

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 18<sup>th</sup> April, 2012

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

PAPERS LAID

**Mr. Speaker:** Order, hon. Members! What is it the Minister for Finance?

**The Minister for Finance** (Mr. Githae): Thank you, Mr. Speaker, Sir. First of all, I would like to apologise that in the morning we were not able to issue the Paper that you had requested for with regard to the clarification and the basis upon which the Supplementary Financial Estimates and the Budget Policy Paper were brought in. I would like to table that Paper. Also, because the matter arose on the Floor, I request that you allow me to read the Statement Paper so that hon. Members are appraised of the issue.

Mr. Speaker, Sir, while tabling the Supplementary Estimates for 2011/2012, hon. Members sought to know the basis of presenting the Estimates. Hon. Members will recall that in 2011 this House passed the Appropriations Bill, 2011 which was later enacted into law. The Government has since August, 2011 been implementing the Budget on the basis of the Appropriation Act of 2011. Following the challenges and emerging priorities that arose during the implementation, the Government is now seeking changes to the Appropriation Act of 2011. Article 223 of the Constitution of Kenya, 2010 also allows for the introduction of the Supplementary Budget. This is the basis upon which the Supplementary Budget is being presented to the House.

The other issue that was raised by hon. Members was in regard to the Medium Term Budget Policy Statement for the 2012/2013. The Fiscal Management Act of 2009 requires that the Budget Policy Paper be presented to Parliament by 21<sup>st</sup> March while Standing Orders of Parliament require that once the Budget Policy Statement is laid in Parliament, the Budget Committee shall consult the Departmental Committees and lay its Report in the House before 15<sup>th</sup> April. The provisions of the Fiscal Management Act and the Standing Orders were premised on the old Constitution which required that the Budget be presented to the House by 20<sup>th</sup> June. This gave the Executive ample time to reflect on the proposals of the Supplementary Budget in the Budget Policy Paper before laying it in the House and to consider the recommendations of the House in the finalization of the Estimates of expenditure for the ensuing financial year. The finalization of the Supplementary Estimates for 2011/2012 was done when Parliament had already gone on recess.

Mr. Speaker, Sir, you will also recall that the Fiscal Management Act requires that if the House is in recess, the Budget Policy Statement should be submitted within the first week – and I repeat the first week upon resumption of Parliament. We presented the Budget Policy Statement on the first day of resumption of Parliament which was yesterday, 17<sup>th</sup> April, 2012, meaning that

we were cognizant of the delay that would occasion this submission. That is why instead of waiting up to Thursday which would have been the last day, we did it on the first day that Parliament resumed. This is because we are aware of the strict timelines contained in the Fiscal Management Act. However, we have proposed now in the Public Finance Management Bill before this House to amend the timeline for submission to mid-February and if approved by Parliament this will address the challenges experienced this year.

I urge the indulgence of hon. Members and the House and urge that the House should proceed alongside the interim ruling that you had given yesterday. I also wish to inform hon. Members that we plan to have the Finance Bill debated by the House tomorrow in the Committee Stage. I would like to give assurance that the Budget Estimates will be laid before this House within the time stipulated which is 30<sup>th</sup> April.

Thank you, Mr. Speaker, Sir, and I wish to lay the Papers on the Table of the House.  
The following Papers were laid on the Table:-

The Medium Term Budget Policy Statement, 2012  
The Supplementary Estimates of Recurrent Expenditure, 2011/2012

*(By the Minister for Finance)*

**Mr. Speaker:** Order, hon. Members! I allowed the Minister to make those comments and issue his responses to the issues that were canvassed by hon. Members yesterday because the Minister was unable to meet the directions which I gave yesterday to make those comments this morning at Order No.4. I have been satisfied by the explanation rendered by the Minister in the sense that much as he tried he was not able to get to the House in time to deliberate that business at Order No.4. He had otherwise taken the directions seriously and prepared himself as you have all noticed that he did. The only exception, therefore, I will make to this matter at this point will be to allow the Chair of the Budget Committee to make any comments out of the response of the Minister which may not have been anticipated as hon. Members raised issues yesterday.

**Mr. Mbau:** Thank you, Mr. Speaker, Sir. I want to thank you for your indulgence. I also want to thank the Minister for complying. Indeed, from the outset, it is good for us as a House and as the Budget Committee to say that we only push to ensure that the Executive complies with the laws and, of course, the Constitution. We would not like the Executive, through the Minister for Finance, not to comply with the notice the Speaker in his ruling last year made. This is meant to ensure that the Minister for Finance makes it possible and gives sufficient time to the Parliamentary Budget Office to do that which is constitutionally provided for; that is, allowing for parliamentary participation and contribution on behalf of Kenyans.

Mr. Speaker, Sir, regarding the presentation of the Budget Policy Statement which the Minister admits could not have been tabled by 21<sup>st</sup> March because we were on recess, we sought yesterday – and we thank you for granting us our plea – that whereas the Fiscal Management Act gave the Minister that leeway, the same Act did not give any leeway to Parliament. Therefore, since the Minister was this time presenting the Budget Policy Statement out of the legal time frame, we were seeking your indulgence which you granted provisionally that you allow the Budget Committee and Parliament, at least, one week in which hon. Members and chairmen of the various Departmental Committees can engage what the Minister has presented and do due analysis and diligence. They need to consult the respective departments with a view to making recommendations to the various policies and forecasts as enunciated in the Budget Policy

Statement. This is because when the Minister eventually does his final estimates, he takes into account the aspirations and recommendations of hon. Members.

Mr. Speaker, Sir, I want to assure you that the Budget Committee has already began meetings as per your provisional guidelines. I want to further seek through this Communication that you also urge that the various chairpersons of all committees, within the window that the Chair may allow us of seven days, to work during the night like the Speaker agreed and also work during the weekend to ensure that by Monday we have consulted as is necessary so that by Tuesday we are able to synthesize, collate and put together whatever views and recommendations you have out of the Budget Policy Statement. That way, by the seventh day, that is, Tuesday at 2.30 p.m., the Budget Committee will be in a position to table in this House the Budget Policy Statement recommendations which we expect will be taken on board as the Minister finalises the Estimates. The Minister knows that by 30<sup>th</sup> of this month we still expect the proposals of Estimates of Revenue and Expenditure to be submitted here for the House to process so that we do not have undue confrontation.

Mr. Speaker, Sir, we thank the Minister for also confirming that by the end of this month those ones will come, but the proposals will now appear to have lost the benefit of the input of Parliament through the Budget Policy Statement. I want to notify the Minister that even though he will lack the benefit of input by Parliament towards the proposals which will come by the end of this month, we shall still expect that the same will be factored in while preparing the final one.

*(Applause)*

This is because it is not your wish that Parliament did not participate. It is neither our wish. So, we all need to move together. We represent Kenyans, the public and everybody. Therefore, through the Chair, we wish you well. We do not want to appear to be in confrontation. All we want is for the Constitution, the laws and the Standing Orders to be followed.

Mr. Speaker, Sir, if we take each other in that stride, please, allow the chairmen to have meetings over the weekend and by Monday, Tuesday or Wednesday we shall be able to submit the Budget Policy Statement recommendations and report back to this House.

I thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Very well, Mr. Chairman, for your reaction to the Minister's response. Hon. Members, with this now being the position, I am afraid that I have to treat what the Minister has said and the Chairman's reaction with due respect and so, I have to bear those sentiments in mind even as I make the final communication. I will, therefore, defer the Communication to tomorrow afternoon. In the meantime, I confirm that the Speaker's Office will, on its part, do everything to ensure that different committees and their chairmen are facilitated to the fullest extent to discharge their mandate. "Fullest extent" will mean just that. If you want to claim three meetings, yes, that is facilitation and it is assured. Otherwise, I am in full agreement with the Chairman in so far as the appeal to committees is concerned and I will say no more.

### **POINT OF ORDER**

EXTENSION OF TIME FOR JOINT COMMITTEE  
INVESTIGATING KBC STAFF STRIKE

**Eng. Rege:** Mr. Speaker, Sir, pursuant to a public petition that the staff of the Kenya Broadcasting Corporation (KBC) presented to the House through hon. John Mbadi, MP on Thursday March 2012, the Chair directed Joint Committees of the Departmental Committee on Energy, Communications and Information and the House Broadcasting Committee to investigate the matter and report to the House within 21 days. The joint committee has since held several meetings with various parties involved and, as of today, we are yet to have a final wrap up meeting with the petitioners and one crucial witness who has travelled out of the country.

Mr. Speaker, Sir, the joint committee, therefore, requests to be given an extension of two weeks in order to conclude its inquiry, compile its report and table the same as directed. Thank you.

**Mr. Speaker:** Fair enough. In view of the reasons that you have advanced, Chair of the Joint Committee, I grant the extension. Two weeks from today.  
Next Order!

## ORAL ANSWERS TO QUESTIONS

### *Question No.1074*

#### PAYMENT OF DUES TO FORMER EMPLOYEES OF M/S KTEC LTD

**Mr. Kabogo** asked the Minister for Labour:-

- (a) whether he is aware that M/s Kenya Tanning Extract Company Limited terminated the services of 21 workers with effect from 31st December, 2008 but has declined to pay them gratuity, redundancy or other dues;
- (b) when the former employees will be paid their dues; and,
- (c) what measures the Ministry will take to ensure that, in the event of closure of the company, the former employees are paid all their dues.

**Mr. Speaker:** Is the Minister for Labour not here? Hon. Ojode, what is happening to your colleague?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I beg the indulgence of the Chair to allow me to look for the Minister. So, you can defer the Question to the second round.

**Mr. Speaker:** Order, Mr. Assistant Minister! There is no such thing as "second round". You can only plead that we revisit the Question.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, let us revisit the Question after the other ones.

**Mr. Speaker:** Fair enough. We will do so. Next Question by Mr. Warugongo!

### *Question No.1177*

#### ILLEGAL SUBDIVISION OF L.R.1246/1/3/R

**Mr. Warugongo** asked the Minister for Lands:-

- (a) whether the Minister is aware that Plot No. L.R. 1246/1/3/R of 285 acres in Narumoru/Thegu location owned by the Agricultural Mechanization

Service in the Ministry of Agriculture has been sub-divided and transferred to two private developers and, if so, who the beneficiaries are;

(b) whether the sub-division was regular and who authorized it; and,

(c) if the Ministry could revert the title deed to the Government.

**The Assistant Minister for Lands (Mr. Rai):** Mr. Speaker, Sir, I wish to seek the indulgence of the House to allow me to answer this Question on Tuesday because it was partly answered by Minister Orengo. I want to get a little bit of brief before I finalise the exercise because it was a question of trying to give way to certain people to get access to land.

**Mr. Speaker:** Mr. Warugongo, are you prepared to accommodate the Assistant Minister since he seems to have good reasons for it?

**Mr. Warugongo:** Sure, Mr. Speaker, Sir.

**Mr. Speaker:** Very well. It is so directed. The Question is deferred to Tuesday next week.

*(Question deferred)*

Next Question by Mr. Anyanga!

*Question No.1421*

DETAILS OF ACCIDENT AT MACALDER DISTRICT HEADQUARTERS

**Mr. Speaker:** Is Mr. Anyanga not here? His Question is dropped.

*(Question dropped)*

Next Question by Mr. Ruto!

*Question No.1208*

DELAY IN COMPENSATING GSU OFFICERS

**Mr. Speaker:** Is Mr. Ruto not here? His Question is dropped!

*(Question dropped)*

Next Question by Mr. Chanzu!

*Question No.1186*

MISUSE OF EU FUNDS GIVEN TO VIHIGA COUNTY COUNCIL

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

(a) whether he is aware that the European Union (EU) granted Vihiga County Council Kshs.9million towards the rehabilitation of rural access roads during the Financial Year 2007/2008;

(b) whether he could provide an account of how the funds were utilized; and,

(c) what action he will take against officers who embezzled or misused the funds.

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

(a) I am aware that Vihiga County Council submitted a proposal to European Union (EU) and a grant of Kshs15 million was approved during the Financial Year 2006/2007 and not Financial Year 2007/2008.

(b) The grant was released in phases, that is 60 per cent, 20 per cent and finally, 20 per cent. The council was to add another Kshs3 million to cater for eligible costs as a condition. The council contracted Broad Core Construction to rehabilitate rural access roads and construct eight small bridges at a contract sum of Kshs15,113,350 for a duration of 12 months after the EU had released 60 per cent; that is Kshs9 million. The firm rehabilitated rural access roads covering 229.3 kilometres at a total contract sum of Kshs10,355,176. That money was paid to the contractor. The expenditure of the roads was to be distributed as follows:- Construction of existing roads – 151 kilometres at Kshs8.8 million; construction of new roads – 50 kilometres at Kshs2.4 million; rehabilitation of five bridges at Kshs1.3 million and construction of new bridges totaling Kshs2.5 million. Those amounts total Kshs15,113,350. The contractor was being paid for the work done and certified by the District Roads Engineer, Vihiga. However, when the council delayed to pay the contractor for the work he had done on the rural access roads, he deserted the site without constructing bridges. That was due to the delay by the EU to release 20 per cent of the funds for Phase II. At the same time, the council was not provided with a budget for the same during 2006/2007.

(c) The council had entered into a contract with the EU and the conditions provided that if the project was not completed within the said time frame, then some of the grant already released would be refunded. Therefore, the council was compelled to refund the Kshs9 million grant for not completing the project within the time frame.

**Mr. Chanzu:** Mr. Speaker, Sir, in the third part of my Question, I asked what action the Minister is going to take against the officers who were involved in the embezzlement, and he is explaining that the money was not used. However, still, that is lack of commitment and negligence on the part of the council. What action has he taken on that one, the council was able to return Kshs9 million when it is a grant that we have spent? What action do you intend to take on the officers who caused that money to be returned?

**Mr. Nguyai:** Mr. Speaker, Sir, the key reason for the money to be returned was the desertion of the contractor and, once he deserted, then the time frame expired and as such, the money was then refunded. No further money was paid to the contractor and if action was to have been taken, it would have been in contract terms to the contractor and not the officers.

**Mr. Olago:** Mr. Speaker, Sir, it is a pity that grant by a donor had to be returned because of inefficiency by either the council or the Ministry. It is because of this type of thing that the Ministry set up a new system of implementing contracts by creating the Constituency Roads Committees (CRCs). Is the Assistant Minister aware that in some constituencies, technical

officers and engineers who are supposed to be guiding these committees work as if these committees do not exist and, therefore, frustrate contracts?

**Mr. Nguyai:** Mr. Speaker, Sir, the mandate of constructing roads is now entirely the responsibility of the authorised authorities within the Ministry of Roads. As such, the Office of the Deputy Prime Minister and Ministry of Local Governments as well as the councils have no responsibility, unless it on funds that are disbursed through the Local Authority Transfer Fund (LATF). If there are specific cases within LATF or Local Authority Service Delivery Action Plan (LASDAP), I would want the specific details of those cases, so that we can take disciplinary action.

Thank you.

**Mr. Njuguna:** Mr. Speaker, Sir, it is very disheartening that a contractor was given a job to do and he failed to execute the contract. Could the Assistant Minister inform this House what deterrent action he has taken against the contractor?

**Mr. Nguyai:** Mr. Speaker, Sir, the contractor left the site and funds were refunded. So far I have not seen anything, except the terms of the contract relating to termination. I cannot enforce other deterrent action, but we know that besides the work done and the retention, no further certificates were paid.

**Mr. Kabogo:** Mr. Speaker, Sir, you have heard how casually the Assistant Minister is handling this matter. It is a shame. Our development partners give grants to this country for development purposes and the money is returned, and he comes to this House and says that there is very little that can be done because there was a contract. What deterrent measures is the Ministry taking to make sure that these things do not happen in the future? We cannot just sit here and say that there was a contract and so action was taken within the rules of the contract yet money had been returned to the donors. Are donors going to take this country seriously?

**Mr. Nguyai:** Mr. Speaker, Sir, this is an event that took place in the 2006/2007 Financial Year. Since then, this House has been kind enough to provide even more enforceable laws to particularly ensure that we have disciplinary measures. As such, we will follow the law to ensure that, that happens.

Thank you, Mr. Speaker, Sir.

**Eng. Maina:** Mr. Speaker, Sir, surely, the Assistant Minister cannot come here and tell us that money was returned purely because somehow there was non-performance by the contractor. It must be a more serious matter. Could he come out clearly? He seems to tell us that the Government or the council returned the money willingly. There must have been a bigger story. My concern is that with this attitude from the Ministries and with councils that may not have the technical expertise, this country is in jeopardy in carrying out these kinds of projects, and he should tell us what he will do to safeguard this and ensure that this kind of scenario does not recur?

**Mr. Nguyai:** Mr. Speaker, Sir, one of the key things that are necessary in terms of contract grants is to look at the articles and see if there are punitive articles. In this particular case, Article 18, which is the rule for recovery, was extremely punitive. It is important that in future we negotiate contracts, so that they are not punitive to the extent of refund. That is why you find that many of the contracts that were initially from these particular donors seem to move to the East because of less punitive conditions.

**Mr. Speaker:** Last question, hon. Chanzu.

**Mr. Chanzu:** Mr. Speaker, Sir, we now have the new Constitution in place. Due to the nature of councils that we have, there are so many cases of this nature all over the country. What

measures is the Ministry putting in place to ensure that all this information is collected, so that when these councils are handed over to the county, administration is available so that money is not lost in the manner that this particular money got lost?

**Mr. Nguyai:** Mr. Speaker, Sir, in accordance with the Constitution, this House has been very kind to provide a legislation that will be enacted – The Transitional Government Bill. As such assets, liabilities and contracts that have questionable nature will be looked into. We have tabulations of these issues, so that the transition can be smooth, particularly to County Governments. I can see some of my friends who intend to be in County Governments smiling. I am sure that they will have the information.

**Mr. Speaker:** Next Question, hon. Chepchumba.

*Question No.1212*

IMPLEMENTATION OF BANKABLE ENERGY  
EFFICIENCY PROJECT IN KENYA

**Ms. Chepchumba** asked the Minister for Energy:-

(a) what programmes the Government has put in place to ensure that Kenyans achieve maximum benefits from energy saving equipment;

(b) what energy usage benchmarks the government has developed for the various sectors of the economy; and,

(c) whether the government has developed and implemented a Bankable Energy Efficiency (BEE) project in the country and, if so, how many such programmes have been implemented in Eldoret South Constituency and at what cost.

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

(a) The following policy measures have been put in place by the Government so that Kenyans can realise maximum benefits from energy saving equipment:-

(i) zero-rating of efficient energy equipment;

(ii) the Ministry, through the Kenya Power Company, exchanged 1,250,000 live incandescent bulbs for high energy efficient compact fluorescent lamps (energy savers) in 2010, the overall impact of which has been estimated as having reduced peak demand for electricity by 44 megawatts; and,

(iii) promoting the use of improved institutional cook-stoves cum pots, which are cook-stoves with in-built pots for institutions such as hospitals and boarding secondary schools.

Mr. Speaker, Sir, we have also subsidized energy audits, which are carried out by the Kenya Association of Manufacturers (KAM) to determine appropriate and suitable energy saving equipment to be installed in factories, tourist hotels and other large commercial and industrial buildings. The Ministry of Energy provides Kshs30 million annually to KAM for these activities, which also supports training of energy managers. These studies will be expanded over time to cover other economic and social sectors such as hospitals and commercial buildings.

(b) The Government, in collaboration with the United Nations Development Programme (UNDP), is undertaking the Standards and Labels Programme, which is aimed at introducing energy efficiency standards and labels for various equipment and also developing standards for



improved institutional cook-stoves fitted with pots. This is addressed through the Standards and Labels Committee co-ordinated by the Ministry of Industrialization.

My Ministry has also developed regulations for the usage of solar water heating. These regulations are intended to make it necessary for buildings that use at least 100 litres of hot water per day to be fitted with a solar hot water heating system. The regulations have had an input from the stakeholders and have been forwarded to the Attorney-General for gazette under Section 105 of the Energy Act.

(c) Since 2009, the Government has not developed and implemented bankable energy efficiency projects in the country. However, 18 feasibility studies on bankable energy efficiency have been completed for implementation by the target groups.

In Eldoret, feasibility studies have been carried out in three factories namely Corn Products, Rift Valley Bottlers and Kibwari Tea Estate Factory. Normally studies are undertaken for industrial and commercial firms that have indicated willingness and commitment to implement the recommendations of the energy use audits. So far, no industry firm has been audited in Eldoret South Constituency. However, plans are underway to extend the service to more firms and industries including those in Eldoret South Constituency.

**Ms. Chepchumba:** Mr. Speaker, Sir, as I appreciate the answer given by the Assistant Minister, could he tell the House why there has not been equitable distribution of available energy resources in the country?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, if I heard the question right, the hon. Member has asked why there is no equitable distribution of resources of energy in the country.

**Mr. Speaker:** Yes, that is true!

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, I think there is equitable distribution of resources of energy in the country. We are undertaking many energy projects in this country and the hon. Member should be specific and say in what areas in terms of generation, transmission or connectivity we are not having equitable distribution. I think we, as a Ministry, have done our best to have equitable distribution of resources.

**Ms. Chepchumba:** Mr. Speaker, Sir, could the Assistant Minister again state what the Government has done to promote private sector players in energy conservation?

**Eng. M.M. Mahamud:** Mr. Speaker, Sir, in fact, that is the essence of my answer. Kenya Seed Manufacturers is actually a lead agency dealing with the private sector. In terms of energy efficiency promotion, they are the lead agency which we are collaborating with. As I mentioned, we have been giving them since 2004 Kshs30 million per year to undertake energy efficiency programmes. So far, I think they have done over 134 general audits of various organizations and 16 investment bank audits have been done. I think we have done our best to involve the private sector in the energy efficiency programmes.

Thank you.

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

**Mr. Speaker:** Mr. William Ruto, that Question is spent. The question the Assistant Minister was answering was the last one unless you are rising for a different reason.

**Mr. Samoei:** Mr. Speaker, Sir, it was on the same Question.

**Mr. Speaker:** That Question is done!

**Mr. Samoei:** I really wanted the Assistant Minister to---

**Mr. Speaker:** Order, hon. Ruto! You simply cannot.

Let us move on to the next Question by Mr. Affey!

*Question No.1348*

PAYMENT OF DEATH GRATUITY TO DEPENDANTS  
OF LATE I.H. SHEIKH

**Mr. Speaker:** Is Mr. Affey not here? The Question is dropped!

*(Question dropped)*

We will go back to Question No.1074 by the Member for Juja!  
The Member for Juja was in the House not very long ago.

*(Mr. Kabogo entered the Chamber)*

*(Applause)*

**Mr. Kabogo:** Mhe. Spika, ninaomba msamaha.

**Mr. Speaker:** Mhe. Mbunge wa Juja, tueleze kwa nini ulikosa kuwa hapa.

**Mr. Kabogo:** Mhe. Spika, nilitoka tu kidogo kuzungumza na simu nikifiri Swali litachukua kama dakika mbili. Ninaomba msamaha.

**Mr. Speaker:** Sawa sawa!

*Question No.1074*

PAYMENT OF DUES TO FORMER EMPLOYEES  
OF M/S KTEC LIMITED

**Mr. Kabogo** asked the Minister for Labour:-

(a) whether he is aware that M/s Kenya Tanning Extract Company Limited terminated the services of 21 workers with effect from 31<sup>st</sup> December, 2008, but has declined to pay them gratuity, redundancy or other dues;

(b) when the former employees will be paid their dues; and,

(c) what measures the Ministry will take to ensure that, in the event of closure of the company, the former employees are paid all their dues.

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

This Question was partly answered last time. What we were waiting for was the full settlement of this matter. So far the matter is still before the Industrial Court and it is coming up for hearing on 15<sup>th</sup> May, this year. So, I would plead with the Member for Juja to wait for the matter to be sorted out in the Industrial Court.

**Mr. Speaker:** The Member for Juja, are you prepared to---

**Mr. Kabogo:** Mhe. Spika, ninafikiri Waziri Msaidizi hajatilia maanani hili Swali kwa sababu wakati Swali liliulizwa mwezi wa pili wewe mwenyewe, Mhe. Spika ulisema tumpatie wiki mbili ili waweze kurekodi mawiano katika korti. Sasa unaona wameenda na kusukuma kesi mpaka mwezi wa tano ilhali hapo awali walisema wanataka kuuza shamba ili waweze kuwalipa wafanyakazi. Huu ni mchezo wa kutumia korti. Pia, ni muhimu kujua kuwa ni Wizara

iliyowaambia wafanyakazi waende kortini. Kama ni kurekodi *consent* ingefanyika tu hata kama ni kesho. Kwa hivyo, ninaomba Waziri Msaidizi atilie maanani jambo hili, watoe kesi kortini ili wafanyakazi waweze kulipwa.

**Mr. Ojaamong:** Mr. Speaker, Sir, it is true we offered to arbitrate between the parties and they disagreed. So, the workers through their union opted to go to the Industrial Court so that the matter can be settled there. So, if he can advise the workers, the ones he is pushing for right now, to withdraw the case--- It is their lawyer, Mr. Opiyo who refused to have the matter arbitrated by our officers.

**Mr. Kabogo:** Hoja ya nidhamu, Bw. Spika. Umemsikia Waziri Msaidizi akiniambia niende nikawajulishe wafanyakazi ilhali barua yao ya tarehe 19 ambayo nilipeana hapa Bungeni mwezi wa Oktoba mwaka wa 2006 inasema kwamba ni Serikali iliwauliza wafanyakazi waende kortini. Waziri Msaidizi amesema hapa Bungeni kuwa wamesikizana kurekodi mawiano katika korti. Sasa anataka mimi nichukue nafasi hiyo niende kuwajulisha kitu ambacho Wizara imeshafanya. Ni sawa kufanya hivyo?

**Mr. Ojaamong:** Mr. Speaker, Sir, indeed, these people were supposed to record a consent. But on that day when they met they disagreed. The lawyer for the workers, Mr. Opiyo opted for the matter to be heard fully in court. So far, it was heard on 13<sup>th</sup> March which was last month by Justice Rika. It has been fixed again for hearing on 15<sup>th</sup> May. It is the workers themselves who want their matter settled in the Industrial Court.

**Mr. Speaker:** Mr. Assistant Minister, maybe we would be content if you could indicate by what date this matter will be resolved in your estimation because it cannot go on infinitely.

**Mr. Ojaamong:** Mr. Speaker, Sir, I will not dictate the timetable for the courts but I hope that this matter will have been resolved by June.

**Mr. Speaker:** Mr. Assistant Minister, I appreciate and I know you cannot dictate to courts but courts are part of the third arm of the Government. If a matter is urgent, important and needs to be dealt with expeditiously or needs to be determined at the earliest opportunity, then it is in order for you to prevail over the court to deal with it urgently. That is not dictating to the court. So, can you undertake to ensure that this matter is accorded an early hearing date?

**Mr. Ojaamong:** Mr. Speaker, Sir, I will do so.

**Mr. Speaker:** We will then leave it until 18<sup>th</sup> June, I do not know what day that will be. This matter will then appear again on the Order Paper, Mr. Kabogo. Please, monitor the Assistant Minister to see that he takes action to impress on the court the need for early disposal of this matter. That is not tantamount to interfering with justice. You are just asking the court to expedite the hearing.

**Mr. Kabogo:** Nimeshukuru, Bw. Spika.

**Mr. Speaker:** Asante, karibu. Hon. Members we are now into Prime Minister's Time and the first business there is a Question to the Prime Minister by Mr. Kutuny.

## PRIME MINISTER'S TIME

*Question No.QPM/003*

PROVISION OF ROADMAP TO PEACEFUL GENERAL ELECTIONS

(Mr. Kutuny) to ask the Prime Minister:-

Could the Prime Minister provide a comprehensive road map towards a peaceful general election, considering that the next general election will be most complex under the new Constitution?

**Mr. Speaker:** Mr. Kutuny is not here! I am afraid he will suffer the same fate just as the rest of the Questioners. So, this Question is dropped.

*(Question dropped)*

We then want to move on and take the Next Order!

## STATEMENT

### EFFORTS BY GOVERNMENT TO REDUCE COST AND IMPROVE ACCESS TO HEALTHCARE FOR ALL KENYANS

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, I rise to make a Statement on the current efforts by the Government to reduce the cost and improve access to healthcare for all Kenyans.

As we meet in this august House today, hundreds or thousands of our fellow Kenyans are in pain and agony; some are lying helpless in their homes; some are lying hopeless in the open air simply because they cannot afford medical care, or because there are no healthcare facilities close to them. Many Kenyans die needlessly either because their disease is not detected early or because they are not provided with prompt and appropriate medical care. Article 43 of our Constitution makes, among others, the following declarations:-

(1) Every person has the right –

(a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care

2) A person shall not be denied emergency medical treatment.

(3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

The Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights to which Kenya is a signatory both uphold the outlined rights. This is the basis of my Statement to this House today.

Communicable diseases such as tuberculosis, HIV/AIDS, Malaria, diarrhea and typhoid fever are killing millions of our citizens. None communicable diseases such as cancer, diabetes and cardiovascular and chronic respiratory diseases are on the rise. Collectively, these diseases contribute to more than 50 per cent of all admissions to public hospitals. They are responsible for nearly half of the total of hospital deaths in Kenya. In maternal healthcare, it is estimated that 7,700 women die each year from pregnancy related complications. This translates to 21 women dying each day, or one woman dying each hour from preventable causes. Safe motherhood is, therefore, a human rights imperative we must address.

Mr. Speaker, Sir, as we meet here, thousands of Kenyans are meeting in different places to raise money to take their loved ones abroad for treatment. Thousands are at fundraising gatherings to raise money for hospital bills. Thousands of desperate citizens cling to doctors' prescriptions for months, and even years, because they do not have the money to buy the drugs from pharmacies. We have a crisis in the form of unacceptably high cost of treatment and willful

lack of medical facilities, yet the provision of universal healthcare is the stated policy of the Government of Kenya since Independence in 1963. It remains so but to achieve it we must redouble and triple our efforts. We have made significant progress in some areas. However, unless we embark on radical measures, Kenya is likely to miss many of its Millennium Development Goals in the health sector, especially those related to child and maternal health.

The Government, through the Ministries of health, is implementing several policies to improve healthcare. Nevertheless, about a million Kenyans slip below the poverty line each year as a result of medical costs they have incurred. These are among the 40 per cent of Kenyans today who have no option but to obtain healthcare through out of pocket payments. The only way to change this is through a system of truly universal healthcare, and we believe the key to that is the strengthening of the National Hospital Insurance Fund (NHIF).

You will recall that the Government, after elaborate stakeholder consultations, developed Sessional Paper No.2 of 2004 on the national social health insurance in Kenya. A Bill was presented to this Parliament, its main objective being universal provision of quality healthcare. However, although passed by this House, the Bill did not get the nod from the Government of the day. The main reason was the perceived unsustainability of the scheme. Private sector players also feared the loss of business to the public sector. In the light of this experience, the Ministries of health in 2007 began further work in these areas, including examining best practice in other countries with universal healthcare coverage. By the year 2010, the Ministries had already drafted the health care financing policy. Again, in the year 2010/2011, with the support of International Finance Corporation (IFC), the Ministries of health undertook a strategic review of the NHIF and a market assessment of the private pre-paid health schemes. Based on the healthcare financing policy and the ongoing reforms in the NHIF, the Government introduced the new NHIF policies offering more extensive health services and better coverage, but at slightly higher premiums.

The Central Organization of Trade Union (COTU) opposed this plan on several grounds. The COTU was concerned that insufficient consultations had taken place and that the increased funds remitted by workers would be eaten up in administrative expenses rather than in providing improved services. COTU also criticized the previous mismanagement of the NHIF resources and investments, and advised a restructuring of the institution before it demanded increased contributions from workers.

*[Mr. Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, we understand and share COTU's concerns. However, the NHIF currently covers only about a fifth of Kenyans. Coverage for the informal sector and the poorest remain low with the benefits limited to hospital care. Reimbursement to those treated in the private sector is limited to bed charges.

It is, therefore, important for the Government to continue and strengthen consultations. Let us agree on a programme of national health insurance whose implementation takes care of the concerns of all parties and which most importantly extends affordable and quality medicare.

Mr. Temporary Deputy Speaker, Sir, finally, the devolved health systems envisaged in the Constitution provide an enormous opportunity for the development of more responsive and

more affordable health services and for addressing some of the equity and efficiency concerns about the centralized systems. Of course, to reap the full benefits of devolved health systems, it is crucial to strengthen the capacities of the counties and particularly those counties where the reduction of inequities demands that they be accorded priority.

The proposed resource allocation formula is the most appropriate for providing optimum resources to those areas where medical needs are greatest. That is what we aim to achieve.

Thank you, Mr. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Mr. Ethuro): We will have hon. Chachu, Dr. Monda, Member for Lari, hon. Karua and finally, hon. Shebesh seeking clarifications. Restrict yourself to one clarification.

**Mr. Chachu:** Mr. Temporary Deputy Speaker, Sir, I also want to thank the Prime Minister for making a Statement on this very relevant and important issue to Kenyans. I hail from maybe the largest constituency in this Republic. It is as large as four provinces put together. In the entire constituency with two districts - and the Prime Minister has been to North Horr at least three times that I know of - not a single hospital exists. Not a single medical doctor is present. On average, people of North Horr have to travel 600 kilometres to the nearest Government hospital in Marsabit County which is in the nearby Saku Constituency.

What plans does the Prime Minister have to ensure that those Kenyans with great medical needs such as the people of North Horr will have their own hospital with doctors instead of travelling 600 kilometres in an area where there is hardly any road? Not a single kilometre of road is tarmacked in North Horr. What is the Government doing?

**The Temporary Deputy Speaker** (Mr. Ethuro): Fair enough! You have made your point, hon. Chachu!

**Dr. Monda:** Mr. Temporary Deputy Speaker, Sir, I start with thanking the Prime Minister for this Statement which is intended to address the Government's concern to improve health care provision. As I listened, I found myself so sad that the Prime Minister is only pointing to what should have been done or what should be done by the Government without giving us some substantive measures of addressing the issue of the number of health workers in public facilities in this country. It is a concern of every Kenyan that all facilities in this country should have doctors of all cadres and all medical personnel that are required. The hospitals are suffering because of very few medical personnel. There are concerns about the infrastructure. He should have told us what the Government will do to improve the infrastructure of our health facilities in this country which needs to be addressed now.

The provision of all the commodities in these facilities is lacking. He has not told us what he will do to address the deficiencies of medical requirements starting from equipment, pharmaceuticals and non-pharmaceuticals, including blankets, the simplest of all which the Government cannot provide for her people. He is here telling us that we are heading where there are no finances. What is the Government doing to allocate sufficient funds now and in future to ensure Kenyans get service when they need it in all our facilities?

**The Temporary Deputy Speaker** (Mr. Ethuro): I will allow you more because I know you are the Chairman of the Health Committee.

**Dr. Monda:** Thank you, very much, Mr. Temporary Deputy Speaker, Sir. If you could add a third one, it will be better. The Prime Minister has talked about national health insurance. It is only in January when the Government handed over the outpatient health service provision through the National Hospital Insurance Fund (NHIF) and it is the NHIF that will provide outpatient services to public servants. The rollout was done in January. When you look at the

rollout, the Government, through the NHIF, chose to run away from the well known Government public hospitals, which provide the bulk of the population with health services. They handed over the same service to little known private providers, handing over money contributed by public servants to private entities.

**Mr. Kutuny:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Chairman of the Health Committee to mislead this House that the NHIF ignored Government hospitals in distributing its resources or funds whereas it is obvious that it is up to the members of the NHIF to decide where they will be treated? He is misleading the House.

**The Temporary Deputy Speaker** (Mr. Ethuro): What is the correct position, Chairman?

**Dr. Monda:** Mr. Temporary Deputy Speaker, Sir, I speak with authority as the Chairman of the Health Committee, evidence before us is to the effect that the NHIF allocated public servants to little known private clinics some of which have doubtful existence.

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

**Dr. Monda:** Mr. Temporary Deputy Speaker, Sir, I am responding to a point of order.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Dr. Monda. You are responding, proceed!

**Dr. Monda:** Mr. Temporary Deputy Speaker, Sir, the bulk of the funds paid for the first quarter was paid to private entities and so little to public health providers. Therefore, that is the tilt I am talking about.

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

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Members! I wish you remember that this is an opportunity for Parliament to interrogate the Executive. Do not reduce this matter--

**Mr. Ruto:** Mr. Temporary Deputy Speaker, Sir, precisely that. I wish to find out whether it is in order for the Chairman of the Health Committee to start giving us in advance what he might be having in his Committee and he has not even tabled that document. He is anticipating debate instead of interrogating the Prime Minister. Is he in order?

**The Temporary Deputy Speaker** (Mr. Ethuro): That is correct. Hon. Dr. Monda, you know the rules of the House. You do not divulge what you are doing in the Committee until you are through.

**Dr. Monda:** Mr. Temporary Deputy Speaker, Sir, I am interrogating the Prime Minister's Statement. He has talked about the NHIF and how it is being reformed to improve health service provision. I do not find myself to have gone anywhere outside the purview of that Statement.

**The Temporary Deputy Speaker** (Mr. Ethuro): Just conclude then.

**Dr. Monda:** Mr. Temporary Deputy Speaker, Sir, finally, the Kenyan Government is signatory to international treaties and agreements that we shall be heading to where we provide 15 per cent of our Budget to the health care service. Here, over the years, the Government has never even reached six per cent of our Budget to address the many concerns of Kenyans on health services that they get.

Mr. Temporary Deputy Speaker, Sir, could the Prime Minister tell us how he plans to address that? What is he doing to improve the Budget to address those who are able to get money in their pockets and the indigenous people who do not have money totally? That way, he will improve services for everybody, including the many dying children. There are many women who die from conditions that are preventable.

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

**The Temporary Deputy Speaker** (Mr. Ethuro): What is it, hon. Mbadi? Order, hon. Mbadi! The hon. Member for Lari.

**Mr. Njuguna:** Mr. Temporary Deputy Speaker, Sir, while I commend the Prime Minister for the Statement that he has issued, I would urge him to inform the House what the Government is doing on those dispensaries that have been constructed in various constituencies using CDF funds. They have no nurses, staff and medicines. If action is not taken, those projects will become “white elephants”.

Mr. Temporary Deputy Speaker, Sir, secondly---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Member! I only said that I will only allow the Chair, by virtue of his position, to interrogate more.

Hon. Karua.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I would like to ask the Prime Minister on Millennium Goal Number Six: Child health. What specific measures has the Government taken to enable him to say that they have achieved the MDGs?

On maternal mortality, what is the ratio of maternal deaths per thousand? He should also tell us the issue of access to healthcare because we know that women cannot access Government facilities for delivery without paying the amount of money required. If it is in a Government hospital, they are supposed to pay Kshs3000. In a dispensary, I do not know how much it is. I also do not know the amount which is charged for delivery. He should tell us whether the Government has now abolished fees – which we are not aware of - or how we can say we have achieved the MDGs.

Further to that, there are other simple issues. Equipment to screen breast cancer, perform mammograms and also laboratory equipment for screening cervical cancer; how can we say we have achieved the MDGs when we know that such equipment is absent?

Mr. Prime Minister just to ask one example----

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Order!

**Ms. Karua:** The last one, please, Mr. Temporary Deputy Speaker, Sir. The very last one. Is the Prime Minister able to tell us the number of facilities in Turkana County, where women go for delivery? Just one County in Kenya; I would not ask two!

**Mrs. Shebesh:** Mr. Temporary Deputy Speaker, Sir, the Prime Minister is giving us a Statement on the current efforts by the Governments to reduce costs and improve access to healthcare for all Kenyans.

Mr. Temporary Deputy Speaker, Sir, of course, all Kenyans include women, who are a bigger per centage in this country than men. Is the Prime Minister aware that the Reproductive Health Bill that would cater for many issues that make the Government’s cost of taking care of its Kenyans almost double--- That is because women are not able to get free reproductive health services, which include pre-natal and post-natal care.

Mr. Temporary Deputy Speaker, Sir, I am saying this because the Government has been unable to bring that Bill for political reasons. They fear the church and everybody. Women continue to die. A woman’s health bill for the Government is double than that of any man. If this was done in advance, the Government knows that it would save a lot of money. Could the Government be bold and brave enough? Now that we have a Constitution that directly speaks to the issue of abortion, which was a very thorny issue in this Bill--- The Constitution is now very clear. So, the Government has nothing to fear. Could you bring this Bill to give women free



reproductive health services and cut down the bill of the Government when it comes to healthcare in this country?

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

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Those are the first ones that I have allowed. I will now call upon the Prime Minister to respond.

**The Prime Minister** (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, hon. Chachu Ganya, MP for North Horr, decried the facilities or lack of facilities in North Horr Constituency. I agree with him. I have been with him a number of times to that constituency. I ordered the creation of a second district because of the size. North Horr Constituency is 38000 square kilometres. In other words, it is one and half times the size of the Republic of Rwanda. So, geography is a serious challenge. One other factor is that the population is fairly sparse. They live in a hamlets dispersed by long distances.

Mr. Temporary Deputy Speaker, Sir, setting up a national hospital in such a wide area is also a challenge because people would still have to travel long distances to that particular centre. What we require are functioning health facilities near where the people live. This is something that the Government is considering; setting up of, at least, two well equipped centres in North Horr. I am sure that this is going to be factored in the coming financial year so that two proper functioning health facilities are available, at least, in the constituency.

Hon. Dr. Monda talked about inadequacies in terms of numbers of health workers in our facilities. I agree, yes, if we are looking at it in terms of the number of doctors or nurses per 1,000 patients, for example, and compare it with other countries, I would say that we are still far from reaching what you can call adequate healthcare. But I would like the hon. Member to appreciate the limited resources that the Government has at the moment. We have also other competing interests. That is because I am sure that the hon. Member would be speaking with equal passion when he talks about education. He would be talking with equal passion when tells me about roads in his own constituency. He would also be talking with the same passion when he talks about the provision of water, electricity and so on. So, we are trying to balance out those competing interests and try to do what is possible with the resources that are available for this Government. But as the situation keeps on improving, we will make more funds available for provision of healthcare.

Mr. Temporary Deputy Speaker, Sir, I want the hon. Member to appreciate that nowhere in the world has it been possible to provide all those services through the public sector. We must accept that there is need for a partnership between the private sector and the public sector in the provision of healthcare. The only reason why we have not seen more investment in this sector is lack of adequate funding available, particularly to the patients. So, the patients cannot afford. The facilities are few and, therefore, the laws of supply and demand take effect. You will find that the few that are available are over-stretched and over-charged.

Mr. Temporary Deputy Speaker, Sir, as the Government continues to put more investment in this sector, we are creating conditions that will encourage the private sector to invest in healthcare. That is by creating a viable national social health insurance scheme, which will make healthcare accessible and affordable to poor people.

At the moment the poor cannot afford it. There were a number of projects and clinics in the rural areas that had to close down. So, I would like the hon. Members to appreciate this fact and to help the efforts of the Government to set up a National Social Health Insurance Scheme.

Mr. Temporary Deputy Speaker, Sir, again the hon. Member was already adequately answered with regard to the scheme that the Government introduced. It is not that the public servants have been transferred to the private sector; no. The officers have got an option to either go to the private sector or to the public sector.

Mr. Temporary Deputy Speaker, Sir, the hon. Member for Lari was concerned about the dispensaries which have been constructed using Economic Stimulus Programme funds, which have no staff and medicine. The answer to that is that attention is going to be given to those facilities to ensure that they are adequately staffed in order to be able to function effectively.

Mr. Temporary Deputy Speaker, Sir, hon. Karua asked about maternal mortality rate. I did give a figure in my statement; I talked of a figure of 7,700 deaths per year; I said that it translates to almost one death per hour in our country today, which is unacceptable. Yes, she did say, and I actually did say it, that the cost of medicare is too high. That is the essence of the statement I am making today. How do we make it affordable and accessible? I quoted Section 43 of the Constitution, which makes access to medicare a constitutional right of all our citizens. This is the reason why we are addressing this issue. We also know that the child mortality rate is also still fairly high in our country. We need to reduce these rates.

Mr. Temporary Deputy Speaker, Sir, without going to the details, which are the responsibilities of the Ministers for health, I am confining myself to accessibility and affordability of medicare by the majority of our people. So, I am not able to give, for example, specific data with regard to Turkana District. Those are details which the Minister for Medical Services is in a better position to provide.

Mr. Temporary Deputy Speaker, Sir, hon. Shebesh raised an issue with regard to the Reproductive Health Services Bill. Yes, this Bill had some challenges in the past and I do agree that with the new Constitution, where we have now addressed the issue of abortion effectively, this Bill should come to the House. This Bill does not necessarily legalize abortion, because abortion is actually illegal under the new Constitution. But what was provided for in the new Constitution is actions to save life, which we all agreed was necessary.

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

**The Temporary Deputy Speaker** (Mr. Ethuro): What is it, hon. Ruto?

**Mr. Ruto:** Mr. Temporary Deputy Speaker, Sir, did I hear the Prime Minister right when he said that abortion has now been legalized by the new Constitution? He did, and all along he has been denying the same.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! Order, hon. Ruto!

**Mr. Ruto:** He did say that, Mr. Temporary Deputy Speaker, Sir, and I heard him. We can get the HANSARD.

**The Temporary Deputy Speaker** (Mr. Ethuro): Did you say that, Hon. Prime Minister?

**The Prime Minister** (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, I actually said the opposite. I said that contrary to what was being said by those detractors during the campaign, that the Constitution allowed abortion, the Constitution has actually illegalized abortion; it states clearly in clear English that abortion is not permitted under the new Constitution.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! In fact, right honourable Prime Minister, you do not need to respond to that one because it is only hon. Ruto who was not listening!

*(Laughter)*

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

Order, hon. Members! We have only ten minutes to the end of the Prime Minister's Time. So, I can only take four hon. Members and you should restrict yourselves to only one question per person. I will take Dr. Eseli, hon. M.H. Ali, hon. Mureithi and, finally, Mrs. Odhiambo-Mabona.

**Dr. Eseli:** Thank you, Mr. Temporary Deputy Speaker, Sir; I wish to thank the hon. Prime Minister for that Statement today.

But, Mr. Temporary Deputy Speaker, Sir, I would have expected the hon. Prime Minister to tell us the stage where the Bills that are related to health care have reached, because we have several Bills that we are anticipating after Parliament and the drafters of the new Constitution failed to put the Health Services Commission into the Constitution. So, we expect that to be enacted. I had expected the Prime Minister to tell us the stages at which all these Bills are, so that Parliament can operationalize them.

**The Temporary Deputy Speaker (Mr. Ethuro):** Order, Dr. Eseli!

**Dr. Eseli:** Could the Prime Minister, therefore, tell this House about bringing those Bills to Parliament.

**The Temporary Deputy Speaker (Mr. Ethuro):** Order! Order, Dr. Eseli! You are repeating yourself. You have made your statement.

**Dr. Eseli:** I was building my case, Mr. Temporary Deputy Speaker, Sir. I have not even asked the question.

**The Temporary Deputy Speaker (Mr. Ethuro):** In fact, you asked it very many times! Proceed, hon. M.H. Ali.

**Mr. M.H. Ali:** Thank you, Mr. Temporary Deputy Speaker, Sir. I would like to inform the Prime Minister that after using CDF money to build more than 20 health facilities in Mandera East over the years, we have not been able to operationalize these facilities for lack of personnel and also equipment. Since the CDF kitty started in 2003 up to now, we have not been able to use these facilities and *wananchi* are accusing us of building just structures without the services in this part of Kenya. What will you do as the Prime Minister to ensure that these facilities in Mandera East are utilized for the purposes that they were built?

**The Temporary Deputy Speaker (Mr. Ethuro):** Hon. Mureithi.

**Mr. Mureithi:** Thank you very much, Mr. Temporary Deputy Speaker, Sir. I want to thank the hon. Prime Minister for his coverage of the reduction and the improvement of access to healthcare. I consider that coverage of medical services is very low, and we still have a problem with some of the infrastructure, like Ol Kalou Hospital, which was built in 1975, and which has been neglected up to now. People continue seeking medical services either from the private sector or from other places in other counties like Laikipia. What is the Prime Minister doing to make sure that these facilities are not only equipped, but are kept at the level at which they are? Ol Kalou is at level IV, but it does not function as a hospital at that level.

**The Temporary Deputy Speaker (Mr. Ethuro):** Lastly, hon. Odhiambo-Mabona!

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Speaker, Sir, I would like to thank the Prime Minister for that Statement. Only last week, we buried Commissioner Mary Onyango arising from cancer. There is a very good friend of mine, a young brilliant man called Meshack who is struggling with cancer right now at Kenyatta National Hospital (KNH). Cases of cancer are alarmingly on the increase and we have very few oncologists in this country that can deal

with all the cases of cancer. What is the Government doing to ensure that we invest in training more oncologists to deal with those cases?

**The Temporary Deputy Speaker** (Mr. Ethuro): Rt. hon. Prime Minister, it is your time to respond and you have a maximum of five minutes!

**The Prime Minister** (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, Dr. Eseli wanted to know the stages of various Bills that deal with healthcare. I do not have that information at hand immediately, but I will ensure that the Minister for Medical Services will get in touch with Dr. Eseli to give him that information. We have been trying to fast-track the Bills that deal with the implementation of the Constitution, but at the same time, we will also push forward other Bills. I know that a number of those Bills have actually been through the Cabinet and may just be waiting for the appropriate time to be published and come to the House.

Mr. Temporary Deputy Speaker, Sir, hon. M. H. Ali has used the Constituencies Development Fund (CDF) money effectively and constructed 20 health facilities in Mandera East. I was in Mandera East last week and I saw one of those health centres. What is lacking now is staff and equipment. I will convey this information and ensure that those facilities are made good use of as quickly as possible.

Mr. Temporary Deputy Speaker, Sir, hon. Mureithi decried the lack of maintenance of existing facilities and mentioned specifically, Ol Kalou Hospital which he says is dilapidated and in a sorry state of repair. Again, I will convey that information, not just with regard to Ol Kalou Health Centre, but other health centres all over the country, to ensure that proper maintenance is done.

Mr. Temporary Deputy Speaker, Sir, hon. Odhiambo-Mabona talked about employing more oncologists. Cancer is one of the non-communicable diseases that I was talking about. In that category we also have diabetes and cardiovascular diseases. These diseases initially were seen to be diseases of affluence. In other words, they were diseases which were mainly prevalent in developed societies and not many in other societies. The situation has changed so rapidly that within a very short period of time, we now have a situation where diabetes, cancer and cardiovascular diseases are some of the biggest killers in our country. Quite a number of our institutions are now training oncologists. I know that they are few in number at the moment. But I am sure that over the next few years, we are going to have quite a number of oncologists who will be able to take care of our cancer patients.

Mr. Temporary Deputy Speaker, Sir, I did also talk about improving the health facilities in our country and investing in state of the art facilities, so that we do not have to spend too much money transporting patients for treatment outside the country, for example, South Africa, India, the United Kingdom (UK) and the United States of America (USA). This is not only robbing this country of a lot of money, but also impoverishing very many of our people. Because the facilities that we have are also inadequate, the costs are generally very high. Sometimes you can say that we have extortionate rates. Recently, we had a patient, a medical doctor, who had an accident. He fell after missing a step and hit his head. He was seriously injured. This doctor spent two-and-a-half months in Nairobi Hospital and died. The hospital bill was over Kshs8 million which had to be raised. You are raising Kshs8 million to pay for accommodation in a hospital for two-and-a-half months. Hospital accommodation is much more expensive in this country than a five-star hotel room. You are paying this money, but the patient has also died. If you are paying and somebody has survived, it is a different matter all together. But you are paying basically to be allowed to take away the dead body. So, some of these are extortionate rates. This is a state of affairs that is unacceptable and we are determined to change

it. This is the reason the Government must invest in state of the art facilities and, at the same time, create a conducive environment for the private sector also to partake of this, so that we can progressively lower the cost of medical care, so that we can make it accessible and affordable to the majority of our people.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ethuro): Well done! Is there anybody with a Statement?

Next Order!

## **BILL**

### *Second Reading*

#### THE LAND BILL

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Land Bill be now read a Second Time.

Mr. Temporary Deputy Speaker, Sir, my task is a little easier because over the last 60 days, the Committee on Lands and Natural Resources has convened several working sessions and gone to various parts of this country to talk to people and stakeholders. As a consequence of that engagement, they held a session in Mombasa about a week ago which I attended. We literary went through, not only the Land Bill, but also The National Land Commission Bill and The Land Registration Bill. I think there was a broad consensus reached on the content of all these Bills. I believe that at the Committee Stage, the House will have an opportunity to engage more effectively and decisively on the issues or content of all three Bills, including The Land Bill. But, I would like to say right from the outset that in those engagements in which the Members of the Committee on Lands and Natural Resources were doing this work--- That engaged several experts and important constitutional bodies, that is, the Committee on the Implementation of the Constitution, the Law Reform Commission and also the Office of the Attorney General. So, largely, the report that has been given by the Chair of that Committee which was tabled in this House, truly reflects those deliberations. Their deliberations have not been confined to the debate during the Second Reading, but the more practical work that we shall undertake during the Third Reading or when the House will be in the Committee Stage.

I want to thank the Committee most graciously, especially the Chairman, Mr. Musyimi and all the Members of that Committee. At the last meeting all the chairmen of all the Departmental Committees of parliament were invited and most of them attended those sessions. These included the Chair of the Parliamentary Oversight Committee or the Parliamentary Select Committee on the implementation of the constitution. The thing that was attractive was the passion. I know the word “passion” has some relevance in this House. The way hon. Members approached this whole issue was very impressive; they were working overtime in order to come out with an appropriate compromise on these Bills.

Mr. Temporary Deputy Speaker, Sir, without having to repeat what I said during the second reading of the National Land Commission Bill and the Land Registration Bill--- Indeed, what I said during the National Land Commission Bill should be taken as part of the record in this debate about the reforms in the land sector. It will be mere repetition in the records of this House if I went through that process while examining the history of land, and the development of

legislation relating to land since the turn of the last century. The challenges that have confronted the issues relating to land during the colonial period, the past injustices are all in the records. So, it would be repetition to say the same things. I said them because I seized the first opportunity during the Second Reading of the National Land Commission Bill. Whereas if in the order of things the Land Bill would have come first, that would have been the time when I should have made the statements that I made in relation to the National Land Commission Bill.

We are in a rather advantageous position because as we look at the Land Bill, which should be taken to be the substantive Bill or the substantive law in relation to land, we have the Sessional Paper No.3 of 2009 on National Land Policy. As you know, under Article 67 of the Constitution, the National Land Policy has been enthroned on a constitutional pedestal, because it is required that there will be a National Land Policy that would inform reform and legislation in the land sector and the management of public land. That national land policy should be reviewed from time to time. So, if you are looking at this Bill, I think the starting point is not so much what is now being said out there in the public but so much Sessional Paper No.3 of 2009 on National Land Policy, which was approved by the Cabinet and by this National Assembly. We should carry out what we call a political or legislative audit of this Land Bill *vis-à-vis* the National Land Policy.

The other very important document is the Constitution. What we are doing in enacting this law is on the authority and mandatory directions given by Article 68 of the Constitution on what is required of Parliament. I will come to that a little later. Again, I invite Members of Parliament to carry out an audit of the Land Bill as against or in juxtaposition to the Constitution as promulgated on 27<sup>th</sup> August, 2010. I believe that if you do that you will find that quite a lot of work has been done in fulfillment of the directions of the National Land Policy and the Constitution.

The other very important consideration on this matter, which we must keep in focus, is the issue of devolution. It is a framework and structure of governance that we have now not only enacted; but by the Bills that you have enacted in this House on matters to do with land, you will find that the county governments and communities are going to play a critical role. So, again, as against the principle of devolution, these Bills, including the Land Bill, can be audited to find out whether, indeed, the land law that is envisaged by these three pieces of legislation underpins the structure and constitutional framework of devolution. I think to a large extent you will find that some effort has been made to underpin not only the spirit but the structure of devolution in ensuring that the management, particularly of public land, is directed and overseen by both the national Government and the county governments. This is in the spirit that under this new Constitution, the people are supreme and sovereign.

With those remarks, let me just say a few of the matters that I need to highlight *vis-à-vis* what I have said about the Constitution and the National Land Policy. The National Land Policy lays down some very critical issues which the Constitution dealt with, and also the Land Bills have dealt with. I do not want to go through them in terms of clauses because that would take a long time. As I promised I just want to highlight some of those issues for purposes of debate. The National Land Policy addressed a number of constitutional issues, which are about seven. If you read the Constitution generally and the Bills you will find that we have made a successful attempt to deal with constitutional issues. Under the old order, property was not defined and it was not clear in the interpretation of the old Constitution as to whether, as was popularly believed, there was protection of all rights and interests over land. Land was never categorized especially under Chapter 5 of the old Constitution. This Constitution has actually defined what

land is. The Land Bill has now carried forward that definition of land and secured the various tenure systems, or system of ownership of land as exists then and now; again, you will find that the Land Bill deals with quite effectively.

One of those issues was what systems of land tenure were recognized at constitutional level, or using the constitution as a threshold. What is an interest or right to land? You find that under that old Constitution, it was very difficult to come up with the definition of property that would be protective of all interest in land under the various systems of land ownership.

Those of you who have cared to look at Article 40 of the new Constitution have seen that under Clause 2, there is a recognition not just of land that its titled; which means that you do not need to have a title to land in order to enforce your interests on land. Generally, under the old law, there was recognition of customary interest in land. However, there was never really a general provision in recognition of, let us say, customary systems of land tenure.

Under Article 40 of the Constitution, you will find, under the provisions that deal with deprivation of rights to private property that for purposes of compensation those persons who occupy land in good faith or have acquired rights of occupation under good faith, they will be entitled to compensation. How does the Land Bill address that issue? If you look at Clause 5 of this Bill, and this is important because during the Debate on the National Land Policy, time and again, a question was being asked that under the Kenyan law, what systems of land tenure are recognized? You could not take one piece of legislation or statute or any regulations or orders that have been made under the law and say that these are the systems of land ownership and tenure systems that are recognized under the law. I think this Bill addresses the issue of tenure. I think before we can begin to talk about land, right or interest in land, we need to have recognition of what systems of land tenure exist.

Under Article 5, you will find that the freehold, leasehold and co-tenancy systems are recognized. This is an area that we will talk about a little bit more; what is called co-tenancy and spousal interest or rights over land. That is an area that is controversial. However, I think that as a starting point, to have this bold statement of the law that this system of land tenure is part of the law of the land is important.

There are forms of partial interest as may be defined under this Act or any other law but not limited to easements. These easements, normally handled in the old law, were really what are described as equitable rights that were recognized by usage and practice. However, under the Kenyan law, we are saying that there are other interests of land which may not be registerable or may be registerable. Again, that is dealt with under the Land Registration Act. This form of tenure is also recognized under this Bill.

We also have the Customary Land Rights and I think this is important because under the old Constitution, there was not such a bold statement even in the provisions that related to trust land. There was no provision making any statements about customary land rights. The position then was that customary land rights were held to be inferior to other systems of land tenure. Under Clause 5(i) of this Bill, you will see quite clearly that the manner in which this ownership is set out is not a ranking, but they are all systems of land tenure that are recognized in our law.

There is yet another bold statement in this Land Bill which says: "There shall be equal recognition and enforcement of land rights arising under all tenure systems." The emphasis is on "under all tenure systems" which as I have said will then include customary land rights. This is on the basis of non-discrimination in ownership because if you interrogate a lot of historical injustices, you will find that discrimination was many times the basis for an unfair system of land ownership.

A fundamental principal which comes under Article 60 of the Constitution is the issue of access to land. Access to land as a constitutional right has been spelt out. What that access is, again, a proper reading of this Bill will clearly set it out. So, that was a fundamental issue that this Bill deals with. It was not just being dealt with out of the ordinary but it was dealt with because it was a gap in our law that when the formation of the National Land Policy came to the fore, there was no security of land ownership, if we can put it broadly. Therefore, this issue has not only been addressed by the Constitution but also by this Bill. If you read the Bill, you will see the regulation of property rights without necessarily endangering that particular constitutional right. You may own land but you are not required to endanger your neighbour or other persons in the enjoyment of that right.

The other issue that has been dealt with very firmly regarding the Constitution was the compulsory acquisition. I think this Constitution, more than the old Constitution, wants a very fair system of compulsory acquisition of land that would not entail abuses that we have seen in the past, where land is acquired for public purpose or public interest and it ends up in private hands. The process of compulsory acquisition is used, merely, to have access to public land with the objective of ensuring that that right is bestowed on private individuals who use it for primitive capital accumulation and speculation. This Bill, in Part 7, deals exhaustively with that, I may say, and if it is not exhaustive---. It says that the Commission shall prescribe a criteria and guidelines for compulsory acquisition. This is something that we need to look at and consider greatly in relation to the fact that public land which will be acquired by the National Land Commission and not by the Commissioner of Lands, the Minister for Lands or the President will be acquired based on the criteria you will find in this Bill. That is found in clauses 121, 123 and 124. The land cannot be acquired unless it is required for public purpose. It must be demonstrably clear that the acquisition is in relation to a public purpose or for a public interest. This is a matter which generated a lot of debate and in the definition of what public purpose or public interest is, you will find that Members of Parliament contributed immensely in coming up with that criteria and definition of what is a public purpose or a public interest.

We will ensure that if land is given for public purpose and it is not used for public purpose, then that agency will not have the possibility or the luxury of selling that land or transferring it to another entity, private individuals included. They either use it for that public purpose or surrender it back to the public. I think that is a very important distinction. If you look at the law governing land acquisition at the moment, it also gives additional protection to owners of property because even before that acquisition, this clause and, more particularly, Clause 123 says that: "If there is any damage made to your property or your land while this process of acquisition is going on, even by mere entry, the County Government or the National Government will have to pay compensation." I think the distinction now which is important in this process of compulsory acquisition is that it firmly falls in the hands of the commission as the entity which will acquire and then, within the guidelines, to ensure that those properties that are so acquired are used for the purposes for which they were meant to be used.

Mr. Temporary Deputy Speaker, Sir, under the current law, which is the Land Acquisition Act, there are no similar provisions. The Commissioner of Lands and the Minister for Lands merely act as agencies for an entity in Government to acquire compulsorily, and the determination is for me particularly as the Minister for Lands. So, when it comes to my desk, the only determination that I am required to make in law is that money is available for that acquisition. But I think this now puts an extra responsibility in the spirit of accountability of ensuring that public land is not given away as gifts or objects of showing patronage and all that.



Those provisions are there in Part VII and I invite my colleagues to look at it. Again, there are provisions of what happens when there is a withdrawal in the acquisition. That is all set out.

Mr. Temporary Deputy Speaker, Sir, the other responsibility which I think I should point out - although that was not a constitutional issue in terms of the national land policy - is generally the issue of settlement of squatters, the poor and landless. You will find that, that responsibility will now largely fall in the hands of the commission. The management of that process will now fall in the hands of the commission. So, the department of Government responsible will be reduced to issues of policy. But when it comes to executing the process, from the outset to the end, it will be the responsibility of the National Land Commission and all that is to be done again taking into consideration other laws like the public procurement processes, the devolved system of Government and all that is there for you to look at in Part VIII of this Bill. That begins from page 406. The committee that will help the commission - if you have a copy of the Bill before you, it is on page 407 - will include a representative of the Governor. A representative of the commission is there as part of that process. The Commissioner of Lands is not there to give directions. Then the National Government will be represented and any person who is appointed or an office so established will be to carry out administrative work at the level of sub counties. Then the women representatives will be there. As you know, in those settlement programmes, women do not normally get a fair deal. This Part VIII of the Bill deals very effectively with the whole issue of settlement and acquisition of land for purposes of settlement.

Mr. Temporary Deputy Speaker, Sir, there were also the issue of categorization of land. You will see that under the Constitution and also under the National Land Policy, land was categorized as either public land, community land or private land. Those inform the systems of land tenure that I had talked about earlier. You will find in this Bill that there is a faithful demonstration of compliance with the National Land Policy and the Constitution to ensure that those categories of land are not there for cosmetic value, but there are principles of tenure that affect each system of tenure like the community land. Of course, the Bill is work in progress and so, I invite you, again, to look at that Bill when it comes.

Mr. Temporary Deputy Speaker, Sir, now the constitutional requirement which was required of this House - and that audit must be carried out as spelt out in Article 68 - was to revise, consolidate and rationalize existing land laws. In all these three legislations - the Land Bill, the National Land Commission Bill and the Land Registration Bill - you will find that when they become law, nearly about 20 statutes will be repealed or provisions of those 20 statutes will be repealed. In relation to settlements that are dealt with in Part VIII of the Bill, you will find that, that will also require review of the law in place. But it will repeal the provisions of the Agriculture Act. There has been an oddity in the sense that whereas settlements and settlement of the poor and landless falls within the mandate of the Ministry of Lands, but the empowering legislation is in the Agriculture Act. So, it is sitting, in our view, not in the right legislation.

So, if you look eventually at the Bills to be repealed by this Bill - the National Land Commission Bill, the Land Registration Bill and by the amendments that are coming courtesy of the work that has been done by the Committee, stakeholders and, of course, the Ministry of Lands, you will find that, indeed, we have, as a starting point, repealed a lot of legislation so that we do not have to have too many statutes connected with land. The Committee has given us a suggestion which I do not have any problem with that, indeed, at some particular time, the Attorney-General will be required to, again, consolidate these three Bills into one legislation. I see no problem with that. Indeed, if we want the Committee to be part of that single statute, I have no problem with that. That is because that will reduce the burden of having so many

volumes and laws which could conveniently be put together into one legislation. In the process of consolidating, revision and rationalization, we have ended up with these three Bills largely because that is what was recommended by the National Land Policy. But the suggestion of the Committee would improve this further.

Mr. Temporary Deputy Speaker, Sir, now, there are issues in this law that are the matters of ideological positions that we take. I think even in the ideological question, there are people who will agree or disagree with them, and hon. Kabando here, I must say without any fear of contradiction that on those ideological issues, I take it and I know we will agree. But with others, we may not agree. So, the spirit of this Bill is to deal with fears and rights and have a compromise. The Constitution directs, and there is no way that we can run away from it on this very critical question, that we must prescribe a minimum and maximum land holding acreages in respect of private land. Members of the Committee were saying that everywhere they were going all over the country, there was nothing as popular as this particular dictate of the Constitution that we must prescribe a minimum or a maximum.

Mr. Temporary Deputy Speaker, Sir, do we do this by picking up a figure from the air or does it require a study to come up with a rational basis for fixing these maximums and minimums? By the way, there are areas I have gone to, where peasant farmers who own one acre. If you tell them that there is going to be a prescription of this type, you will find that there is a lot of opposition because some of them are saying that they own one acre of land and that they could do with another two acres or three acres.

So, this greed for acquisition sometimes is not just with the land agents and those who own large tracts of land, but it permeates even at the level of the peasantry. The question then was, if you prescribed a minimum of 20 acres to a wheat farmer, for example. Would you commercially be able to reap the benefits of your labour if you are to do that on a mere 20-acre farm?

Mr. Temporary Deputy Speaker, Sir, in the case of Canada, where there are similar laws relating to provision of a maximum and maximum, those limits are based on the crops being planted. You look at the area and make a determination as to the kind of minimum acreage that would be required to have an economical and sustainable agricultural enterprise with appropriate returns in any particular given circumstances. You would find that as they go crop to crop, wheat farmers would get even 100 square miles of land as Canada is a large country.

So, the answer to that question in this particular legislation was that the Commission must establish a scientific study to enable us make reasonable judgments and decisions and make the consequent legislation on how this statutory requirement would be enforced and put as part of the law of the land. I think that is reasonable.

Mr. Temporary Deputy Speaker, Sir, there was an issue that was dealing with taxation of idle land, which was contained in the National Land Policy. Unfortunately, it was absent in the Constitution. During the deliberations in Naivasha and even nationally, the question of taxation of idle land was a deal breaker. Many people said that if that legislation found its way into the Constitution, they would vote against it. If you look at the initial drafts that included the element of taxation on idle land, you will appreciate that the history within this House is that it did not find favour with Members of Parliament.

If you ask what my opinion about that would be, I would really be in agreement that some system of taxation of idle land is required, so that you can keep it, if you want, and not use it. If you keep it and you do not use it, you will be taxed. If you use it for cosmetic value, you

will be taxed. Happily, for purposes of this Bill and the Constitution, we do not have to deal with that matter. Probably, a more reform minded generation of Kenyans will drive that process.

Mr. Temporary Deputy Speaker, Sir, another issue that is, again, of an ideological kind, but is dictated by the Constitution is regulation of the recognition and protection of matrimonial property. I am glad that the Leader of Government Business is here because this matter was discussed at another place and it was rubbished very quickly. Those who are addressing this particular sector and gender interests would define “matrimonial property” to be any property acquired or existing in a situation of marriage. So, if you owned a ten storey-building in the middle of Nairobi within the existence of marriage, it will be categorised as “matrimonial property”.

The constitutional implication was that even when it comes to matrimonial home, it becomes even more important. It was not just important as a legal question or a philosophical legal question, but as something which would help the law to deal with what would happen to that property on termination of marriage. I can tell you that this is a matter that is hot out there. There were some presentations which were made in the newspapers today about lack of recognition of gender equality and the rights of women over matrimonial property although this law goes in the way.

Mr. Temporary Deputy Speaker, Sir, I can say without fear of contradiction that within the areas that I have engaged in, taking into account that there are certain categories of property that are used for business purposes, with a restrictive law, probably, it would make business too difficult. Our answer to the question of regulation of matrimonial property and home has been to find a compromise rather than put it broadly in the sense that there was no agreement on this. The Constitution required us to protect and conserve public land access to it. I will come to those clauses which deal with the issue of access to and conservation of public land.

The issue of dispossession of land which may have been unlawfully undertaken has been dealt with through the National Land Commission Bill. So, having gone through the provisions in Article 68, if you are to carry out an audit as to whether or not the Bill before the House has achieved that constitutional mandate or direction, the answer is that it has been largely achieved. Where it has not been achieved, there is a compromise that has been made as a step forward, so that the reform process is not delayed.

Mr. Temporary Deputy Speaker, Sir, there are provisions which, again, I wanted to talk to because this is something which attracted a lot of debate during the formation of the National Land Policy and in the Ndung'u Commission Report. The issue of acquisition and management of public land was a very important consideration. It evoked a lot of debate. If you look at Clause 7 of the Bill, you will see that it deals with how you can acquire land. The various systems of acquisition are spelt out as through allocation, adjudication process, compulsory acquisition, prescription, settlement programmes, transmissions, transfers, long-term leases and any other manner that may be prescribed by an Act of Parliament.

However, in relation to management of public land, if you look at Clause 12, you will see that it provides for a very rigorous process for the Commission to follow, on behalf of the National Government and County Governments, in allocating public land. The whole idea is that even if it is land that belongs to the National Government, so long as it sits in a particular county, that particular county will have to be involved at some point in the process of allocation, and vice versa.

The national Government would be involved to the extent that you may have assets and projects like the national airport which sits both in Nairobi County and Machakos County. You would want, at some level, those county governments to get involved.

Mr. Temporary Deputy Speaker, Sir, the process of allocation must be transparent and accountable. Notices should be given out and opportunity to the public should also be given to ensure that the process of allocation is not abused but is used in the broader interest of the public.

Even those State entities including corporations will be under duty to deal with land in the manner and spirit of the values that are both spelt out in the Constitution and the National Land Bill. Leases, licences and agreements in relation to public land will be equally covered in that process. I hope that we will have your views on this very important matter.

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

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

Mr. Temporary Deputy Speaker, Sir, Part Four deals with community land but only to the effect that it contemplates that particular legislation which will be coming in the fullness of time. That is the Community Lands Bill. Then there are the provisions that relate to the administration and management of private land. Those are found in Part Five and I do not want to go through them because really it is a question of rationalizing what is in place and ensuring that the systems of land administration that existed under the various Statutes are harmonized and made to cohere and in a manner that is user-friendly.

My last shot on this, because I said I did not want to take a lot of time, but I think I have taken sufficient time is; I hope that in this new dispensation in relation to land, and particularly public land, the interest of the people will always prevail. Where the rights of an individual cannot be rationalized as against the public interest, the paramount interest should be that of the public. That is the spirit of the Constitution. The classification of land as envisaged in Article 65 is that all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals. A simple reading of that statement is that the people of Kenya have a radical title and interest to own land in Kenya. To that effect I hope that the abuses of the years past in relation to land will be a thing of the past when we pass this legislation.

With the coming up of the county governments, I hope the land courts in dealing with disputes in relation to land will have a more effective and efficient and not just expedient but a process that will not delay justice in any manner or form. We appeal to the courts, as I speak now, that we have had a history where a lot of public land was taken away from public institutions by characters who were not using that land for any good but merely to make extra money which again if you go to the bottom was used really to create fear and despondency in the politics of the land.

The court should not fear but subject to Article 40 which gives the right to property which is recognized but looking at the overriding interest of the public, there should be consideration. We have had a very bad history where, for example, my learned friend who will second this Bill--- and I want to congratulate him for being appointed the Minister for Justice, National Cohesion and Constitutional Affairs and I think he will be up to the task in many ways-- Already my being with him at various levels underscores this. Therefore, I am delighted that

he is seconding this not only with his capability but also because he is the Minister for Justice, National Cohesion and Constitutional Affairs.

Like in his constituency where somebody took a public institution; a hospital and turned it into a private property, there cannot be any excuse in law or in equity to try and reason out that that person was holding a title and, therefore, you cannot interfere or take away that land from that particular individual.

I believe that for Kenya to move ahead and to make sense in this new dispensation there may be a need to decisively deal with the injustices of the past, both to communities and to the people of Kenya. In the court trying to administer justice in accordance with the Constitution and the law, this broad consideration should be at play. This is because right now, we are having conflicting judgments on whether or not in the spirit of the Constitution we can recover public land or not. There are conflicting jurisdictions. But on the face of it, some of these lands that were acquired in instances and areas that you cannot even sit and wait, but in the name of the people of Kenya for whom we act decisive action needs to be taken under those circumstances. Now that we are going to have community land, and I invite Mr. ole Ntimama to have a sit-in through when we hold workshops and deliberations on community land because I think it should be known to the people of this country that most of the land in Kenya will become, by dint of this Constitution, community land. Nearly 80 per cent of the Kenyan land territory will be community land. How they are dealt with and administered, the community land law which I do not want to anticipate debate on will be very important.

What I am saying is that in our system of courts, if those community interests are not recognized not just in terms of whether the law is there, but in terms of what is moral, ethical and just. If they were to take those into consideration, then my friends who have suffered from these injustices in Coast Province, in the Maa community--- Even without this basic law, just in the name of morality and justice, and when that justice is being pleaded with fountains of justice within the houses of justice which are the law courts, the arguments of communities who were dispossessed by oppression and colonialism should have been determined even without the use of these laws that we are trying to legislate. That is if they went before courts or went before governments that were committed in righting these historical injustices.

I want to say that in some instances although people have thrown words at me where I found that communities have been disadvantaged--- These are the Bajuni, the people at the Coast, the Maa community and communities in the Rift Valley which include the Kalenjin community and even the Kikuyu community. Some people forget that the displacements were not necessarily at the Coast and in the Rift Valley. Even in the Central Province there were displacements that if, for example, you had a more decisive action you will not have those colonial villages that you see in Limuru or in Nyeri. Those should have been things of the past whether it was the law or not just on the simple invocation of ideas, requisites of justice and equity.

I think those are the problems that we have to deal with, yet they remain questions that are still looming large even as we enact this Land Bill.

Mr. Temporary Deputy Speaker, Sir, let us, finally, say that as Kenya is grappling with what is yet to come, and in the spirit of this Constitution we continue to talk about reform; reform is going to come about when there is--- I do not want to use the word ‘crusader’ because in some corridors it may not be the right word. Justice also needs its soldiers. To bring about change, you must have people who believe in change and the land question in Kenya is still a looming question. It was identified as such under the dialogue process at Serena under Agenda

No.4. It was a critical question, a recurrent issue that has caused violence and disputes, displacement and killings. On that question, unless we have a generation of Kenyans who believe in what Gandhi did, that God created enough for our need and not for our greed; nobody can believe in that cardinal principle if in the spirit of greed for wealth, you cannot see anything wrong in one individual owning 500,000 acres of land in an environment where some people, not only do not own land but do not have what they can call reasonable access to land. In Nairobi, we have people who cannot access even a water point, because all around them are just buildings. You go to streams and they are walled. Everywhere is like a huge urban prison and you need to scale these walls to know that a different life exists for a minority of Kenyans. Unless we have people who believe in these reforms and want them for the good of the people of Kenya. these laws may just be a small percentage in the airport, because action is what is required. I think if we are truly committed to the reform process, we must have people who are prepared to be her or his brother's keeper, who is prepared to give a new haven to a suffering brother or sister. For people who see Kenya as belonging to us, as the late Mary Onyango, who was the Vice-Chair of the National Commission on Integration and Cohesion (NCIC)---I salute my brother, Mr. Wamalwa, for coming to that funeral. She had this in vocation and clarion call "Kenya Kwanza". So as we talk of land as belonging to us all collectively as a nation, and community as individuals, can you think of Kenya which belongs to us collectively as Kenyans and not as communities or as tribes?

Mr. Temporary Deputy Speaker, Sir, that is what is the problem with the land question; people look at land as belonging to a chosen few, if I may put it that way. Can we make a paradigm shift and say that when I go for an election, I am thinking about a Kenya that belongs to all of us? When I see a piece of land, I think about the communities that do not have land. I want to engage my brothers in the Government in this; the Minister for Justice, National Cohesion and Constitutional Affairs, probably this will fall under his table. We must continue to tell our colleagues in administration and the police that what we are seeing like in Kibarani where people are being evicted and people think that the Ministry of Lands or the Ministry of Justice, National Cohesion and Constitutional Affairs has something to do with it; those who apply the brute arm of force to carry out evictions and displacements do not belong to the current Kenya, where the Constitution says you cannot move people without telling them where they ought to go. I want, on this platform, to condemn in the harshest terms some of these evictions that are going on in Kibarani. I get calls and I feel so helpless that today under this new constitutional dispensation, we can continue to beat men and women and destroy property as a Government, even in the name of a court order. I think the devil should be ashamed by this kind of conduct.

With those few remarks, I beg to move and ask my learned friend, Mr. Wamalwa, to second.

**The Temporary Deputy Speaker** (Mr. Njuguna): The new Minister for Justice, National Cohesion and Constitutional Affairs, it is your chance now to second.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Temporary Deputy Speaker, Sir, I wish to thank Mr. Orenge for giving me the opportunity to second the Bill before the House and the opportunity to address the House from the very first time from this side.

*(Applause)*

I also thank His Excellency the President and the Prime Minister for giving me the opportunity to serve Kenyans in this capacity.

Mr. Temporary Deputy Speaker, Sir, in seconding this Bill, I wish to thank the Minister and his officers at the Ministry of Lands; the Permanent Secretary; I have seen here the Chief Land Registrar, the Commissioner of Lands, Mr. Mabea and my friend Mr. Murage, the Director of Survey. I know that together with the Minister they have burnt the midnight oil to get this job done. I must also thank the Departmental Committee on Lands and Natural Resources of this House, which is led by my very good friend, Mr. Musyimi. We know that they have contributed greatly to having this Bill get before this House. We also know that the 60 days extension that this House graciously granted them was not wasted. I think it was put to good use and, indeed, within the 60 days, the Minister has been able to come before this House to move this Bill; I wish to congratulate them.

I also wish to say that it is another landmark and milestone in our progress towards implementation of the Constitution. This Bill gives effect to Article 68 of the Constitution which helps in the consolidation of land laws. Mr. Orengo, apart from giving me the opportunity to second this Bill, gave me the opportunity to serve in his chambers when I was fresh from law school. I know that, as a law student, one of the most difficult undertakings in our discipline was land law. There were so many laws that you had to go through as a student and I can see some of them are listed like the Indian Transfer of Property Act, 1882, the Wayleaves Act, the Trespass Act, the Land Acquisition Act, the Registered Land Act, the Government Lands Act, the Land Titles Act and the Registration of Titles Act. To go through the law school and qualify was not easy. Even as a practicing lawyer, still it was with great difficulty when you were serving your clients using so many pieces of legislation scattered all over. Therefore, to consolidate and rationalize these land laws, it is a great step in the right direction. I wish to second this Bill knowing very well that it will go a long way in improving matters touching on land in our country.

Mr. Temporary Deputy Speaker, Sir, I must also say that for the first time, we have a law that will implement the land policy. We, as a nation, know that we shed blood for our land to drive out the colonial masters from the White Highlands and other parts of this country. We know that because of land, we shed blood in 1992 and in 1997. In all the general elections where we had tribal clashes, land was at the centre of it and, indeed, in 2008, it was identified as one of the Agenda Four items that needed to be dealt with. It took us over 40 years as a nation to come up with a land policy. We know that hon. Orengo's team played a major role also in ensuring that the Draft Land Policy went through the Cabinet. We know that it took quite some time and a lot of push from the civil society and other Kenyans for the Sessional Paper to be brought before this House. That land policy was eventually approved by the Cabinet and it came to this House as Sessional Paper No.3. When you look at this Bill, we are very optimistic that now we are not just going to have a policy without the necessary legislative back-up.

Under Section 6 of the Bill, we have the Cabinet Secretary who has a specific mandate of ensuring that he facilitates the implementation of the land policy reforms. We believe that everything that Kenyans aspired for through the land policy, this legislation and other pieces of legislation that will come before this House will be given effect.

I say so, because I was one of those who were on the front line fighting for the land policy. For the first time in our history, we recognized a category of Kenyans that we had overlooked and they are called squatters. Through the land policy and now through this Bill, for the first time, we will put in our statute and our books of law the name of squatters. You will see

on page 10 that for the first time, we are recognizing and describing who a squatter is. It is not a very pretty definition. The word squatter means a person who occupies land that legally belongs to another person without that person's consent. There are many Kenyans who have been squatting, and squatting is a very uncomfortable position if you tried it physically. They have been squatting on other people's land for many years. When I came to this House, I indicated that between myself and my brother Mungatana, we were arguing as to where the headquarters of squatters is and I said that the Trans Nzoia County is the headquarters of squatters, but Mungatana insists that it is the Coast.

Amongst the first Motions that I moved before the House was a Motion on squatters and the need for this nation to identify and come up with means of dealing with the problem of landlessness and squatters. I indicated that when my grandfather came to Trans Nzoia, he was a squatter of one colonial master called Major Hoax. He was a Major in the Second World War. Therefore, as I speak today, I speak passionately about this as a grandson of a squatter. I believe that as we pass this Bill, we are finally, after over 40 years of ignoring a problem, beginning to accept that we have this state of affairs that can no longer be overlooked, whether it is in Trans Nzoia, whether in Kibwezi where we had Kenyans moved to provide for the Mzima Springs or whether it is at the Coast where there are thousands of squatters--- I thank hon. Orenge who has been visiting the Coast several times since he joined this Ministry. We know that with the passing of this Bill into law, we will eventually be in a position, as a nation, to start confronting problems that we have been overlooking all this time.

We also know that as a nation, we have had serious problems and a disease called land "grabbiosis" that hon. Orenge referred. Where I come from, it has been a problem and for many years, we know that we have not been addressing this problem. We know that with the new laws that we are proposing today, there will be proper management of public land and it will no longer be at the pleasure of an individual to turn land into a gift shop to be gifted to his cronies and supporters or those who are politically-correct individuals. I believe that with the passing of this Bill, which I will urge all my colleagues in the House to pass, we will have put in place the steps that we undertook after the Serena Talks to address as a nation before the next general elections under Agenda Four. We know that several other issues have been addressed, but amongst the sensitive issues recognized under Agenda Four, the land issue was key. It was one of the most sensitive and emotive of all the issues. The other issue was the problem of the youth and unemployment.

As I speak, as the sun start setting on the Grand Coalition Government, we know that these two areas were yet to be addressed under the Agenda Four item. Today, as we pass this Land Bill, we know that there are issues of communal land. There are communities in this nation who have talked about historical injustices and they have cried out for years to be considered. Amongst such minority and marginalized groups, we have the Endorois. I was privileged as Minister upon my appointment, the first task I undertook was to address a workshop of the minorities and the marginalized. We engaged with the Endorois who had to go to the African Court to get justice. In a land mark ruling that was delivered, the Endorois who come from Lake Bogoria were granted a favourable judgement. I know the Minister for Lands had visited Lake Bogoria and made an undertaking. I wish to remind him that after the land mark ruling that gave the Endorois back their land, he visited Lake Bogoria and this community and indicated that the Government was willing to implement the ruling of that court. They are still waiting. We are hoping that we will consider such minorities and the marginalized communities through the land laws that we are passing now and the Constitution that provides and protects the rights of



minorities and the marginalized. As the Swahili says, “*mnyonge hana haki*”, but under the new constitutional dispensation, *mnyonge atakuwa na haki*.

*(Mr. ole Ntimama fell down and was assisted  
by other hon. Members and orderlies)*

Mr. Temporary Deputy Speaker, Sir, I do not wish to take up much time because I know that several Members are waiting to contribute to this Bill. I know that when the Community Land Bill comes, we will be addressing these issues. I wish to second this Bill and to give room to other Members to also contribute. Thank you very much.

**The Temporary Deputy Speaker** (Mr. Njuguna): Let me start by thanking those who aided hon. ole Ntimama! That is a supplementary point.

*(Question proposed)*

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me this opportunity to talk about this very important Bill called the Land Bill.

Mr. Deputy Speaker, Sir, I, first of all, want to say that I support this Bill fully. In fact, I had supported all the other Land Bills which were moved by my friend, hon. Orengo. I also want to congratulate the Minister for handling these very sensitive and crucial Bills and really steering them through. Whatever is left I know is going to be done properly and, definitely, for the benefit of this country.

Mr. Temporary Deputy Speaker, Sir, it is true that hon. Orengo and his team have done their best in trying to get the people of Kenya to understand these Bills and to understand the fact that land is so important to them that they must know what is happening in these Land Bills, especially in relation to the new Constitution. I want to really congratulate hon. James Orengo for taking time and for really doing his best together with the Committees of Parliament and many other professionals. That is why we have these Bills now, which I think are going to benefit the people of this country, indeed. We know very well that land is a very sensitive issue in this country. Most of the problems that have befallen this country have actually revolved around land issues. So, it is important that we go through these Land Bills very carefully and talk about them so that we get what we think is important for the people of this country, so that we do not go back to the old days of conflict over land and so forth.

Mr. Temporary Deputy Speaker, Sir, I want to talk a little bit about community land. Community land under Article 63 of the Constitution is very clearly defined. I want the Minister to understand that community land is related to devolution. Devolution is the essence of this Constitution. This Constitution is really based on devolution and mostly in simple language and simple principles; devolution is so that the people on the ground - the lower groups down there - will be able to decide their own affairs and their own fate, as the case may be. Land is one of the things that must be part of the devolution so that the lower people on the ground will be able to manage and steer their interest on land based on their own whims and aspirations. That is the most important thing. Why am I talking about community land? I know that we have had many problems on land. But I think it is so important especially in the part of the world that I come from. We have group ranches which actually are part of community land, which they brought

together--- Factors of management of livestock, water and arid areas are such that they need people to come together and manage their own affairs as a group.

Mr. Temporary Deputy Speaker, Sir, I think it is very important to give those people the opportunity really to manage their own affairs seriously. That is so important. I have an example. We have had ADC farms. Those ADC farms were actually brought up by the Government of the day so that the people of Kenya - farmers of Kenya - can have breeding stock in livestock, sheep, pigs and even chicken but, Mr. Temporary Deputy Speaker, Sir, you know that very well. You know about this country just as much as I do. All those ADC farms were sold to people. They were subdivided. Literally, they were destroyed. We have had no other chance of breeding stock; really pedigree stock for this country. I think if we have something like community land, we could be able, with the help of the Government and the people who own those piece of land, to develop some of those breeding stock which can help our people.

We have an example and I am sure my friend, James Orengo, knows about it. There is a farm called Purko Sheep Ranch, where I was actually, particularly instrumental, when I was in the county council many years ago. I helped that farm so that we can have breeding stock for sheep. We gave it to the farmers so that they can develop their sheep and cattle. It is community land. We are still running it. But it would really help the Purko community to be able to change their livestock and sheep. Any group like that, with the direction of a good department of veterinary services, would be able to do a lot. With the protection of the law now on community land, it should not be destroyed like they have done on all the other ADC farms.

Mr. Temporary Deputy Speaker, Sir, I also want to say that some of these areas can actually help in many ways. I am the Minister of State for Natural Heritage and Culture. During the 1911 Agreement of the white men and the Maasai, which was the first agreement, which was actually never honoured by the British--- When they moved us there long time ago, they set the agreement- It is written in the 1911 Agreement that some 2,000 acres of a certain area which is presently, I think, Kinangop or Nyandarua or whatever it is--- I do not know what it is but it was set aside so that cultural ceremonies can be done in that area. Some of them are so important and are known all over the world. For example, we have the Uloto and, probably, Enkepata. Those are things that have been documented by some cultural groups in America and even in England. They are very well known and we think we need documentaries even in this country for some of these things, so that we do not lose our culture; or so that we can keep it going for our future generation.

Mr. Temporary Deputy Speaker, Sir, I want to say that when we were moved out of the Rift Valley, part of it, definitely, that area was set aside for ceremonies. But when the second settlement came through the trust funds, it was actually swallowed and allocated during the settlement trust fund and that area disappeared.

We have no problem in getting some of these areas for ceremonies. In fact, we are beginning to say we can carve out some areas of the forests, so that this thing can become communal, and so that we can perform our cultural ceremonies there; we still have them and we want to maintain them just for the future of our community. So, I want to emphasize the fact that community land should actually be taken very seriously by all of us.

We also know very well, Mr. Temporary Deputy Speaker, Sir, that the local authorities have grabbed some of these lands. They have been pretending that it is trust land for the people but in the real sense, most of these lands have been grabbed; most of these lands have been sold to people who are not the right people. These are the areas that we want really separated, so that the communities can have them because of the communal benefits, the community itself and

because of certain reasons like that the community will benefit; these can be protected. I think that is really the most important thing.

Mr. Temporary Deputy Speaker, Sir, I think it is important to separate some of this community land, as I said, from what they call “trust land” because trust and like ADC farms has also been badly misused. The local authorities have distributed or sold it with little or no management at all. I think it is so important to identify some of the community land; with the help of the Government and some professionals, proper committees can be established with the responsibility to look after this land for the benefit of other people.

*(Applause)*

This is also so that we can separate some of these things from the towns and other areas to get the community to own something which they can benefit from.

Mr. Temporary Deputy Speaker, Sir, before I leave this issue, I want to say that in the Constitution, we have this question of historical injustices. It is so important and it has been very well documented in the Constitution; historical injustices should be addressed either through petitions in Parliament or through petitions to the National Land Commission---

*(A mobile phone rang)*

**The Temporary Deputy Speaker** (Mr. Njuguna): Sorry; can somebody check that strange voice in the House as we continue? Continue as that is being checked, hon. ole Ntimama.

**The Minister of State for Culture and National Heritage** (Mr. ole Ntimama): Shall I continue?

**The Temporary Deputy Speaker** (Mr. Njuguna): Yes, continue.

**The Minister of State for Culture and National Heritage** (Mr. ole Ntimama): Thank you, Mr. Temporary Deputy Speaker, Sir. So, these historical injustices are real and they are, definitely, some of the things that must be addressed. We seem to not seriously think about them; we seem to go over them without really putting some emphasis on them. These historical injustices are real, and unless we really try and sort them out, they might be a source of trouble in the future. If there was anything called establishing, studying very carefully--- In fact, we should establish a proper professional committee under the Ministry of Lands to look into some of these historical injustices, the loss of life, the loss of land and all these things by certain communities from the Coast right through to the northern Rift Valley. I think it could help the Government to try and settle people. In a way, for example, if there is anything to do with compensation, then the people should be compensated. If people lost hundreds or thousands of lives, then they should be paid reparations. This is because this Government took over from the British Government and I think in a way, it is the successor to what the British actually did to the people here; it should be responsible for some of these injustices that have taken place. If it is reparations, if it is compensation, if it is just a question of saying “We are sorry that it happened-- We have seen some of this in the world. We have seen the Prime Minister of Australia apologize to the Aborigines of Australia for the land they lost; we have seen some of this land being given back to them; we have seen them being handsomely compensated, so that their schools can be rebuilt, and so forth. The bushmen of South Africa, for example, who lost their

land also got it back. They got just a little bit of it before Verwood relinquished the reigns of power of the then South African Government.

So, Mr. Temporary Deputy Speaker, Sir, what I am trying to say is--- What am I saying? We should establish this thing; this Government and its successors cannot run away from some of these things. It should deal with them properly through this House, through the Land Commission or through other committees that can be established to make sure that we deal with historical injustices. We cannot leave them hanging because they might give us more trouble as we go on; people normally want to see that some justice is done. The Constitution provides justice for all, and you must make sure that even those who were robbed of their land forcefully or cajoled get justice by being rewarded justly by the Government of the day.

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

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Bill. I would like from the outset to thank the Minister for Lands for really bringing this Bill, which is overdue, in fact, going by the requirement of the Constitution.

Mr. Temporary Deputy Speaker, Sir, as one of the Members of a Parliamentary Select Committee on the Constitution, I participated fully in the issue of land in the Constitution. When you look at Articles 60 to 68 of the Constitution, they cover the land issue. The Bill does bring out certain aspects of the Constitution which are very important. But there are certain areas in the Bill which are winding, and which I would like the Minister and his team to go and look into.

Mr. Temporary Deputy Speaker, Sir, Article 60 (1)(b) talks about security of land rights. When you take that and you go all the way to Article 67 on the issue of the National Land Commission--- Article 67(e) says that the National Land Commission will address land historical injustices and Parliament will make legislation on this. That is why we are here. I would appreciate that when the Land Commission becomes operational, it should address the very important issue of land by finding something in the Ministry of Lands which will give them direction; there are issues of land policy. The principle is security of the land. I am not very sure whether that has come out quite clearly.

Mr. Temporary Deputy Speaker, Sir, my colleague, hon. ole Ntimama, has talked at length about community land. Community land is captured in Article 63. I talk at length and with passion about community land. When you look at Kajiado County, for example, the Amboseli National Park, which is part of the community, has continued to remain a national park, when it should actually have been part of the community land. So, those are the issues which eventually will be captured by the National Land Commission.

Mr. Temporary Deputy Speaker, Sir, if we are serious on addressing land issues, we should appoint proper, qualified and genuine people to the National Land Commission. They should be people who have land. You cannot bring somebody who has got no land to manage land. So, we want people who understand historical injustices and know what the issues are---

*(Loud consultations)*

**The Temporary Deputy Speaker** (Mr. Njuguna): Could the hon. Members lower their consultations, so that we can also hear the contribution by the hon. Member?

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Temporary Deputy Speaker, Sir, regarding the issue of the sale of land, if we cannot create laws to curb the sale of land, there are communities which will be marginalized. We are already threatened with dirty money. People want to clean dirty money in Kajiado County by coming to buy land at exorbitant prices. Sooner than later, the Maa Community of Kajiado County will be totally marginalized. I want the Minister for Lands to bring a legislation that indicates that before you sell land, we must sit down as a county. In fact, I want to propose that every county should have a vetting committee because land boards are very corrupt. We should create land vetting committees based on communities. If we are capable of repossessing that land from that individual who wants to sell it, we should do it. We can even create a fund to help those who are in need. This is because sometimes when you are in need and you have no other alternative of getting resources, then you may be tempted to sell land. By the way, the majority of our people are not educated. If a *mzee* is given Kshs1 million per acre and he has got 2,000 acres, he can say: "Why can I not sell 10 per cent of the parcel, which is 200 acres?" Whoever is buying this land will subdivide it into portions of a quarter of an acre. A family of five will move into a quarter of an acre. If 200 acres is divided into portion of a quarter an acre each multiplied by five family members per portion, the Maa Community will be marginalized. I hope that you are getting what I am trying to tell you. I am a scared person and that is why I remained here to contribute to this Bill.

Mr. Temporary Deputy Speaker, Sir, we have talked at length about the issue of injustices. *Mzee ole Ntimama* also talked about it. The land in Laikipia, for example, was taken away from our community. If you talk of Rift Valley, this land was taken away from a community. When we got Independence, instead of the Government of Kenya either compensating or giving back this land to the rightful owners, they created something called Settlement Fund Trustee (SFT). First of all, they created Agricultural Development Corporation (ADC) farms which eventually they gave their cousins, fathers, brothers and mothers, yet this is our ancestral land.

**Mr. Kiuna:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to ask the hon. Assistant Minister whether he is in order to mislead this House that there is specific land or areas where a specific or certain community is supposed to settle. I thought that all of us are Kenyans and every Kenyan has the right to own land and live anywhere in the Republic of Kenya. Is he in order to mislead this House?

**The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry):** Mr. Temporary Deputy Speaker, Sir, I am not against any Kenyan owning land anywhere in the Republic. First and foremost, I am a patriot and fight for the rights of Kenyans. I am not talking about citizens buying land by right. I am talking about the Government dishing out land without considering the previous owners. We should have been given the opportunity.

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

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

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

Mr. Temporary Deputy Speaker, Sir, I do not want to engage the hon. Member.

**Mr. Kiuna:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House again by saying that the ADC farms, which were Government property, were dished out to some cousins? Could he substantiate and name these cousins that he is talking about?

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Mr. Temporary Deputy Speaker, Sir, he is one of the cousins I am talking about. If it was not for the *Mzungu*---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Assistant Minister! Address the Chair!

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Mr. Temporary Deputy Speaker, Sir, let me be a bit casual because I think the hon. Member wants to engage me. He thinks that he can destruct my line of thought and contribution.

**The Temporary Deputy Speaker** (Prof. Kaloki): Proceed!

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Mr. Temporary Deputy Speaker, Sir, every Kenyan has a right to live anywhere in the Republic of Kenya, and I will stand by that. I wish Kenyans could elect me as the President of this Republic. We will streamline certain areas.

Mr. Temporary Deputy Speaker, Sir, I was saying that at Independence, the land which was taken away from certain communities by the *Mzungu* was never given back to the rightful owners. I gave an example of Laikipia and a certain part of Rift Valley. I do not know why the hon. Member cannot wait until I finish.

Mr. Temporary Deputy Speaker, Sir, the other problem of historical injustices involves a big issue which the Kenyatta and Moi regimes continued to overlook. I said that the principle of land is security of land rights, and it is in the Constitution. Article 67(e) says that when the National Land Commission is put in place, it must address historical land injustices. One of the historical land injustices is the boundary between Kajiado District and Machakos District, which is the railway line. Part of the Kajiado land has been "eaten." It has been negotiated by the Government and given to certain individuals. You take land that belongs to a particular community, so that a certain Minister can get a flag. Can you imagine this? So, we want the Minister to correct that. At Independence, the boundary between Kajiado District and Machakos District was the railway line. How come then that the Kenya Meat Commission (KMC), East African Portland Cement and Export Processing Zone (EPZ) are now in Machakos District? These are the historical injustices which should be addressed.

Mr. Temporary Deputy Speaker, Sir, the other point which is very important is that I have not seen in the Constitution where it says that certain rates will be levied on land. I hope the National Land Commission will come up with that. I would propose that apart from the normal transactions, the other places we can levy rates on should be municipalities, towns and cities because of the innocent small farmer in Todonyang, which is a dry rock where we can get oil. I do not think you can levy rates on a farmer or somebody who lives at a place called Bute Helu in the middle of Wajir. You cannot tell that person to pay rates. Those are issues that we need to look at.

Finally, I want to emphasize on the leadership of the National Land Commission. Those people who have land must be remembered in leadership because those are the people who have the passion for land and are able to take into consideration the right decisions and the right policies.

I do thank the Minister for this very well prepared Bill, but there are certain areas which need some cleaning. I would like to make that proposal to him.

With those very few remarks, I support.

**Mr. Mututho:** Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. As I support it, at the outset, I want to reintroduce myself and say that I am the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives. Just in case this august House forgets, I would like to remind you that there are four factors of production in agriculture, whether you are in Europe or Africa. These are land, labour, capital management and entrepreneurship. Therefore, activities on land affect agriculture wholly and that is the beginning point. I have listened keenly even while I was outside there the contribution of Mr. ole Ntimama, my senior, and also that of the Major-General. We may have our emotions but it is good to remind this august House that we have inherited fairly bad behaviour from the colonialists, that one of not honouring critical agreements and covenants that have been entered into between parties. Supreme among them was the Maasai Treaties of 1910s. The basic understanding and the terms thereon were such that certain parcels of land were to be vacated by the Maasai in exchange for certain rights. I encourage hon. Members to go to their libraries and check on specific terms and what was envisaged then. After that, Kenya became a colony in 1920. In 1923, land issues were heating up and two events took place. First and foremost, there was this wonderful man, God let him rest in eternal peace, Mzee Jomo Kenyatta, then a young man. He fought a whiteman around Globe roundabout; it was because---

**The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry):** On a point of order, Mr. Temporary Deputy Speaker, Sir. I have the agreements between the British and the Maasai of 1904 and 1911. What I was alluding to was not an agreement between the whitemen and the Maasai. I was saying that the Government which came after was the one which did not return the land which belonged to certain communities. Is the Chairman of the committee on Agriculture, Livestock and Cooperatives in order to mislead the House?

**Mr. Mututho:** I think the Maj-General was interrupted by the Minister; so he did not get the gist of my argument. I am saying exactly the same thing, that we have a tradition of not following agreements and covenants. I am now tracing events from 1905 all through to 1923. In essence, we are talking about the same thing. The reason for which the late President Kenyatta went to London was because some old men who were seated at Grogan Road heard the story that there was a young man who had fought a whiteman. The young man was called Kamau then. They thought it was not proper and, therefore, they looked for him and gave him a scholarship to go to London and learn the whiteman's ways and then come and rescue them in land matters.

So, land issues started heating up in 1923. In that year, there was a commission instituted and then there was the Devonshire White Paper. The import of this paper was that Kenya was basically an African country, and whatever you wanted to do, you had to have Africans in mind. Africans did not mean Kikuyus, Luos or the Maasai but all of us. Whatever development was to follow thereafter, their interests were to be supreme. It is sad that by 1953, the colonial government thought it honourable for those people who supported Mau Mau to lose their land. That went through the equivalent of the Kenya Gazette. We are familiar with the ordinances of 1953. All those ordinances named parcels of land and people by name and they lost their land.

We went to Lancaster to do a new Constitution but even before going there--- I seek your indulgence to tell you that in Rift Valley itself, there were people like our grandfathers who had settled in three spots, Eburu, Dundori and Olenguruoni. Those people sat there believing that they were in their land. The Maasai had gone to graze in the low land near the hills. Another

community of Somalis were bringing down a gentleman called Delamere. Delamere came and thought that all land belonged to him. So, he took all the land from Ngong Hills to Njoro, including those parcels of land which had already been occupied by Kikuyus and they became squatters. Many things followed thereafter. The Late Bishop Kinyanjui, who died last week, may God rest his soul in eternal peace, in his book talks about destruction of forests, but nobody did as much destruction as the whiteman himself. They had mills for timber and we were exporting it all. That gives the genesis of the events.

When hon. Martin Shikuku and his group went to discuss the Constitution, Delamere wrote a letter. Because he was a whiteman, he was treated very kindly. Therefore, they sanctified all title deeds and the instruments which had been issued by the colonial government. So, they were incorporated in our Constitution, thereby preserving Article 75 of the old Constitution. It is that article that brought about Cap.295 and others just to make sure that the land which was taken by colonialists officially belonged to them.

Come Independence, the African Government that came into existence reckoned that a total of 11 million acres had been taken from Konza all the way to Laikipia, Nakuru and Kitale. Eleven million acres of land were taken. They agreed that they could not be taken back by force because the Article 75 of the old Constitution did not allow it. There could only be compensation.

Since the new Government was a blue government, so to say, they can only do in bits. Therefore, they worked on the one million acre scheme. Some of the first one million acres became the Agricultural Development Corporation (ADC) farms while others became settlement schemes like in Nyandarua and other places, and it is mostly what people talk about. However, with regard to the 10 million acres, nobody bothered again to come and follow systematically how do Africans get back that land. So, as much as we want to talk about politics, our own tribal differences, leadership differences, political differences and party differences, these are hard facts. There were agreements and considerations. If we followed the 10 million acres, we will come back to a situation which is very harmonious.

This brings us to the question: What do we do? We can and we shall do it if we localize the local land commissions because the local people understand their situation better. The Maasai - I would hate to be seen to be praising them - live with our wildlife and they are ecologically sound. They do not eat antelopes but their neighbours, the Kamba, do. The Maasai have stayed in harmony ecologically with the antelopes and have balanced the ecosystem. They have followed a certain migratory pattern over time. When you restrict that movement, then you must also introduce science into the art of land administration and management. I am saying that it is one thing to come and declare counties but it is another all together to identify livestock and wildlife movement corridors following the natural patterns that are agreeable. Neighbours will always talk to neighbours. We are Africans and in the end, we will agree.

Mr. Temporary Deputy Speaker, Sir, Nakuru, Narok, Kajiado, Laikipia and Samburu counties can sit and agree that certain areas should be set aside for certain considerations. About injustices, they are not only restricted to the Maasai but also to the Kikuyu, for instance, around Lavington and Westlands. That land belonged to three families. That is Wanyee, Muchene and Kinyanjui. There is no record anywhere that they sold that piece of land. However, they allowed, in utmost good faith, the white man to settle. The white man settled to an extent that he created Lavington, Muthaiga and all the other areas. The land south of the railway belonged to the Kamba. Even when we were young boys, where we have the Kenya Commercial Bank



(KenCom), the Maasai cattle used to water there. There used to be a spring out there. This is just the other day. These are real facts.

Mr. Temporary Deputy Speaker, Sir, I rise here to support the Land Bill because we now have science. We can now read and google all these facts. A Delamere letter can be found and all these facts are plain, simple and clear. The Lands Commission can be localized so that the Registrar of Titles only sees Nairobi as a way of notification and for harmonization. However, most of these land issues should be dealt with at the county and local levels. The local land registrar at the county level must be powerful enough to harmonize these events. I have dealt at length on the history, and even the latest that we had in 2007. We promised the IDPs that we will settle them. However, this Government with a tradition of not honouring agreements has continued to keep them in tents and I do not see any hope for them even in the next few years. These things can be sorted out locally.

As I support this, on the high value land now being identified in Konza and other places like Turkana where we have discovered oil, always remember at the back of your mind that that land belongs to some people. These are poor people who cannot even understand, cannot afford anything and did not even go to school. If there will be any proceeds from those high value land because of new found resources and thinking, then the full value must be realized and transferred to the right owners which are the local communities.

I thank you, Mr. Temporary Deputy Speaker, Sir. I support this Bill.

**Mr. Kiuna:** Mr. Temporary Deputy Speaker, Sir, I also rise to support this Bill. As I support it, I do not know what we will do. I do not know where we will start because at the moment, if those brothers and sisters who are in the Ministry of Lands are the ones who will implement this Bill, I do not think we will go anywhere. I hope that the Minister for Lands is listening wherever he is and his officers are also very attentive. We will speak here and pass this Bill but if there are no people down there to implement the Bills and Acts, it will just be a waste of time and I do not think I belong to that category.

If I can go back to history, *mheshimiwa* Mututho from our county, Nakuru, has elaborated. He has talked at length about historical injustice, not only in Central Province but all over the country. If I can refer to the days before Independence, in Central Province, our forefathers who sacrificed their lives and went to the bush to fight for the liberation of our dear country left their land but while they were out there, all their land was taken away by the homeguards and those who were loyal to the Colonial Government.

After attaining Independence, when they thought that they were coming to celebrate their sacrifice, those who survived the bullets and the cold in Mount Kenya and Aberdare Hills, they found that all they had left had been taken away by the homeguards and their sons. They pleaded with the Government to be considered for resettlement. However, when they approached the Government, they found that the sons of the homeguards are the ones who had occupied all the Government offices. Their plea could not be heard and up to now, those who are still alive are landless and their sons are the ones who are roaming in major towns looking for employment. Surely, if we talk about historical injustice, I do not know where we will begin. I come from Rift Valley where I was born, brought up and still live. My late father and my later grandfather were also born, they were brought up and died in the Rift Valley.

I remember what my grandfather used to tell me on how they migrated there. When they found the *mzungu*, they became squatters and casual workers. But after independence, those big farms changed hands from the white man to another black colonialist. There are still so many landless people in Rift Valley and, more so, in Nakuru County. I do not know how the Minister

will go about it but, at least, he needs to go back to the drawing board, sit down with his officers and find a situation to those forgotten fellow Kenyans so that they can be reconsidered for resettlement.

When we come to community land, I sympathize with those dear fellow Kenyans because all the land that they occupy, they regard it as community land. However, there are those rich few individuals who have invaded their land. They are buying it at a throwaway price. So, I will request the Minister and his officers to move very fast and start educating those communities, wherever they are, to know the importance of their land. That is because there are those people who are roaming around in those areas and, eventually, they will sell that land and they will be left homeless.

Mr. Temporary Deputy Speaker, Sir, for catchment areas, the Government should try to find a way of containing and retaining them so that people are not settled there. More so, there are those few areas like water catchment towers which are very dear in our country. The Minister should try and annex them and set a boundary so that those few remaining catchment areas are well preserved. I am saying that because I come from Nakuru County and we have the Mau Forest. Sometimes back, it was invaded--- In fact now, it is more or less turning into another desert. I thank the Government because it has taken some action and some remedy. But we should protect those catchment areas jealously.

So, with those few or many remarks, I support the Bill and thank you.

**The Assistant Minister for Industrialization** (Mr. Muriithi): Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support and, as I do so, let me say the following: First and foremost, reforms in the land sector, in my view, ought to be guided in part by an effort to do restitution – an effort to right wrongs of the past.

Mr. Temporary Deputy Speaker, Sir, if you look at Australia 10 to 15 years ago, the Supreme Court in that country found out that even though the land rights of the Aborigine people had been taken away from them - say 500 years ago - the fact that the State or all those who were able to take those property rights had the force or the means to do so, that really did not extinguish the rights of those Aborigines.

Therefore, along the whole question arose the question of what is the appropriate restitution of those property rights. Four hundred years down the line, it may not be possible to undo the things that have happened on parcels of land across Australia, but it is certain possible to say what recitative action the Government could take. Therefore, I believe that the reform in the land sector should really be driven by some of these key principles.

Mr. Temporary Deputy Speaker, Sir, I believe that with regard to these Bills, and perhaps many other Bills, we need to approach the drafting in a way that makes it easy for everybody to understand what is being said, regardless of whether you are a lawyer or not. I can see two senior lawyers behind me. If you are a poor farmer in Sipili or Ronyek or Rumuruti or Kangundo, you should understand what it is that is being done. I believe that we need to put in more resources to enable the capabilities of drafters to be what they should be. I do not think the way to do it is to hire expatriates and pay them large sums of money. What we should do is to ensure that our own personnel are well compensated and that they get their dues.

The other principle that I think should inform us in moving forward is the whole question of sustainability of land use. For example, in Laikipia, which I represent here, there are tracts of land where, we, as peasant farmers, have been attempting for the last 20 to 30 years, to make a living by growing maize, beans and other crops. We, as households, have ended up becoming poorer. So, in my view, one of the things that the regime of land administration ought to do is to

encourage us to make use of land in ways that will help us to benefit and have economic value out of those lands.

Mr. Temporary Deputy Speaker, Sir, hon. Mututho talked about the same question of sustainability. For example, he raised the question of what became of livestock and wildlife migration corridors. One of the sources of anguish amongst us today is human-wildlife conflict. A week hardly goes by without a citizen being trampled by an elephant or mauled by a lion in Laikipia and many other areas. This is a weekly occurrence.

We, as a country, have to make up our mind. If, in fact, we have decided that we are doing conservation since we have wild animals, this is the basis of our tourism, we also have to be able to ask ourselves how we will manage, live and create the right facilities, so that we do not settle on land meant for conservation, as we have done now.

Mr. Temporary Deputy Speaker, Sir, we have settled citizens for purposes of agriculture between spaces we also expect wildlife to roam. So, if you go to areas like Mwenje, Sipili, Mutara and other areas, where small scale-farmers have literally settled side by side with areas where wildlife is expected to roam around in search of pasture, you will find that the resultant human-wildlife conflict is such that the citizens feel disenfranchised.

So, I do believe that as we come up with these reforms through this legislation, we should be looking at that.

Mr. Temporary Deputy Speaker, Sir, one thing that we can and must improve is the whole question of the rule of law and, therefore, respect for private property rights. In many areas today, citizens who have title deeds or leaseholds to land find that they cannot use those pieces of land because of conflict. For example, where the law allows for adverse possession and yet the citizen cannot go to her land in Narok ranch, Mutukanio or Runyeki because of conflict or because her security is threatened, I think we need to do better. We should find a way to really enshrine and prioritize respect for private property rights over issues such as adverse possession.

I also want to say a couple of things about the efficiency of the registries. This is because you will notice that a lot of commerce in Kenya is, in fact, dependent--- For example, financial transactions or lending to small business is extremely dependent on the ability of the registries to do the work and do it in a timely fashion. I think this is an area that requires a great deal of improvement.

I do not know why it should take several weeks or, indeed, months to accomplish, for example, registering some of these things. If somebody has taken a mortgage on a property, I think within seven working days, it should be possible that those things are recorded and, therefore, commerce moves in the speed that it should.

In addition, that efficiency of registries is, in fact, what we have spoken about I think now for 10 or 15 years. That is making the registries electronic in order to speed up these transactions and perhaps to avoid human error and also guard against corruption and so on. Why is it that in this day and age we should end up with, for example, two public interests being allotted the same parcel of land? It is just yesterday that we were dealing with a case in Nyahururu where Laikipia University and the Child Welfare Society have found that they have been allotted the same parcel of land. The efficiency of these land registries and their ability to deliver what it is that they are supposed to do, in my view, is critical.

Mr. Temporary Deputy Speaker, Sir, I want to conclude by saying that I know that a number of amendments are proposed. Since the question of land is so central to our whole world view as Kenya and our livelihood, I think we must do the very best we can to make sure that we

end up with a law that is not just credible but is seen to be credible and that citizens and others feel that it is a law that will assist us to manage land in the best way possible.

Mr. Temporary Deputy Speaker, Sir, I support this Bill.

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Minister, you can now proceed and reply.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I would like to thank all the hon. Members who have spoken to this Bill; contributions have concluded with the eminent contributions by Messrs. Muriithi, Kiuna and Mututho. Maj-Gen. Nkaisserry, Mr. ole Ntimama and my Seconder, Mr. Wamalwa. I would like to urge my friend, Mr. Muriithi, that when we come to the Third Reading of the Land Registration Bill, that there is a cocktail of amendments that are coming and that, probably, will be the appropriate time when some of the issues that he has raised about efficiency of registries will need to be looked at. I think hon. Members who were in Mombasa with me, courtesy of the Committee, dealt with those issues.

I would also want to commend the historical perspective that has been given by Mr. Mututho, but say that now is the opportunity to deal with some of those historical questions and generally the land question by enacting a law that fully complies with the vision, and, as Mr. Muriithi put it, the world view encompassed by the new constitutional dispensation. Even concerning the issue of the historical injustices, I think there is a wide mandate which has been given to the National Land Commission to try and deal with historical injustices.

I, therefore, without further ado, 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)*

*Second Reading*

THE JUDICATURE (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Minister!

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, it looks like many of my colleagues left on the basis that the previous Bill would take a considerable period; but as you can see, the debate has gone on quite fast and quite expeditiously; people were worried about timelines.

So, I would kindly suggest that probably this is a convenient time--- But I do not excuse the hon. Members who should have moved this particular business; I think many of them expected debate on the previous Bill to go on until, probably, tomorrow.

**The Temporary Deputy Speaker** (Prof. Kaloki): Fair enough.

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, there being no other business, the House is, therefore, adjourned until tomorrow, Thursday, 19<sup>th</sup> April, 2012 at 2.30 p.m.

The House rose at 6.25 p.m.