me is when you give those people letters of employment and employ them, as they had been asked to come to the Ministry Headquarters and collect their appointment letters.

The Minister for Education (Prof. Onger): Mr. Deputy Speaker, Sir, hon. Ethuro did not listen to my answer. Out of the Ministerial Statement that I issued, he should have had an answer. I said that those candidates whose appointments are not questionable, numbering 1,793 plus another group, together totalling to 2,093, whose recruitment was processed correctly, and who were employed but have not received their personal numbers, will receive their personal numbers within this week. It took a meeting between my Ministry and the Ministry of State for Public Service, and the two Permanent Secretaries, to resolve the issue of those who were recruited but have not received their personal numbers. There were those 339 who were also employed properly, but whose names did not appear on the list of those who were employed.

That decision has been made jointly between me and the Minister of State for Public Service that they will be taken on board. What is on balance is the 837 staff who were being queried. We have since then done an audit. We are satisfied that the qualifications of some of them were correct. Therefore, they need to be considered in one way or the other.

Mr. Deputy Speaker, Sir, there were a few of them, I believe about 10 or 18, who had fake certificates. Therefore, those will, by necessity have to go. Whether they were employed or not; once you have a fake certificate which does not tally with the employment, you will just have to go. These are the ones I am now handling. Because it involves the Public Service Commission which is an independent body, we all agree that we now need to carry it. If you are a little bit patient, I think we are beginning to see the light at the end of the tunnel on the balance of 837 candidates.

Mr. Pesa: On a point of order, Mr. Deputy Speaker, Sir, when I was raising this question, I had asked the Minister to table the names of those people who were employed and currently are under problems from his Ministry. He has not tabled that list.

The Minister for Education (Prof. Onger): Mr. Pesa, it would be in your interest to let me handle the problem of the 837. The bottom line is how we eventually deal with them. If you so push I will table it, but I do not think it will be in the interests of those candidates at the stage where we are now to do so, because we are making an appeal to the Public Service Commission. If we table the names now, we will be creating another problem all together. That is the indulgence I am asking from the hon. Member because I think we are beginning to get a solution to the final problem that is facing the Ministry. We have had a very serious joint consultation between my Ministry, the Ministry of State for Public Service and our two Permanent Secretary. We have agreed on the way forward. The only other third party that we have to bring in is the Public Service Commission. Being a constitutional office, it is only fair that, first of all, we give a substantive report on the way we see it from this end. This matter will be put to rest.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. While I am willing to gamble once more, which should not be part of my business, by allowing the Minister more time, could he give an indication, so that he can shorten this long tunnel and we can see this light without going through the tunnel that he is talking about? When will he resolve this matter? In solving this matter, he can assure me through this House, and the

people of the County of Turkana and the public at large, that all those who had qualified from Turkana and had actually been asked to come and collect their appointment letters will be absorbed very soon? The more he delays, the more these people are denied their rightful share of employment. Unless he wants to convince me that he is perpetrating the culture of impunity just because we do not come from where he comes from---

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, I think Mr. Ethuro knows that we do not have those characteristics of impunity. It could be that as he is talking now, some of those candidates in Turkana have received their letters.

The Assistant Minister for Education (Prof. Olweny): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order. Mr. Minister, your Assistant Minister wants to inform you! Will you be informed?

The Minister for Education (Prof. Ongeru): I will not allow him now because I know why.

The 339 were those who had not appeared and I believe Turkana was one of those groups that we had made a decision that they will collect their letters, and their personal numbers will be included. This decision was made on Monday afternoon. I suspect by now those numbers must have been generated. The hon. Member could check and find out what is happening then give us a feedback. If it has not happened, we will be glad to steamroll.

Mr. Ogingo: On a point of order, Mr. Speaker, Sir. The Minister and his team are quite aware that under the law of contract, a third party is under no duty to ensure that the internal rules are complied with. Is it in order for the Ministry to subject those innocent Kenyans to this trauma for a mistake that is not theirs?

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, I have clearly stated that it is not the intention of the Ministry to be able to subject somebody who, at any rate has been in the job for the last six months and beyond, to further problems and difficulties. That is why it was necessary that the two Ministries had to meet because the lower cadre staff is actually a function of the Ministry of Public Service and the Public Service Commission. We were only called in to co-ordinate that exercise as the Ministry of Education. I think we are pushing it to the logical conclusion.

Should any of those 837 that I have already mentioned be part of those groups that have fake certificates, then I am sorry there is nothing I can do for them.

Mr. Deputy Speaker: Fair enough. Hon. Minister, this question has had ample time. Let us have a Ministerial Statement by Mr. Lesrima. Try and make it as short as possible.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, on 26 of May, 2011, Ms. Martha Karua, Member of Parliament for Gichugu rose on a point of order to seek a Ministerial Statement and I notice she is not here.

Mr. Deputy Speaker: It is the Chair's wish that if a Ministerial Statement is sought that the Member seeking that Statement by and large should be in the House to be able to prosecute that Statement.

But I was told you have three Ministerial Statements that you intended to deliver today. Do you not have one that has the Member present in the House now?

Mr. Ethuro: Mr. Deputy Speaker, Sir, I am present.

Mr. Deputy Speaker: Do you have one for Mr. Ethuro?

Proceed and give it to Mr. Ethuro. The Chair remembers that the Statement for Mr. Ethuro has been long standing unless it is a different one from the one the Chair remembers.

CATTLE RUSTLING IN LOBEI AND KOTARUK VILLAGES

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, on 31st May, 2011, Mr. Ekwe Ethuro, Member of Parliament for Turkana Central rose on a point of order seeking a Ministerial Statement on cattle rustling in Lobei and Kotaruk villages. The hon. Member wanted to know the number of animals that were stolen during the raid, the number of fatalities and how many people were displaced.

Further, he wanted to be informed on the specific intervention in terms of State security along our boundaries. Finally, he wanted to know the measures in place to prevent further escalation of cattle rustling---

(Mr. Ethuro held loud consultations)

Mr. Deputy Speaker: Order, Mr. Ethuro. The Assistant Minister is making a Ministerial Statement, presumably that you did seek yourself. If you engage passionately with the hon. Member next to you, you might miss out some of the information that he is giving.

Proceed, Mr. Minister.

(Mr. Ethuro stood up in his place)

Order! The Chair is just telling you to be attentive and listen to the hon. Assistant Minister.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I just want to inform you that I was very attentive. The Assistant Minister was repeating what I had requested. So, I was waiting for his response.

Mr. Deputy Speaker: Proceed, hon. Assistant Minister!

The Assistant Minister , Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, I want to respond as follows. On 27th May, 2011, Mr. Emmanuel Simale, Chief Kotaruk Location, reported that raiders had attacked a village near Lobei and Olukuse areas. At Lobei, about 200 suspected Pokot raiders armed with rifles attacked the villagers and made away with the following animals: 200 camels, 200 cows, 150 goats and 150 donkeys. Nobody was injured or displaced during the attack. A similar attack was reported at Olukuse where about 500 suspected Pokot attackers, armed with rifles, attacked a *manyatta* and shot dead the following persons: Purkwel Alegoleta, aged 65, male; Kale Eng'orok, male, aged 57 years; Kilangasi Olkalel, male, aged 52; Amuria Akidel, female, aged 37 years; Lokwalo Akidel, male, minor aged five years; unknown female aged 19 years and an unknown male aged 27 years. One young man, Ekidor Ngilimo, aged 28 years old was injured on the right side of the chest near the armpit and admitted at Lodwar District Hospital, where

he is recovering. About 150 persons were displaced and are being assisted by the Government and aid agencies operating in the area.

The raiders made away with the following animals; 200 camels; 150 donkeys and 150 goats. Security personnel were dispatched to the two areas immediately and the following animals were recovered; three camels, five donkeys and ten cows. A joint team of the General Service Unit (GSU), the regular police, the Anti-Stock Theft Unit and the Administrative Police officers are pursuing the raiders with the aim of arresting and charging them accordingly.

Following the attack, the Government dispatched reinforcements to the area to boost security between the Pokot and Turkana. To ensure that the area remains secure, the Commissioner of Police recently upgraded and gazetted Todonyang as a fully-fledged police station with effect from 17th May, 2011 vide *Kenya Gazette* Notice No.5374 of 20th May, 2011. Consequently, additional personnel have been deployed and a Chief Inspector deployed there as the Officer Commanding Police Station (OCS). The Government is in the process of resettling those displaced, peace committees have been revitalized, and regular peace meetings are being held to foster peaceful co-existence and educate the residents to desist from cattle rustling.

Mr. Deputy Speaker: Hon. Ethuro, you should be seeking some clarifications.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I really do not know what kind of clarifications to seek from that answer, because I believe the Assistant Minister is not giving adequate information in terms of the losses of livestock and humanitarian assistance which I had sought. He is talking of Government assistance when, in fact, it is only the Kenya Red Cross that has provided some relief. He is mentioning unnamed persons, as if the Kenya Government does not have officers to account for the people. He is talking of a police station. He is talking of upgrading of Todonyang, which is 200 kilometers northwards of Lodwar. The areas we are talking about are 100 kilometers southwards.

Mr. Deputy Speaker: Hon. Assistant Minister, are you satisfied that the Ministerial Statement answers the issues raised by the hon. Ethuro?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, yes, this is a very serious matter, and I empathise with my colleague and the people of the area. We have instructed the District Commissioner to provide food that is available in the stores immediately, while the Ministry of Special Programmes officers are also mobilizing themselves.

Mr. Deputy Speaker, Sir, I only referred to Todonyang, because in his statement, he had also referred to it. Obviously, Todonyang is very far; the distances involved are just colossal. I think Lodwar is 100 kilometers away. We are mobilizing the GSU at Lorengipi, the Anti-Stock Theft personnel at Lokichar also to take care of the corridor between the Pokot and the Turkana. So, those actions are being taken.

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

Mr. Deputy Speaker: Hon. Assistant Minister, empathizing, sympathizing and feeling sorry aside, you have a responsibility as a Government. It was on that basis that the Ministerial Statement was sought by the hon. Ethuro. Can you address yourself to the issues that are raised, and not say that you will now do this? This is not what you are supposed to do. If you have to talk to the Commissioner of Police now, this being an emergency, you should have done that way back. Are you responding to this thing

because it is being asked now on the floor of the House? Hon. Ethuro, what is your point of order?

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. My point of order is that the Assistant Minister is grossly misleading the House. I want to thank you for that support. I do not need empathy. I need Government action – a Government that my people elected to office. The Assistant Minister is talking of the GSU and Anti-Stock Theft Unit in Lokichar, but there is no Anti-Stock Unit in Lokichar. He is talking of mobilizing GSU from Lorengipi. There are no GSUs in Lorengipi.

Mr. Deputy Speaker, Sir, I want to request you to defer this so that the substantive Minister, Prof. Saitoti, himself can come and deal with this, so that we can interrogate him properly and squarely.

Mr. Deputy Speaker: Hon. Assistant Minister, whether you are doing it deliberately or you were misled by your own officers, I am sure you will admit that the statement you have issued falls far short of the required standard of this House. What is your position?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, I know that the Government is mobilizing security personnel to deal with the situation. That one I know, but if hon. Ethuro feels that hon. Saitoti is the one who should deal with this matter, I have no problem. But I know that action is being taken to mobilize resources to go and help people on the ground, because they have also been displaced.

Mr. Deputy Speaker: How long does it take you to mobilize in this situation in a part of this country? You realize, this a Government of the people, by the people and for the people. Where is the void? Does it take two to three weeks to mobilize when people are suffering?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, we are in the middle of mobilizing to support the troops that are already on the ground. So, action is being taken.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I requested you to---

Mr. Deputy Speaker: No! As far as the Standing Orders of the House are concerned, a Minister is defined as the President, the Prime Minister, the Vice-President, the Minister and the Assistant Minister. So, indeed, this is a Minister.

Mr. Ethuro: That is correct but, besides that consideration, the statement is inadequate, and you agree with me. I felt that, maybe, being an Assistant Minister, he can give an adequate answer but now, the Cabinet Minister might give an adequate statement. It was in the light of that.

Mr. Deputy Speaker: It is upon the Government to make up its mind. If it is convinced that somebody else needs to give the statement, it will be upon the Chair to direct as to who should give a statement on behalf of the Government. Hon. Assistant Minister, are you satisfied that your answer is inadequate, and how soon can we give an adequate answer on the Floor of the House?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, I am satisfied that my answer is adequate. If the hon. Ethuro has additional information, because I have mentioned activities that the Government is undertaking on the ground, obviously this is very frustrating---

Mr. Deputy Speaker: Order, hon. Assistant Minister! You have just indicated your ignorance. I want to believe that what you said concerning the stationing of the GSU and the other officers is actually the fact on the ground. So, you have indicated your ignorance by not even knowing which troops are where.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Besides the inadequacy of the answer, I want the Assistant Minister, who is my friend and who comes from this kind of scenario, to appreciate. Even in his own Ministry, he knows more than his people know here. So, he should not expect me to know less than he knows about Samburu. But having said that, the Standing Orders are very clear; I am not just arguing for purposes of inadequacy of the answer. I am also talking about misleading. The Assistant Minister has a responsibility to this House to give correct information. I have demonstrated on this Floor that the forces he is mobilizing do not come from where he has indicated and needless to say, they have not been mobilized.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, I undertake to come back on Tuesday, to confirm whether, in fact, the General Service Unit (GSU) officers were actually being mobilized to Loronkipi and the Anti-Stock Theft Unit (ASTU) to Lokichare. I think it was the other way round. That activity is taking place and they are on the way.

Mrs. Shebesh: On a point of order, Mr. Deputy Speaker, Sir. As the Assistant Minister prepares to come and give a better answer on Tuesday, is it in order for me to also ask the following? Since another incident like that happened just a few weeks ago and the Government gave indication of the kind of measures it will put in place, that he also clarifies what kind of measures had already been put in place for that incident to happen just barely two weeks again in almost the same situation?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, I will come back with the details, including the ones that were announced by the President on the marshal plan for Turkana and the region, generally, including mine.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I would like him to come back and consider the situation of the police in Loima Division, being deployed in areas where there is insecurity. Could he also explain why the Government has not deployed officers, when I have given them a police station in an area known as Kotarugu just because they say there is no water? Who is supposed to provide water? Those policemen should drink the water that my people drink, so that they know what it means to be neglected and marginalized this long.

Mr. Deputy Speaker: Hon. Assistant Minister, the Chair directs that you have an adequate answer that essentially answers the concerns of the Members of Parliament and Kenyans at large on Tuesday next week in the afternoon. That also does not, in any way, stop the relevant Committee from doing its work. The role of the Committees is to keep the Government on its own toes. I am inclined to believe that hon. Ethuro is probably a Member of the Committee on Administration and National Security.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I am not a member of that Committee.

Mr. Deputy Speaker: But, nonetheless, the hon. Members, including the Chair, are people who come from pastoral backgrounds that essentially face the predicament that your constituency faces. So, the Chair will not direct because I do not have to direct

them to do their work. But, nonetheless, you can liaise with the relevant Committee to make sure that something is done from that direction.

Yes, hon. Imanyara!

POINTS OF ORDER

CONTRAVENTION OF ARTICLE 37 OF CONSTITUTION BY POLICE

Mr. Imanyara: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security explaining why the police have continued to manhandle, beat and arrest peaceful demonstrators in breach of Article 37 of the Constitution which, in very clear language, reads:-

“Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.”

Mr. Deputy Speaker, Sir, in the Statement, the Minister should explain why the police manhandled and arrested a person who was holding a placard during the 48th Madaraka Day Celebrations held at Nyayo Stadium on 1st June and attended by both the President and Prime Minister. Also, he should explain whether the person we saw being manhandled by the police officers has been charged with any criminal offence. He should also explain why the police fired teargas canisters at a group of peaceful demonstrators who had spent the whole day of Tuesday outside the President’s Office along Harambee Avenue, and intended to have a night vigil protesting against the high cost of living.

Mr. Deputy Speaker, Sir, we have a Government that does not seem to recognize that we are living under a new constitutional dispensation. They continue to behave as if this country is under the old Constitution. They continue to wreck havoc on the rights of the citizens, which they have fought so hard for. It is time that this Government acknowledges that the people of Kenya deserve respect in accordance with the new Constitution. When will the Minister issue that Statement?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, we will issue the Statement next week on Wednesday afternoon.

SELECTIVE APPLICATION OF TRANSPORT LICENSING ACT

Mr. Mbuvi: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the selective application of Transport Licensing Act, Cap.404.

Mr. Deputy Speaker, Sir, in his Statement, the Minister should clarify:-

Mr. Deputy Speaker: Hon. Mbuvi, is it Cap.404 or Cap.440?

Mr. Mbuvi: It is Cap.440, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Proceed.

Mr. Mbuvi: In his Statement, the Minister should clarify the following:-

(i) The reasons why traffic police exempt Kenya Bus Service and Citi Hoppa from the provisions of Traffic Licensing Act, Cap.440, which state that public service

vehicles shall be so used only in a specified district or between specified places, as experienced in route No.23 in Kamukunji Constituency today.

(ii) Whether it is within his knowledge that traffic police officers are among people who have franchises with the Kenya Bus Service and Citi Hoppa and, consequently, have conflict of interest.

(iii) Whether he could inform the House on the measures he will put in place to ensure that there is uniform application of the law and civil servants do not contravene the Public Officer Ethics Act and those who do so face legal sanctions.

Mr. Deputy Speaker, Sir, finally, the people of Kamukunji are really suffering. They are my neighbours and do not have a representative in this House. With all due respect, can I ask for permission to be allowed to act for them as their Member of Parliament pending the outcome of the court case and by-election?

Mr. Deputy Speaker: There is nothing like an acting Member of Parliament for a constituency in our Constitution. But, nonetheless, as a Member of Parliament, you can represent the interests of any Kenyan anywhere in the Republic of Kenya.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, I will issue the Statement next week on Thursday afternoon.

MISREPORTING OF HON. MEMBERS PARTICIPATION IN PARLIAMENTARY PROCEEDINGS

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir, I need direction from this House because I like truth and justice. My attention has been drawn to information that hon. Waibara has never raised Questions. I sit in this House and he has asked Questions severally in English. I think the House needs to defend a Member when there is misleading information that is going out to the public. He has asked Questions more than once. He has even asked me to help him by asking a supplementary question. He said that in English. He speaks very good English!

Mrs. Shebesh: On a point of order, Mr. Deputy Speaker, Sir. In the same vein, this weekend, I read an article by one journalist, Barrack Muluka, who also intimated that the Member for Khwisero has never given his Maiden Speech here which, again, is a fallacy, because the Member for Khwisero has spoken and even asked Questions.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Could you also, in your ruling, consider the kind of punishment to met out on some misleading media houses? That is because when you have an issue like the one of hon. Waibara, which is impacting even on his election petition, it would unfairly disadvantage him when such misleading information is given out, and which anybody can check and verify from the HANSARD. The information is peddled to the whole nation as if it is the absolute truth. In the spirit of truth, justice and honesty, the Chair owes this House and hon. Waibara some explanation on the facts that we all know before this House.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, with your kind permission, I was to deliver a Statement that was requested by hon. Imanyara. If you allow, I will do so. It is very brief on the issue of the Chief Justice and the Deputy Chief Justice.

Mr. Deputy Speaker: Can you wait?

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

Mr. Deputy Speaker: Indeed, the Chair was shocked when it saw in some of the media outlets in the country that hon. Waibara has not participated in the business of the House. The Chair remembers very well that hon. Waibara has participated very actively and eloquently on a number of issues on the Floor of the House here. The Chair is going to give a Communication on this kind of misleading information by the media houses. The media is allowed to report, but within the rules. So, the Chair is going to give a Communication on the same on notice.

I very much regret the erroneous image that was built on hon. Waibara. But nonetheless, hon. Waibara is also at liberty to go beyond the House and take an appropriate action. This is a country of laws. You cannot just say any falsehood against any Member of Parliament. So, as an aggrieved person, he has that option too, but for the benefit of the House and the protection of the dignity of the Members of the House, the Chair is going to give a Communication on the same, on notice.

ATTACK ON KUBIFORA BY ETHIOPIAN BANDITS

Mr. Chachu: Mr. Deputy Speaker, Sir, I wish to request for a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security regarding the general security situation in North Horr Constituency following the raid by Dasnat bandits from Ethiopia at Kubifora on 26th May, 2011.

In his Statement, he should clarify the following:-

(i) The circumstances surrounding the attack on Gabra Hasmin in Kubifora area by Dasnat bandits from Ethiopia that resulted to the death of two Gabra men, one of whom was a Kenya police reservist and a further injury of two people who have since been flown to the Kenyatta National Hospital by the Kenya Red Cross.

(ii) In his Statement, he should clarify what the Government is doing to stop the cross border raids by the Ethiopians targeting the Kenyans in North Horr Constituency. The North Horr Constituency is basically a neighbour of Turkana. It is only Lake Turkana that divides those two constituencies. It is the same people who have been attacking the people of North Horr. We have had massacres after massacres and this Government should do what is necessary to protect the Kenyans in North Horr Constituency and the nation at large.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, the Minister is currently leading a Kenyan delegation to discuss the relationship between Kenya and Ethiopia on the issues that the Member has raised. I would appreciate if we are given time for him to report back from Addis Ababa next week.

Mr. Deputy Speaker: When?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, a week after! Tuesday!

Mr. Deputy Speaker: Order, hon. Assistant Minister! When will you give the Ministerial Statement? Next week when?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, next Tuesday, but in the meantime, we will attend to the issues of encroachment and attacks.

Mr. Chachu: On a point of order, Mr. Deputy Speaker, Sir. I already have very valid information from the ground that these Ethiopians are mobilizing again to attack my people. Due to drought, our people have moved to the borders. This is an issue of national interest and I want the Assistant Minister to give it the urgency it requires. This is a serious concern.

Mr. Deputy Speaker: Assistant Minister, because of the nature of the issue itself and the potential for a conflict and loss of life, I think you owe this House better attention than two weeks from now. So, can we say Thursday next week?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, I have said that action is being taken to deal with those attacks at the moment, but I referred to the question of a comprehensive Statement arising out of a meeting that is being held right now in Addis Ababa. So, we can issue a Statement on Thursday next week.

Mr. Deputy Speaker: Fair enough!

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. When there were attacks in Todonyang, we got the Prime Minister to visit the area and he made a Statement here that our borders will be secured. Todonyang neighbours North Horr Constituency. The Assistant Minister has talked about meetings that are going on in Addis Ababa. Fine, they should go on, but as they are going on, the Ethiopians have attacked another section of Kenya, which is not very far from Todonyang. What is the point of having discussions when you should be deploying the forces to deal with this aggression?

Mr. Deputy Speaker: Hon. Assistant Minister, the Chair heard that you are mobilizing---

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, we have decided on two issues. As to the point of having the meeting at Addis Ababa, I do not think I want to answer that one, but on the attacks that are taking place right now, action is being taken.

Mr. Deputy Speaker: The Chair directs that this Ministerial Statement be made available on Thursday next week.

Hon. Deputy Leader of Government Business, in accordance with the Standing Orders, you have to give the program of the House for next week.

MINISTERIAL STATEMENT BUSINESS FOR
THE WEEK COMMENCING 7TH JUNE, 2011

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, pursuant to the provisions of the Standing Order No.36(4), I take this opportunity to make the following Statement with regard to the business for the week commencing on Tuesday, 7th June, 2011.

From the onset, I begin by commending the Members for passing the Independent Electoral and Boundaries Commission Bill, Bill No.6 of 2011, and the Salaries and Remuneration Commission Bill, Bill No.8 of 2011, on Tuesday, 31st May, 2011. It is

worth noting that the Members sat until midnight in order to pass the two Bills and discharged their constitutional mandate.

On Tuesday, 7th June, 2011, the House will consider in the Committee of the Whole House:

- (i) The Prohibition of the Female Genital Mutilation Bill, Bill No.24 of 2010,
- (ii) The Nurses (Amendment) Bill, Bill No.25 of 2010. In addition, the House will debate the Insolvency Bill, Bill No.22 of 2010

depending on the progress today of the Supreme Court Bill, Bill No.10 of 2011.

Finally, the House Business Committee will convene on Tuesday, 7th June, 2011, to consider business for the rest of the week.

Mr. Imanyara: On a point of order., Mr. Deputy Speaker, Sir. Once again, I rise to protest that the Minister, while giving the programme of the Government during the coming week, leaves out matters that were specifically addressed to the nation by His Excellency the President and the Prime Minister yesterday when they purported to pass the blame for non-implementation of the Constitution to the Members of Parliament, yet as he acknowledges, the Members are prepared to sit until midnight in order to pass legislation touching on the implementation of the Constitution.

I would have expected that today there would have been First Reading for, at least, four or five Bills, but we cannot do so because the Cabinet has not met to approve them. The Bills have not been published and yet, the two principals continue to give this misleading information to the Kenyan public; that it is the Members of Parliament who are to blame for non-implementation of the Constitution, while we know that the blame lies squarely with this Government.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. On the same light, we would want the Deputy Leader of Government Business to explain why the Cabinet cannot sit until midnight because they are not any special than us. If we can sit here until midnight, they can also sit until midnight. Why can they not cancel their international trips because we have also cancelled our international trips so that we can sit here and implement the Constitution? Every time there is a hitch in the implementation of the Constitution, it is brought before us. We also have hitches but we are able to deal with them. Why can you not sit until midnight, cancel your trips and take the issue of implementation seriously?

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. This is a point of order. It is not my maiden speech. I will be making it in due course.

I rise under Standing Order No.216 with regard to the business of the House. The Standing Order provides for the exemption of business from the Standing Orders. So, since I have not been sitting in the House Business Committee and I saw the Speaker of the House this afternoon belabour to open up the deadlock on the three appointees; the Chief Justice, Deputy Chief Justice and the DPP, I would like to ask hon. Kimunya to tell us why the House Business Committee has chosen the longer route and, in the process, portraying to the nation that, probably, Parliament is unwilling to see the conclusion of that process when, under Standing Order No.216, this House can, today this afternoon, end this exercise. I do not have to give you notice. All I have to do, and I beg the indulgence of the Chair, is to give the Motion to the Deputy Speaker that this House---

((Mr. Kimunya stood up in his place))

Dr. Khalwale: Mr. Kimunya, please, listen to me. I am very serious.

Mr. Deputy Speaker: Proceed, hon. Dr. Khalwale! Address the Chair.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I was just giving you a copy of this so that I do not get you unawares because we meet with your consent.

This Standing Order says:-

“A Motion may, with the approval of the Speaker - which I so seek now - be moved by any Member, either with or without notice that the proceeding on any specified business be exempted from the provisions--- We go direct to Part XX, Committee of the Whole House and Part XXII, Select Committees.

If we appreciate this Standing Order, it gives us, as the National Assembly, the entry point for us to discuss the Motion acknowledging that the President, in consultation with the Prime Minister, has recommended the names of Dr. Willy Mutunga, Nancy Baraza and Keriako Tobiko to the National Assembly for approval, after the nominees had certified the Judicial Service Commission for appointment for the positions of Chief Justice, Deputy Chief Justice and Director of Public Prosecution, respectively. Concerned that an unhealthy political stalemate between the ODM and PNU parties is threatening the conclusion of this important process, this House, in an effort to unlock this *impasse* resolves under Standing Order No.216 that it has satisfied itself with those nominees and forthwith approves all the three of them for the formal appointment to their respective positions by the President.

I raise this matter because when you look at the voices that are against the three names, you very quickly see the same faces that were against the passing of the new Constitution when it was at the point of the Referendum. I am afraid that if this matter is not brought before this House, the same voices can still go to those little committees that are, of course, Committees of this House and influence them with falsehoods and some of the things imagined to the extent that a verdict can come here, where you will find that a great son of this country, like Dr. Willy Mutunga, has found his name barred from going ahead.

I beg that you weigh in Standing Order No.216 and allow this issue to be finished here and now, so that we spend next week on important issues that hon. Kimunya has brought before the House.

With those few remarks, I hope that you consider my request.

Mr. Midiwo: Mr. Deputy Speaker, Sir, I thank the newly re-elected Member of Parliament for Ikolomani. However, we want to excuse him for being a bit rusty. The hon. Member is trying to make an appeal on the Speaker's ruling un-procedurally. The Speaker has already given direction on this matter. I wish to bring to your attention the fact that what the Member for Ikolomani is trying to do is to impute improper motive on the House Business Committee. This matter has properly been canvassed and the Constitution, under the Chapter on Integrity, is very clear that there must be public participation. What he is talking about regarding Standing Orders No.216 is true. However, there is no way that a Committee of the Whole House can get down and listen to the public in this Chamber. So, you should stand guided because the document that I am holding, which appears to be in the same colour like the one you are referring to, is a superior document. Thank you.

Mrs. Odhiambo-Mabona: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. In relation to the matter raised by Dr. Bonny Khalwale, though he said that he was not making his maiden speech, perhaps, he would want to say whether, indeed, he has now made his maiden speech. My understanding of the Standing Orders is that you cannot transact business until you have made your maiden speech. Therefore, according to me, that is his maiden speech. Secondly, I want to welcome Dr. Khalwale and as the new entrant, we will induct him. The Constitution is very clear that even though he wants us to pass these nominees very quickly, Kenyans passed the Constitution with very clear standards and rules. We want openness, transparency and accountability to the people of Kenya. We cannot be sneaking in names, even though I support the three nominees. We cannot sneak them in. If there are people who have issues with them, we will deal with them publicly and the public will see. I will give you an example of Ms. Catherine Muma who came before the oversight committee. An issue had been raised persistently that she had stolen money. When we gave her an opportunity, before full cameras, she was able to clarify that she had not stolen. Therefore, she did not go away with the issues hanging in her head that she had stolen monies. That is because it was merely a rumour. If there are issues that people want to raise about Dr. Mutunga, let them bring them and we look at them as per the Constitution. If people want to raise issues against Nancy Baraza, we will also look at them as per the Constitution. I want to read the National Values and Principles of Governance, which is Article 10 of the Constitution and 10(2). It reads:-

“The National Values and Principles of Governance include; patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people.”

This is not the only part that hopes for the participation of the people. Participation of the people is mentioned in this Constitution more than ten times. So, it was not accidental.

Mr. Deputy Speaker, Sir, I want to agree with hon. Midiwo that the Speaker has already given direction. I, as the Vice-Chair of the Constitutional Implementation Oversight Committee, we have already made an appeal to the public to bring---

Mr. Deputy Speaker: Fair enough! You have already made your point.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order, hon. Members! Order, on behalf of the Speaker! On behalf of the Chair!

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I must give forgive my friend, hon. Khalwale, because he has just arrived from the village, where he was very busy for three months sitting on people.

I saw him sitting on top of his constituents. I think he even owes us an apology. He cannot pass Chapter Six of integrity at this rate.

(Laughter)

He cannot impute improper motives on Members of Parliament that Committees will necessarily not do the right job. We are all in agreement with the Speaker. I think he

is still in a campaign mood and he made some wrong promises. Although I welcome him, he is my friend and I congratulate him, but I would like him to style up.

(Laughter)

Mr. Abdikadir: Mr. Speaker, Sir, with your permission, I wish to go through Section 124(4) of Constitution on Committees and Standing Orders. It says:-

“When a House of Parliament considers any appointment for which its approval is required under this Constitution or Act of Parliament –

(a) the appointment shall be considered by a Committee of the relevant House;

(b) the Committee’s recommendations shall be tabled in the House for approval; and,

(c) the proceedings of the committee and the House shall be in public.

Mr. Deputy Speaker, Sir, that is the Constitution. One, it must be considered in Committee. Two, the Committee proceedings must be in public, and three, the Committee tables its report. That is the way the Constitution requires us to handle this matter.

(Dr. Khalwale and Mr. Ethuro stood up in their places)

Mr. Deputy Speaker: What is your point of order, hon. Ethuro? You made your point, hon. Khalwale, allow the Chair to make a ruling on the same.

Mr. Ethuro: Mr. Speaker, Sir, just because I made points on other matters, that should not discriminate me from making my point on this particular one.

Mr. Deputy Speaker: Order! The Chair was not addressing hon. Ethuro. The Chair addressed hon. Khalwale.

The Chair gave you the Floor to say what you want to say. Could you go ahead?

Mr. Ethuro: Thank you, Mr. Deputy Speaker, Sir. That is what I had to say.

Mr. Deputy Speaker, Sir, if you look at the Standing Order that hon. Khalwale, my good friend, and I went to campaign for him, I am glad that I talked to the people of Ikolomani and they listened to me, and they brought him back. I congratulate him. The Standing Order says with the approval of the Speaker. He is seeking that approval on the Floor. He is directing the Chair on what needs to be done.

Mr. Deputy Speaker, Sir, we want to welcome hon. Khalwale to be more patient. Two, the Speaker had made a ruling just today as a result of midnight meetings of the House business Committee, not because they are nocturnal by nature, but because of the desire to resolve the matter within the day that they had been appointed. Three, if we allow this kind of sneaking business, we, as a Parliament, will not be doing our part to interrogate these people. The job of this House is not a rubberstamp of the Executive decisions and appointments. We must interrogate the matter. It is our right to approve or decline. That is still within our right.

Mr. Deputy Speaker, Sir, I beg that you rule this Motion completely inadmissible and that you grant hon. Khalwale, with due respect, as we congratulate him, to be given a bit of more time to re-inducted the second time.

(Dr. Khalwale stood up in his place)

Mr. Deputy Speaker: Hon. Khalwale, you have risen on a point of order. You have raised your issues under Standing Order 216.

To begin with, the Speaker has given a ruling on the same. You do not expect the Deputy Speaker to rule other than what the Chair has ruled. That is provided for in the Standing Order No.268, which says “a Motion may with the approval of the Speaker”. The Speaker has given a direction on this matter, and the Speaker or the Deputy Speaker, cannot give another direction on the same matter here.

Not only that exemption of business from the certain provisions of the Standing Orders--- Let us proceed. If you go and read the other provisions of Standing Order No.216, there are certain other steps within the Standing Orders that you are not exempted from. Not only that, the Constitution is superior to the Standing Orders. The Constitution is very categorical. Article 124(4) says:-

“When a House of Parliament considers any appointment for which its approval is required under this Constitution or an Act of Parliament –

- (a) the appointment shall be considered by a Committee of the relevant House;
- (b) the Committee’s recommendations shall be tabled in the House for approval; and
- (c) the proceedings of the committee and the House shall be in public.”

Hon. Khalwale, whereas the Chair congratulates you for being re-elected after the petition, the Chair rules that you are out of order!

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, before the intervention by hon. Khalwale, hon. Imanyara and Odhiambo-Mabona had raised some clarifications. I just want to confirm that I was at the Nyayo National Stadium. I listened to the Prime Minister and the President. I even read the President’s Speech thereafter. At no time, did any of the two leaders blame Parliament for delaying on the legislation. So, I believe the concern has been that the sideshows within the political scenarios maybe interfering with the implementation. But at no time was Parliament blamed on the legislation.

The other thing I want to also confirm to this House is that Cabinet has not refused or failed to meet to clear any of the legislation. The Cabinet is eager as this Parliament is to receive the draft Bills and process them through. If we are to sit until midnight, we shall do so. Immediately all the consultations are taking place. All the Bills that have come before the Cabinet have actually been processed and are here. So, I just wanted to clarify that neither Cabinet nor Parliament is actually delaying the implementation of the Constitution. All the Bills are coming before this House. We have one today.

There is no delay. The consultative process is taking place and the Minister for Justice, National Cohesion and Constitutional Affairs has explained on this Floor before that because of the participation of the people, it is taking much longer than necessary to draft all these Bills and get concurrence. But immediately they are ready, they are processed in Cabinet and brought here to Parliament. Parliament has demonstrated that they can sit up to midnight. I am hoping today, we shall not leave this place until we have finished the one Bill that is before us to demonstrate our perserverance of the same.

Thank you.

BILL

First Reading

THE INDUSTRIAL TRAINING (AMENDMENT) BILL

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

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF SUPREME COURT BILL

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, this House orders that the referral period of the Supreme Court Bill (Bill No. 10 of 2011) to the Departmental Committee on Justice and Legal Affairs be reduced from 10 to 8 days.

Mr. Deputy Speaker, Sir, I believe that this House is eager to clear all the constitutional Bills and Bills which have impact on implementation of the Constitution. It is in this spirit that we felt that we do not have to wait for another two days to bring the Bill, which the House is waiting to debate. If this House agrees, we can start debate on the Bill today.

I do not want to belabour the point. It is a straightforward matter. With the leave of this House, we can commence business on the next Order.

Mr. Deputy Speaker, Sir, I beg to move and ask hon. M. Kilonzo to second the Motion.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I beg to second this very important Procedural Motion. I do not want to repeat what the Deputy Leader of Government Business has said.

I beg to second.

(Question put and agreed to)

BILL

Second Reading

THE SUPREME COURT BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I beg to move that the Supreme Court Bill, Bill No.10 of 2011, be now read a Second Time.

Mr. Deputy Speaker, Sir, the principal purpose of this Bill is truly historic because it is intended to provide for a legislative framework to operationalise Article 163 of the Constitution. With the enactment of this law, we will have provided for the operation of the Supreme Court as the final judicial authority on this land. Again, we are giving the Kenyan people a Supreme Court capable of, among other things:-

(i) asserting the supremacy of the Constitution and the sovereignty of the people of Kenya;

(ii) providing authoritative and impartial interpretation of the Constitution;

(ii) developing a rich jurisprudence that respects Kenya's history and traditions, and facilitates her social, economic and political growth;

(iv) enabling important constitutional and other legal matters, including matters relating to the transition from the former to the present constitutional dispensation, to be determined, having due regard to the circumstances and history as well as cultures of the people of Kenya;

(v) improving access to justice; and,

(vi) providing for administration of the Supreme Court and related matters.

Mr. Deputy Speaker, Sir, for ease of reference by hon. Members, the Supreme Court and its establishment is found on page 103 of our Constitution.

The Bill also provides very clearly for the administration of the Supreme Court and its procedures. For the first time in this country's history, we will have a clear and statutory order of seniority of judges of the highest court on the land. Hon. Members will find that under Clause 5 of the Bill. This will ensure that at any given time, there will be no vacuum in the leadership of the Supreme Court.

Mr. Deputy Speaker, Sir, this Bill further seeks to create the Office of the Registrar of the Supreme Court with clear functions and responsibilities. This is found in Clauses 9 and 10 of the Bill. This will free the Chief Justice and the other judges of the Supreme Court from the mundane procedural and administrative matters of the court and direct their attention and energies to the more substantive business of the court.

I would hate to see the Judiciary overtake Parliament in the process of implementation of the Constitution, the reason being that the Judicial Service Commission (JSC) has already advertised and announced that it will begin the recruitment of judges, including judges of the Supreme Court, on Monday, 6th June, 2011, which is only next Monday. Therefore, the timing of this Bill this afternoon is fundamental.

Mr. Deputy Speaker, Sir, the Bill also sets out the manner of invoking the jurisdiction of the court in relation to disputes arising out of presidential elections. I would not want to remind this country what happened in 2007/2008, because it is a very bad reminder. The reason as to why we went on our knees, with people uprooting railway lines, women being raped, murders taking place and so on, and the presence of the International Criminal Court (ICC) in Kenya was because of a huge constituency of this country refusing to go to court on the well founded assertion that they did not have confidence in the Judiciary. Therefore, this will truly be a fundamental function of the Supreme Court.

The Supreme Court will also have an advisory role and, above all, the special jurisdiction to ensure that the ends of justice are met. Hon. Members will find this under Part III of the Bill. A key highlight of the provisions on the Court's jurisdiction is that it will be a special jurisdiction, as captured under Clause 14. Allow me to call the attention of the House, as I usually do, to the fact that this clause has been crafted very carefully, indeed. The importance of this special jurisdiction needs not to be overemphasised.

Mr. Deputy Speaker, Sir, we are all aware that Kenyans have had to bear great misery and suffering arising from unscrupulous judgements. Some of those judgements have led to removal of some judges and magistrates, yet the ramifications of the same continue to exert untold suffering on quite a number of Kenyans. Hence I encourage hon. Members to carefully study Clause 14, and if they deem it fit, allow it to exist. In conferring this special jurisdiction on the Supreme Court, we are remedying the wrongs that may have been perpetrated on the Kenyan people in the previous dispensation.

Speaking from a legal training background, I was taught that it is far better that 99 guilty persons be let free by a court of law than a single individual to be condemned and punished for an offence in which he was innocent, hence this special jurisdiction of the Supreme Court.

Mr. Deputy Speaker, Sir, further, the Bill provides the manner and criteria for the exercise of the Supreme Court's appellate jurisdiction. It sets out the threshold and instances upon which the court may decline to hear appeals. The Bill also makes provisions regarding fresh hearing of appeals. For the first time in the history of this country, we are going to allow the highest court, where it is satisfied that the ends of justice so require, to actually take evidence and hear a matter completely afresh. There are general powers regarding proceedings and the exercise of the powers granted by the Constitution and the law. You will find that in Part V.

Mr. Deputy Speaker, Sir, from the foregoing, this Bill provides a very critical mechanism in our judicial reform process. I will be encouraging other East African partner states to consider it very carefully, so that the entire region can move forward together in the rule of law. I will plead with hon. Members to carefully consider the importance of this Bill and enact it as quickly as is possible.

Mr. Deputy Speaker, Sir, we have borrowed very heavily in creating this law from the Commonwealth, particularly Canada, the United Kingdom and Australia. I want to specifically mention New Zealand which has helped us a great deal in the formulation of the various clauses.

With those few, but extremely important remarks, I beg to move. My good learned friend, Mr. Abdikadir, Chairman of the CIOC has kindly agreed to second the Bill.

Mr. Abdikadir: Thank you, Mr. Deputy Speaker, Sir. I wish to second the Bill as stated by the Minister for Justice, National Cohesion and Constitutional Affairs.

Mr. Deputy Speaker, Sir, this country has not had a Supreme Court before now. Under Section 163 of the Constitution, we did create through the Constitution the Supreme Court. The court is the highest in the ranking of the Judiciary. All appeals finally end at the Supreme Court and decisions of the supreme court---

Mr. Deputy Speaker: Order, Mr. Abdikadir! The Chair is clearly worried. This is a Government Bill. A Bill of the House is a Government Bill. You cannot have a Back

Bencher seconding a Government Bill. So, Mr. M. Kilonzo, under the circumstances, it is only fair that you have a fellow Minister doing this job.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I was a drafter of the National Accord and that is what was helping. But I accept your directions and my good friend, Prof. Sam Ogeri will second the Bill.

The Minister for Education (Prof. Ogeri): Mr. Deputy Speaker, Sir, this is a fairly straightforward Bill. Article 163(3) of our Constitution establishes the Supreme Court of Kenya.

We have not had an opportunity to have a supreme court of Kenya. There have been so many disparities in our various levels of jurisdiction that the public felt disenchanted whenever they had to go for appeals. They felt short-changed. Therefore, the establishment of the Supreme Court offers an opportunity for all Kenyans who are aggrieved in one way or the other, to be able to ventilate their feelings through the Supreme Court.

More so, of immediate interest to us all, we had a very traumatic experience during the post-election violence. The arguments then for and against were that we did not have a credible judicial system that would be able to listen to the complaints of the aggrieved parties. In the absence then of the Supreme Court, the obvious happening was chaos that we all witnessed with so much trauma, bleeding and death and many anti-social activities that took place.

Mr. Deputy Speaker, Sir, I believe that the setting up of a Supreme Court is a step in the right direction. We will be able to listen carefully, so that the court has the final jurisdiction over matters that either the group, the parties or individuals may be able to present before this court.

One of the things that attracts our attention in this Bill is that one of the reasons that we have had a judiciary which has been a bit hesitant in making decisions and hence creating a backlog of cases has been as a result of the action that was taken where some of the judges may have been removed from the Bench, rightfully or wrongfully.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, these days some magistrates and judges are unwilling to go forward for interviews because they feel sometimes they may be over-exposed to certain unsavory questions that may be coming. The only recourse to this kind of thing is to be able to have a Supreme Court that overrides all the interests and interpretations of the law as it stands today.

We have promulgated a new Constitution. As it is, Parliament alone has been very complex. We have always had to lean back to the Speaker to give the ruling. We are fortunate because the Speaker, on many occasions, has given very solid rulings that have helped us to move the agenda forward.

With the establishment of the Supreme Court, there is no doubt whatsoever that this country will be seized with a judicial organ that is able to delve deeply into the laws

of this land and be able to interpret them in the light of how they are taking into account our social, cultural heritage and political persuasions and everything that there is to it.

Mr. Temporary Deputy Speaker, Sir, it is very difficult to get a foreign judge to be able to understand the ethnic balances in this country. On the surface, we may be seen quarreling, but deep down when we begin appreciating our inherent strengths, we are able to agree.

One case in point is on Tuesday. I must go on record that for the first time, this Parliament was able to shed off the very issues that normally divide us rather than unite us. We were able to move forward expeditiously because we were of one accord.

I was imagining a situation where we came into a state of paralysis; what would have happened to this House if we did not agree to pass both the Bills that were before this House? I believe this is a body whose time has come and we must establish it as soon as we can. The onus is on this House to do so.

I think my colleague; the Minister for Justice, National Cohesion and Constitutional Affairs, has clearly read both the memorandum of objects and reasons on why we are setting up the Supreme Court. At any rate, it is already captured in Article 163(3) of our Constitution. Therefore, what remains for us to do is to pass this Bill. More so, whoever occupies the position of the Chief Justice and the deputy chief justice will not be bogged down with administrative matters because this same Bill establishes the Registrar of the Supreme Court who will handle day to day activities of the court. We believe that the Registrar of the Supreme Court will be able to set up a very adequate and elaborate record system which is digitized, so that we do not get these disappearances of files now and then creating congestion in the dispensation of justice.

With those few remarks, I beg to second.

(Question proposed)

Mrs. Shebesh: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to give my views on this particular Bill and, of course, to support it and to ask some clarification on some issues which I am sure the Minister will be looking at as he goes further into developing it.

Let me start by appreciating that we have always wanted a Supreme Court, especially for the issues that are well enumerated in the Articles (12), (13) and (14).

From the outset, I look forward to the Supreme Court being able to deliver justice to this country because we always feel like justice has a lid.

Mr. Temporary Deputy Speaker, Sir, we have reached the conclusion that the courts have never been friendly to people, especially to women in this country. I say this without fear of contradiction. Therefore, I get a bit worried when I see a lot of reference to the Supreme Court. Looking a lot at the history and traditions of this country, I would like to imagine that because I am not a lawyer, I might not be understanding the history and traditions. If it is the history and traditions that for many years have marginalized women and minorities in this country, then I would really like the Minister to relook at the issue of having as a basis the history and traditions of what we have seen in the justice system of this country, because they have not been fair and it is not a history that we have been necessarily proud of. However, if it is speaking of the history in terms of learning from the past and then coming up with better things for the future, then I would accept it;

I would be very hesitant to look at the history, for example, of how courts have determined cases that have, especially, dealt with issues relating to women like issues of inheritance, disputes when there is separation in marriages *et cetera*. Those are issues that I would really like clarity on, that that is not the history that the Supreme Court will be looking at. I would rather we deal with how to move out of being stuck in a broken record until people can almost anticipate that when you go to court with certain issues, you almost know what exactly the court will decide because of the history we have had.

Mr. Temporary Deputy Speaker, Sir, with those very few remarks, I want to support and say that we really have again shortened the time on this Bill. We are also debating it. Mr. Minister we have shortened the time on Bill and we are debating. We are ready to sit here until midnight, but you should not do what you did to us last week when you sneaked away and a Bill was withdrawn without any prior warning to those of us who supported you; that there was a deal somewhere that was being cut. We do not want deals cut with our legislation; we really believe if there is a credible reason why we must postpone something, then I think we are all able to do that without feeling that there is something that could be cooking behind us. This is good work by the Minister and we want to continue supporting him.

With those few remarks, I support.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Temporary Deputy Speaker, Sir, I stand to support this Bill, and it is coming at a very important time when this country is engaged in a number of reforms, more specifically reforms in the judicial sector. You remember in 2007, Kenyans, and more so the political leadership in this country, reached a stage where they said they could not go to court in order to solve political and election disputes. They were right in the sense that a time had come when the High Court, Court of Appeal and the judicial system in this country was bedeviled with corruption, nepotism, favouritism and all kinds of ills. For us not to go back to those days and to go to the time when the people of this country will not lose faith in the judicial system, this Supreme Court Bill--- I think this Bill will be the panacea to our problems.

Mr. Temporary Deputy Speaker, Sir, we have three arms of Government. We have Parliament that creates laws as its primary role. We have Parliament that oversees the Executive branch and in certain conditions may even override the Executive. We have the Executive whose main role is to execute the policies of the state, and to do the implementation of the recommendations by Parliament. Finally, we have the Judiciary which is to interpret the law and adjudicate the disputes brought before it. With this kind of Constitution that we say is one of the best in Africa and in the world, we need a Supreme Court that will uphold the basic right to equality before the law; that will fight all forms of discrimination based on religion, race and gender and, above all, your place of work. For many years, those of us who were born in the north want a Supreme Court that will not allow any sort of discrimination based on where you were born in this country, in which family you were born or any form of discrimination.

Mr. Temporary Deputy Speaker, Sir, equality of opportunity in matters of employment, the right to freedom of speech and expression, the right of assembly, the right to association are all that we want the Supreme Court to uphold. All the three arms of Government are the product of our Constitution, and our own basic laws; their functions are inter-related. They act as checks and balances. At any given time each

branch of this Government will confine itself to its authority, and at no time will one branch usurp the powers of the other. We look at the Supreme Court as the final court that will be above the current Court of Appeal. As the Minister for Justice, National Cohesion and Constitutional Affairs has said under Article 14---. Previously, many Kenyans suffered from very poor judgments delivered by judges of the High Court and Court of Appeal. I think this Supreme Court that we are going to establish will do many things in terms of review of judgments made by judges and the lower courts. I think for now, it is important that as we face the vetting of judges and magistrates, and as we reform the Judiciary through the Judicial Service Commission (JSC) and all other measures within that system, the Supreme Court will begin its work by looking at the judgments even by the Judicial Service Commission. We feel that more than ever before, with new electoral laws, voting and voter education systems in place, at no time in the history of this country will Kenyans fight and refuse to go to court, and say; “we have no faith in the courts, but we have faith in the street demonstrations and mass action”.

Among the functions of the Supreme Court will be that it must interpret and expound even on all legislations and enactments brought before it. The Supreme Court, in its own jurisdiction will say that: “What Parliament has passed is in contradiction with the Constitution and it cannot be law”. That benefit of doubt was not there before; the role of the Supreme Court will be parallel to the role played by the High Court and the Court of Appeal. However, the Supreme Court will have powers superseding the powers of those other courts. It will have power to relook and re-evaluate both the county and the national governments in terms of how they put together their statutes and decide whether the county and national government laws conform to our Constitution. That will be a very important function and role of the Supreme Court.

Mr. Temporary Deputy Speaker, Sir, again, the Supreme Court has the powers to check both the Presidency and Parliament, which we never had before. The Supreme Court is also the final judge in all cases involving the interpretation of the Constitution. I want to say it here that for the first time, we have players. The Supreme Court is like a referee that will look at the Executive, the Legislature and all those who are playing in the football field and give directions. It will give chance to the Kenyan people to know how the Executive, Legislature and Judiciary itself, interpret and make laws as per their mandate.

Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for Justice, National Cohesion and Constitutional Affairs. With the establishment of the Supreme Court, I think we have come of age. We are sure that no Kenyan will be discriminated against. No Judge in his own right will give a judgment that has ethnic overtones, is influenced by corruption and very discriminatory. The people of this country will know that they have a point of reference. They will know that there is a place they will go to that will give a fair judgment as per the Constitution of this country.

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

The Minister for Nairobi Metropolitan Development (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make my contribution.

Mr. Temporary Deputy Speaker, Sir, let me first of all start by thanking and commending the Minister for Justice, National Cohesion and Constitutional Affairs for rushing this very important Bill to Parliament, so that hon. Members can debate it. I am

happy that after this Bill, there are no more Constitutional Bills before Parliament. So, Parliament has done its job. Also, there are no Constitutional Bills in the Cabinet and, therefore, the Cabinet has also done its job. So, I think the quicker we pass this Bill, the better for this country. As you are aware, one of the reasons why we entered into a very sad phase in 2007 was because one party to the election said that it had no confidence in the Judiciary and, therefore, it could not petition the results like in other cases. It is important that we now have a Supreme Court that all parties, individuals and corporations not only have trust in, but also have full faith in its organization and authority. I think that is a good thing in itself.

Mr. Temporary Deputy Speaker, Sir, as we debate this Bill, I think we need also to bring to the attention of the Judicial Service Commission (JSC) that the way they are going about making some of those appointments is not right. When they advertise, shortlist, interview and then just come up with one name, in effect they make themselves the appointing authority. We need to say that in no uncertain terms. It is preferable if for every position they give, at least, three names to the two Principals, so that they can look at them and make a decision. Otherwise, when they just give one name, in effect, they are making the Principals mere rubberstamps. I think that is not the intention of the Constitution. The appointing authority is not even a mere rubberstamp, but a robot basically to confirm what JSC has done.

Mr. Temporary Deputy Speaker, Sir, I commend the selection panel that interviewed and shortlisted candidates for the position of the Director of Public Prosecutions. That is because they came up with three names and gave them to the President. The President, in consultation with the Prime Minister, then came up with one name. I think that, to me, is the right procedure and right way to go, particularly in view of this transitional phase.

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

*[The Temporary Deputy Speaker
(Dr. Laboso) took the Chair]*

Madam Temporary Deputy Speaker, again, when I looked at the Judges that have been shortlisted, some of the philosopher Judges, and we know them because we have looked at their rulings and decisions--- There is someone like Aaron Ringera. I think it is a pity that he was not shortlisted among the Supreme Court Judges. Those who have had a chance to look at his decisions, they are philosophical and full of Shakespearean language. He used to make a lot of important judicial propositions. Again, he is not afraid even to use the law to serve his purpose. So, I do not know how they went about shortlisting some of those Judges, because we know them. As lawyers, we know the Judges who can make good judgments and those who can make very dry judgments. We also know Judges who even make a one page judgement on an important issue, which is not possible. Therefore, my hope is that when it comes to the shortlisting and nominations, they will actually come up with Judges that will make historical rulings. I look forward to the day when we will have Judges who make rulings like Lord Denning. Even today, law students are still learning about the rulings of Lord Denning and he did

that more than 100 years ago. Those are the kind of Judges we need in the Supreme Court.

Madam Temporary Deputy Speaker, secondly, Judges of the Supreme Court, like Caesar's wife, must be above suspicion. They should not have any shade of contradictory character.

Madam Temporary Deputy Speaker, I am glad to see that the Supreme Court is actually forced to sit in one sitting. At the moment, the Court of Appeal has about three circuits. Therefore, you will find one circuit of the Court of Appeal, say, in Kisumu, another one in Mombasa and another one in Nairobi, giving contradictory judgements. I am glad that here, the Supreme Court must sit as a whole, so that they can develop philosophy and jurisprudence of law. That way, the lower courts then can follow the precedent set by the Court of Appeal. In this way, they must not be afraid to call even for judgements where there has been no appeal, like it happens in the Supreme Court of the United States of America. Where a matter is of public interest, the Supreme Court of the United States of America calls for that file. An appeal does not even have to be proffered there. They call for the file, look at the judgement and then make a ruling. The ruling then guides the country as a whole.

Madam Temporary Deputy Speaker, it is important that the Supreme Court actually achieves the purpose that it is being established for. One of them, as per the Constitution, is that it will be the sole body that will be able to arbitrate on presidential elections. I think that is the way it should be, so that we have one body that will be able to look at the petitions of presidential elections.

Madam Temporary Deputy Speaker, I think one of the most important clauses is that the Supreme Court will be able to look at all judgements, even in a case that has been passed after the vetting of the Judge and the Judge has not been able to meet the criteria. In my view, this is a bit restrictive. We should have allowed them to open all cases, namely, where there has been claim of bribery, claim of corruption and a claim where justice was not served. We should have given them that liberty instead of restricting it to just those cases that form part of the case against the judge. That way, we would then be able to look everybody straight in the eye and say that all the judgements that are in our books were properly passed by the Judicial Authority.

Madam Temporary Deputy Speaker, lastly, it is important that as it proceeds on its work, we give this Supreme Court authority and facilities. We need to come up with a nice, good and beautiful building where we can house them; a building that even 200 years from now will be a remarkable building. As the Ministry of Nairobi Metropolitan Development, we have just finalized our spatial plan where we have what we are calling a judicial city, a city where we can house all the Supreme Court chambers, the High Court and even magistrates. The theme of that city will be justice. You will go to that city and get justice. It is my hope and belief that Members of this august House will pass this very important Bill, so that we can move on. As you know, Kenya is in the world Guinness Book of Records as the only country, in the entire universe, without a Chief Justice. We are in the World Guinness Book of Records. We are there! So, the earlier we pass this Bill so that we can come out of that list, the better,

Mrs. Odhiambo-Mabona: Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity. I want to congratulate the Minister for bringing this Bill and I want to support it.

In supporting the Bill, I want to say that as a country, we have always called for a Supreme Court. I am amongst the people who presented a memorandum when I was in CRADLE, calling for the setting up of a Supreme Court. I know many other Kenyans did so and the reason that we called for the setting up of a Supreme Court is not so that we can promote judges to a more superior court, but because we do not want things to be as they are. We want a change in the way we do things. We want a court of last resort that we have confidence in and persons that we have confidence in. So, to me, the issue is not just the establishment of a court, but that we have persons of integrity, who know and understand the law and who can remain faithful to the Constitution. That is why I am glad that both the Constitution and this Bill talk of impartiality and authoritative interpretation of the Constitution by the judges who will be appointed.

Madam Temporary Deputy Speaker, I would want to decry the fact that when we have vetted several people, I was shocked to learn that many of the members of the Judiciary do not have further education. The reason why I was shocked is because it is not a wonder then that the decisions that we get from the courts are usually very wanting. In Kenya, we authoritatively still quote Lord Denning. The reason why we are still quoting him is because we have no other information. If you went to the US and other jurisdictions, those decisions by Lord Denning have probably been overturned, but we have no clue because we do not expose our judges to further education, so that they are absolutely unaware of the emerging trends in the world. That is why you get shocking decisions like the one that was given by a retired judge where on a simple case of division of matrimonial property, not only was he unaware that Kenya was still using the 18th Century law of England, but even in not using it, he was still stuck in the 12th Century himself. He blamed all the ills of the world on the woman and said that in the Garden of Eden, problems arose because of women.

This judge took his time - I do not know how many days - to write a sixty page judgement where he was just attacking women for going to Beijing instead of taking care of their husbands and their children, cooking for their relatives and tending to cows. I said, surely, even in Kenya here! In Parliament, I do not tend to cows.

Madam Temporary Deputy Speaker, if you have people like that as our judges and supposing we promote such people to our Supreme Court, that is why the name itself is not important. We must vet people for decisions they have made in the past, whether those decisions are gender sensitive, sensitive to persons with disabilities, child rights, human rights, older persons in the society and environmental issues. I am saying this because there was a time we went to court with a decision where a two year old child sued the Attorney-General for a case of discriminating against her for being born out of wedlock. If you look at the decisions by some of those judges, it shows relics of the past. If those are the judges we want to confirm to the Supreme Court, those relics are the ones we are going to take back to the Supreme Court.

I would want to encourage the Judicial Service Commission that even as they vet these people on Monday, they need to look at people who are progressive and people who know not only what is going on in Kenya, but what is going on in the world. We are not insular. We are a world of the nations and we are part of the nations of the world. That is why we are acknowledging international treaties. Therefore, we must have judges that are aware that, for instance, gender equity is now taken for granted like breathing. But if you

are still debating with us and struggling to understand what gender equity is, really, we should not even be considering you for any serious post, leave alone the Supreme Court.

Madam Temporary Deputy Speaker, I was encouraged when women applied for very senior positions like the Chief Justice and even the Deputy Chief Justice. I am glad that we have women who have been shortlisted for the positions of Supreme Court judges. I am happy because the women who did not apply for the post of Chief Justice must have seen that by now, the women who were not appointed Chief Justice have not grown thin, neither have their legs become crooked or their hair fallen because they were not taken. They were asked tough questions, but they were witty and smart and they responded with the same wit that those guys gave them. So, I want to encourage women--

Mr. Ethuro: On a point of order, Madam Temporary Deputy Speaker. Is it in order for the Member to describe the anatomy of our judges in that kind of language when we all know that we were even looking for a female Chief Justice?

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, my good friend did not understand what I said, but I will repeat it for his sake. A lot of times, women fear applying for positions because they are going to be asked tough questions. I am saying that there are tough women who applied for the position of Chief Justice, including Hon. Justice Mary Ang'awa. She was asked tough questions including being told that she conducts her court as a kindergarten. I said that the people who interviewed her were lucky because if it were me, I would have said that, if I am dealing with people like you, no wonder I conduct my court as a kindergarten. Women must learn to be tough because the world expects us to be ten times tougher than men to make it. Therefore, do not be discouraged when we are asked tough questions. So, that is what I am saying. Even now, Justice Ang'awa's leg has not broken because she was asked tough questions. Her hair has not fallen off. She has not grown fatter or thinner. She is still the beautiful Justice Ang'awa plus all the other women who were asked questions. They are still the same old women. So, I am encouraging them. In fact, what has happened is that we now know them more and we know their capabilities. So, I am asking them to be tough. The least that can happen is that they can leave you out. If they leave you out, tell them that it is their loss and not yours.

Madam Temporary Deputy Speaker, I am happy that this Bill talks about and acknowledges that the reason we are setting up this Supreme Court is to acknowledge the sovereignty of the people of Kenya, which we have been harping on a lot. We are saying, as a people, that we want to take back our destiny. We want a court that we can trust in, so that should we have disputed election results, we can go there instead of resorting to violence. Therefore, I want to say that it is not just the court, but it is the people who will go and occupy that court.

I would like to say that, under Clause 3(e), I am very happy. It acknowledges that one of the things it seeks to do is to improve access to justice. I have worked a lot with very poor people in providing justice. That is why I call myself a social entrepreneur because I was giving justice for free without expecting any payment. If you look at the way this Bill is configured - I must say - I am very happy because it is very mindful of that. Clause 31(b) talks about empowering the Registrar in order to promote access to justice, to waive, reduce or postpone the payment of a fee required in connection with a proceeding. Even though it is constitutional, it is important that we provide it here so that

when they are deliberating, if a poor person comes from Suba and cannot access the courts, especially on the issues of the Constitution, they can come very easily.

I would like to encourage the Minister and the relevant committee to look at the fact that, even though we provided for access to justice that is monetary in nature, we need to look at the procedures. That is because the Constitution says that the procedure shall not be technical. I do not see that in the Bill. So, can we provide that very clearly? We can even provide that you can go to court by way of a letter, the same way you can write it to your boyfriend or your girlfriend. Many Kenyans have no clue what a petition is, what an originating motion or originating summons are. If my right is violated, I should write to Dr. Willy Mutunga, whether or not with stud and tell him: "Please, note that this right has been violated." That is by a letter. I can write to whoever is there. The Constitution is very clear that, if it is a violation of a right--- I presented a memorandum with the children of Kenya. They made the presentation themselves. That is because I have dealt with so many children who do not have legal fees and who do not have expertise and come from remote parts of the country. All they want to do is to reach the courts. When the children made that presentation - and I have that cutting until today in my house - they said: "We want to reach the courts in the easiest way." It was provided for in the law. Do not make it difficult.

I want to encourage the Minister that we need strengthening of the parts that talk about representative suits and class action suits. That is again under Clause 31. If you make reference to it, you will see that it is not very tight. That is under Clauses 30 and 31. We should make it very strong. If Milly was to represent a child, you should not put onerous tasks on me because I am just doing it because I am concerned about children. Many times, I have represented more than 1,000 children and they are not all my children. It is the same for people who are representing women, poor Kenyans and, especially, landless Kenyans.

Madam Temporary Deputy Speaker, I would also want to encourage under Clause 10, all that all we provided for the Chief Registrar to deal with must also keep with the new technology. One of the reasons why we have delays in our courts is because we use old technology. So, could we, please, provide for use of technology?

I would also want to encourage the Minister to relook again at Clause 13. How do you commence an advisory opinion? You have made reference to other ways of commencing suit, especially, under Clause 12. However, how do you commence under Clause 13? I want to laud you for Clause 20, which provides that appeals to the Supreme Court may, where the court considers it necessary, proceed by way of fresh hearing. That is noble and wonderful because, sometimes, when we go by way of an appeal and you do not get the opportunity to look at matters afresh, then the court may miss a lot of things, including the demeanor of people who are presenting. So, when circumstances call for, I am happy that we made provisions that the Supreme Court can start afresh.

I am also very happy with Clause 21(3) that; the Supreme Court may make an order necessary for determining the real question in issuing the appeal, and may amend any defect on the record of appeal. For those of us who are in practice, we know that many cases are lost not because of substance, but because of technicality. You are told that you did not file within 14 days when somebody has stolen your *shamba*. You do not know what 14 days means. All you know is that your *shamba* has been stolen. When you go back home, you may not count 14 days. You may just pick up a *panga* and cut the

person because the court did not favour you when you can see a clear injustice. Because of that, I am very happy that we are acknowledging that we should not stick too much to technicalities. I know that we have borrowed a lot from the English. However, I am one of the lawyers who consider myself – I do not want to say progressive--- But when I go to court, I am one of the few lawyers who started to wear trousers.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I trained you!

Mrs. Odhiambo-Mabona: I know that you trained me! That is why you are a good Professor! The reason I started doing that is because I said that the law is made for man and not man for the law. As a country, we have forgotten that.

An hon. Member: And for woman!

Mrs. Odhiambo-Mabona: And for woman. Thank you for reminding me. We stick too much to wigs and robes. When you see people going to court in those wigs and robes, they look like they are going to perform witchcraft or some funny things. Let the judges wear *vitenges* to court. That is what Nigeria does. We can do that, so long as we are meting out justice. If we stick too much to technicalities, that will not help.

Finally, I just want to say that I am happy and thank the Minister. I hope that when we get the Supreme Court Judges, the Judicial Service Commission will consider equity. We need more women than men.

Mr. Ethuro: Thank you, Madam Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill.

I want to start by confirming to the hon. Minister for Justice, National Cohesion and Constitutional Affairs, and his former Assistant Minister, who is now the substantive Minister for Nairobi Metropolitan Development that I support this Bill.

In supporting this Bill, I am a bit disadvantaged because I am speaking after my very good friend, hon. Odhiambo- Mabona, who is actually a very good lawyer and an NGO activist like me. However, she has dealt more with children issues to the extent that Members of the House have started a caucus on the children of Kenya. We are going to audit your performance both in your individual capacity and collective capacity as institution of Parliament to what extent we have impacted positively on the lives of our children.

Madam Temporary Deputy Speaker, this is a great day for Kenya. For a long time we have been demanding for a supreme court. I am really glad that with the new Constitution, although it did not have to go that way, but this was part of it. We are implementing it. This is what we need to do. It is also coming at a time, when we are actually discussing the appointees to the office. It is good that, once we vet and approve them or otherwise, they will find now that they also have an office. Initially, they could have come and would not benefit from the fancy office hon. Githae was recommending.

I just want to also agree with hon. Shebesh's comments to the Minister for Justice, National Cohesion and Constitutional Affairs. I hope he does not disappear, especially when he brings procedural Motions to reduce the publication period of Bills, without even an explanation. I think you owe it to us, Minister. Just the way we support all the Bills and procedural Motions that you bring here, it is only fair that we do business with the urgency that we started with.

Madam Temporary Deputy Speaker, like other contributors, I wish to say that the reason we are having a supreme court is to ensure that we inspire confidence in the

judiciary. We come from a background, especially from the last elections and may be even previously, where it was difficult to serve a sitting President. We scaled it up to where an important section of this society decided that, in an election dispute/petition, which is well pursued in Clause 12, that they had no confidence in the Judiciary. Once citizens start having no confidence in the institutions of the Republic, then you really have chaos and anarchy. I want to believe that besides this Bill, which should be a starting point for inspiring confidence, that we are actually building that confidence through practice. So, it is important that the judges that we appoint to the Supreme Court, are judges of high integrity and high moral standing in the society. Justice cannot become another commodity being sold to the highest bidder, especially in a perfect market like ours, where the goodies go to the highest bidder. But justice must be a matter of the truth. Justice must be a matter of doing what is right. Justice must be a matter of standing up to the mighty, when they have gone wrong.

Madam Temporary Deputy Speaker, unfortunately for me, as this country talks about the Supreme Court, I talk about access to justice. There is only one court sitting in Lodwar, which does not have any seniority. They have to go all the way to Lokichogio, Lokitang, and Lokichar. Minister for Justice, National Cohesion and Constitutional Affairs, you have a police station. The CID does not have a local interpreter. You wonder when you have the local people appearing before courts, which language would they use? How does the CID investigate? So, while I support this Bill, you should also ensure that the Supreme Court may only be important to the people who know and people who are looking for bigger things. But for those of us with mundane matters, to the extent one time, the business of transporting and tracking people from one town to the next, there was an accident that cost many lives. This is not just in Turkana alone. You also remember the last time, when prisoners were being transported to Nairobi and there was a terrible accident on Thika Road and we lost prison warders and prisoners. As if that was not enough, even the money that came out of compensation was stolen by the good lawyers. That is the justice system for you. That is the justice of Kenya. That is the justice system that I want to plead with my good friend, hon. Minister for Justice, National Cohesion and Constitutional Affairs that this Supreme Court and all the other arrangements that we are making in the judiciary, will ensure that these kinds of things do not happen.

Madam Temporary Deputy Speaker, lawyers have talked of great quotes. But none of them seem to be coming from our Judiciary. I want at this moment, for us to reflect on one, Sir Good Marshall, who came here to defend our freedom fighters and rose to become one of the Justice in the Supreme Court of America. In the same American Supreme Court in 1954, there was a case on whether discrimination against schools on the basis of colour is important or not. The Supreme Court of America made a ruling, which is being played out in a very good movie known as "Separate but Equal". The ruling then was that you cannot separate and still expect to operate on the basis of equality.

It is those kinds of high standards that we expect judges of our Supreme Court to have. They should rise to the occasion and look at the injustices of the minorities and marginalized people in this country; to look at the situation as we speak; everyday some areas are chronically affected by insecurity. There is insecurity of cattle rustling and food insecurity. We would expect that when I will appear before the Supreme Court when it

comes, I hope I do not have to go that way, that Section 43 of our Constitution, on social and economic rights, for those marginalized groups, we will be assured the rights to food, education, housing and health.

Madam Temporary Deputy Speaker, I will also invoke Section 56 of the Constitution on the affirmative action that the Supreme Court will be the arbiter of justice. We have Members of this House taking us to court because we are applying the law on poverty index according to the CDF. But justice will be dispensed to people who for a long time--- Even that law was not applied. For two years they enjoyed all the goodies. Even when we are rectifying the situation without seeking for the arrears, they still have the audacity to take us to court, because they think they have the numbers. The Supreme Court will go by facts. It will also protect those ones without the numbers, because that is the law of the land. That is what I expect the Supreme Court to come up with.

Madam Temporary Deputy Speaker, as I conclude, there are issues of disappearing court files, bribery and looking for a judge that is nice to you, and not going to court. I expect these issues will be handled by the Supreme Court. The Supreme Court will not only be dealing with the administration of that particular court, but the Chief Justice sitting in it will also oversee the performance of the entire judiciary. In fact, the Chief Registrar's job will be to ensure the rest of the performance is good. I really expect that this country will rise to occasion. This country will appreciate that there is a new dispensation.

Mr. Minister, you realize that even as we talk about the Budget, the Executive does not appreciate that there is a new Constitution with Article 221 where we are expected to produce something. We are glad that you are responding. But we hope that you will be proactive. We are not going to wait for people to breach the Constitution. The Executive itself will be proactive to look at all the other arms of Government and branches to ensure that every institution plays its roles and that the new Constitution is subscribed to.

Madam Temporary Deputy Speaker, Sir, I hope that in the next general election, irrespective of the outcome, I will be so confident of our justice institution that I will not have to kill somebody or call for mass action or go to the streets to protest. I hope that I will be confident enough to go to court, knowing that I will get justice in the shortest time possible.

With those remarks, I beg to support.

The Assistant Minister for Education (Mr. Mwatela): Mr. Temporary Deputy Speaker, I thank you for giving me the opportunity to support this Bill.

Madam Temporary Deputy Speaker, I do not come from the background of my good sister, Mrs. Millie Odhiamb-Mabona, but I followed her contribution closely and I was very impressed. I wish to state that, for a long time in this country, decisions have been made based on the anatomy below the shoulders. We have to shift from that and make our decisions not necessarily as lawyers or judges but, all the time, look at the credit of a person and forget about the issue of what sex that person is.

That is the only way in which we can correct the inequality that has been with us for a long time, where the women of this country have been put to the back yard. Decisions on employment, remuneration and decisions in all kind of things should be made equitably, irrespective of which gender one is.

Madam Temporary Deputy Speaker, on the issue of using ICT in courts, we are very late. This technology is not only used for keeping records and quickening our decisions but is also used for interaction with the larger society. Our Judges must open themselves to views other than strictly those ones which are spelt out in the letter of the law. It is very important that a Judge looks at things beyond the written law.

For a long time, Judges have kept aloof for reasons that the society itself may have pushed them to do so. We need Judges who understand the society they are working in, including the individual communities in the country. We need Judges who can make decisions which are relevant to the society.

Madam Temporary Deputy Speaker, we have learnt from our mistakes in 2007. That is why we have taken this route. We may have been a bit slow in dealing with issues akin to the events that took place in other African countries, like Ivory Coast, where a decision was made as to who was the winner of the presidential election and somebody decided that he was not going to leave office; similar issues will be solved with the enactment of this Bill.

Up to now, we are grappling with that very sad situation in Ivory Coast. It is probably not fully settled. If we had a situation where courts were respected, and they exercised their jurisdiction, probably, that situation would not have arisen. Even in 2007, when we had the problem of post-election quagmire in this country, we could have easily gotten out of it if we had a Judiciary that was trusted.

Madam Temporary Deputy Speaker, on the issue of the persons who are going to be appointed Judges of the Supreme Court, I hope that members of the Judicial Service Commission (JSC) are not only going to look at the candidates' paper qualifications. I am calling them "paper qualifications" because as much as I respect the very good qualifications of the Minister, who had a First Class degree--- On top of that, somebody should have demonstrated, either as a practising lawyer or as a Judge, that he was really above board. Let us not just look at whether one holds a PhD or not. We should consider whether he makes decisions that are above board, so that we can get the correct people to serve as Judges of the Supreme Court.

As my colleague, hon. Shebesh, mentioned earlier, we should respect history, only that we must be selective and borrow only the good part of history and dump the bad elements of history. There are very many good things this country has presented, one of which happened recently. I have just come from Tanzania, where I met a few legislators of that country's Parliament. They are in praise of this country for the way the JSC conducted the interviews for the posts of Chief Justice and Deputy Chief Justice. We may not have necessarily gotten the best candidate, but that is not the issue. We have actually gotten into the Guinness Book of Records as the only country in the world to have conducted interviews publicly for the holders of those two offices. So, history has taught us something. I believe that we will continue to learn.

Madam Temporary Deputy Speaker, I would like to end my speech by congratulating the Minister for Justice, National Cohesion and Constitutional Affairs, Mr. Mutula Kilonzo, for performing very well. Even for his comments outside this House, I have a lot of respect for him.

With those remarks, I beg to support.

Mr. Njuguna: Madam Temporary Deputy Speaker, I thank you for the few minutes you have given me. Let me, first of all, indicate that it is important that the

Minister has brought this very important Bill to this House. More funds must be allocated to this Ministry, because in this country there are neglected areas which require courthouses. For example, in Turkana Central and other areas of this country, miscarriage of justice is a feature which has been known for quite some time. Therefore, the Supreme Court should address this issue.

Delay in the discharge of justice is another issue which needs to be addressed by the Supreme Court. I note that we are going to establish the Office of the Registrar in the Judiciary. The Registrar will be expected to be competent. He should be a person of impeccable character. He will also be expected to be the custodian of critical court documents. Fake title deeds have been used in our courts of law to secure the release of criminals. Therefore, I hope that this new office will address that malpractice. Unfair rulings have been made in our courts of law. Even very important exhibits have disappeared. Corrupt court officials have also tainted the image of the Judiciary.

Madam Temporary Deputy Speaker, I wish to encourage the Minister to make sure that those constituencies or areas that have been starved of court justice be given court facilities in the new dispensation. Lari in particular should also be given that facility.

Court cases held under trees in modern Kenya must not be tolerated. We hope that this will be a new era in the way we will be discharging justice in this country.

I, therefore, support the nomination process by the Judicial Service Commission (JSC).

Mr. Kioni: Thank you, Madam Temporary Deputy Speaker, for giving me an opportunity to support this Bill and thank the Minister for the work that he has done. I would like to echo the sentiments of many that this is also yet another milestone in our country and in the implementation of our Constitution.

I think it sends a clear signal to Kenyans that Parliament is keen on implementing the Constitution. A supreme court is important because it will help us resolve issues that arise out of the Constitution. They are about to be many. With the Supreme Court, we have the assurance that we will be able to get the spirit of the Constitution in place.

As we continue to appoint or nominate those who will serve in the Supreme Court, it is important that we look at the diversity of this nation. I feel that it is important that we avoid packing the Supreme Court with activists. The Supreme Court is not a place for activism. We need people who are sober; people who can look at the interests of this nation. We want people who can resist the influence, especially from the western world.

With those few remarks, I wish to support and thank the Minister for the job that he is doing.

The Temporary Deputy Speaker (Dr. Laboso): As there seems to be no more interest in the Bill, could we call the Minister to respond?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you, Madam Temporary Deputy Speaker. I want to donate exactly half a minute to my sister Naomi Shaban.

The Minister for Gender, Children and Social Development (Dr. Shaban): Asante sana, Bi Naibu Spika wa Muda na pia Waziri wa Haki, Uwiano wa Kitaifa na Maswala ya Kikatiba kwa kunipa nafasi ili nichangie Hoja hii.

Siku ya leo ni muhimu sana katika historia ya nchi hii. Waziri amewasilisha Mswada ambao utafanya nchi hii kuwa na Mahakama Kuu zaidi.

Wakenya wengi wameteseka sana kwa muda mrefu, hasa wale ambao mali na mashamba yao yamenadiwa kwa sababu ya madeni. Hawakuwa na pahali pa kupeleka kilio chao. Sheria zetu zimekuwa zikiwalinda matajiri. Maskini wamekuwa wakinyimwa haki yao. Lakini tukipitisha Mswada huu, basi maskini watakuwa na pahali pa kupeleka kilio chao.

Ni matumaini yangu kuwa akina mama wengi wataomba kazi kuhudumia mahakama hii. Tunataka jaji wengi wanawake katika mahakama hii.

Majaji watakaohudumia mahakama hii watakuwa na jukumu kubwa la kulinda uhuru wa kila mwananchi katika nchi hii. Tungependa kuona uhuru wa mahakama hii. Haki katika nchi hii imekuwa ni ya kununuliwa. Kuna baadhi ya watu ambao wamekuwa wakitumia pesa ili wapate haki na kuwapokonya wanyonge haki yao.

Serikali yetu imepoteza pesa nyingi sana kwa sababu ya ufisadi katika mahakama zetu. Mahakama hii itaokolea Serikali hii pesa nyingi sana. Ushuru ambao utapatikana kutoka kwa mahakama hii utasaidia uchumi wetu kuimarika.

Tena nitampongeza Waziri kwa kazi yake katika Wizara hii. Jambo hili ni muhimu sana katika nchi hii. Tukiwa na mahakama hii tutapiga hatua za kuleta haki na uwiano kwa wananchi wote.

Kwa hayo machache, ninaunga mkono.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Speaker, as the saying goes, history moves very quietly.

I want to thank hon. Members for making history. This court is so fundamental to our country. In fact, you cannot over-emphasize it. So, I want to thank all of them sincerely for the contributions they have made.

I want to assure Ms. Shebesh that the history and traditions we are referring to will not look backwards, but rather to implement the new Constitution looking forward.

I also want to assure Mrs. Odhiambo-Mabona, my wonderful student, that we have a national council now under the Judicial Service Bill for developing policy.

Above all, let me say this in conclusion, the reason we are asking Parliament to pass this law today is so that this court can start developing the rules for procedures that Mrs. Odhiambo-Mabona has referred to; class action suits, representation suits, new technology, how to start advisory proceedings and how to start fresh hearings. This is because it is only the court itself that can make these rules under the Constitution.

Allow me to thank Mr. Ethuro for insisting on high standards. Allow me to thank Mr. Mwatela for a wonderful contribution for referring to the Guinness Book of Records. I hope they will remember to put my name there also when they are doing so, having moved the Bill.

With those few remarks, I beg to move.

(Question put and agreed to)

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

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, 7th June, 2011 at 2.30 p.m.

The House rose at 6.30 p.m.