

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 3<sup>rd</sup> December, 2009

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### HON. MEMBERS RETREAT ON DRAFT CONSTITUTION

**Mr. Deputy Speaker:** Hon. Members, you will recall that the harmonized Draft Constitution of Kenya was published by the Committee of Experts on Constitutional Review on the 17<sup>th</sup> November, 2009 pursuant to section 32 (1) (a) (i) of the Constitution of Kenya Review Act, 2008. The National Assembly has organized a two-day non-residential retreat for all Members of Parliament at Safari Park Hotel, on 4<sup>th</sup> and 5<sup>th</sup> December, 2009. The retreat is intended to familiarize Members of Parliament with the Draft Constitution, so as to achieve a better understanding of the proposals contained in the Draft, and enable Members build consensus on contentious issues from an informed perspective. The retreat will be facilitated by the Parliamentary Caucus for Reforms, and it is a follow up to the one day seminar held at Naivasha between the 19<sup>th</sup> and the 22<sup>nd</sup> November, 2009. All Members are invited to attend.

Thank you.

**Dr. Khalwale:** On a point of Order Mr. Speaker, Sir. I am a member of the Parliamentary Reform Caucus, and we have just come from a meeting where we have decided that in view of the fact that the ODM will be having a meeting in Mombasa, and pastoralist leaders will also be having a similar meeting, matters of quorum will be a problem. We have requested that the conference you are talking about be held next week.

**Mr. Deputy Speaker:** You have not communicated that information to the Chair! You knew that the Chair would give a communication so that Members of Parliament are informed. Today is the 3<sup>rd</sup>, tomorrow is the 4<sup>th</sup> and Saturday is the 5<sup>th</sup>. If Members are expected to be there on the 4<sup>th</sup> and the 5<sup>th</sup>, they must get the communication. This is the time to do it; so, you failed in your responsibility to coordinate this and--- You can come and approach the Chair at your own time and tell us what needs to be done. You do not rise on a point of order on such things. You rise on a point of Order when something is out of order; what was out of order?

*(Dr. Khalwale stood up in his place)*  
*Order Mr. Dr. Khalwale!*

**PAPERS LAID**

The following Papers were laid on the Table:-

Pursuant to the Anti-Corruption Economic Crimes Act, the Second Quarterly Report by the KACC for the year 2009, covering the period 1<sup>st</sup> April 2009, to 30<sup>th</sup> June, 2009.

Pursuant to the Anti-Corruption Economic Crimes Act, the Third Quarterly Report by the KACC for the year 2009, covering the period 1<sup>st</sup> July 2009, to 30<sup>th</sup> September, 2009.

*(By the Attorney-General)*

The Report of the Departmental Committee on Education, Research and Technology on the inquiry into the students' disturbances at the Kenyatta University in March 2009.

*(By Mr. Koech)*

Report of the Departmental Committee on Justice and Legal Affairs on the Arbitration (Amendment) Bill, Bill No. 2.

*(By Mr. Abdikadir)*

**NOTICE OF MOTION****ADOPTION OF COMMITTEE REPORT ON STUDENTS UNREST  
AT KENYATTA UNIVERSITY**

**Mr. Koech:** Mr. Deputy Speaker, Sir, I wish to give Notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Education, Research and Technology on the inquiry into the students disturbances at the Kenyatta University in March, 2009 laid on the Table of the House on Thursday, 3<sup>rd</sup> December, 2009.

**QUESTIONS BY PRIVATE NOTICE****INVASION OF FARMS IN BUURI/LOWER  
IMENTI FOREST BY HERDERS**

**Mr. Ruteere:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Livestock Development the following Question by Private Notice.

(a) Is the Minister aware that herders from Isiolo have invaded farms in Buuri and Lower Imenti Forest in North Imenti Constituency, with herds of camel, and are causing destruction to crops and recently-planted tree seedlings and exposing the dairy cattle in the region to diseases;

(b) Is he also aware that ethnic clashes could result, considering that the herdsmen are heavily armed; and,

(c) What urgent measures is the Minister taking to ensure the camel herdsmen are re-located back to Isiolo where they came from?

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that some herders moved their livestock from Isiolo towards Buuri, crossed into Imenti North and finally camped at Lower Imenti Forest at Ruiri and Kithoka boundary. The herders, as Mr. Ruteere may be aware, moved from Isiolo area due to the severe drought that ravaged most parts of this country especially northern Kenya, leading to ethnic conflicts that took place in the middle of November, 2009.

I am also aware that these herders were trying to go to Tana River District by trekking along the road via Mwingi District, with over 2,000 camels and 4,000 sheep and goats. While there were reported cases of vegetation degradation in the forested areas, no farm land invasion has been reported so far.

I wish to inform Mr. Ruteere that trekking along the road poses obvious dangers of spreading diseases to other areas as well the trekked animals.

To mitigate the disease threat, especially the dairy cattle in North Imenti, my Ministry has undertaken a major vaccination campaign where over 150 head of cattle, 90 goats and 95 sheep have been vaccinated against Rift Valley fever, Blackquarter and Anthrax. Plans are under way to step up these vaccinations in Buuri and North Imenti districts within the coming months. Moreover, my Ministry has put in place an elaborate disease surveillance and reporting system in the entire country for early disease detection.

(b) I am aware of the threat of conflict between the communities involved, especially due to the scarce pasture and water during the dry period. That is why more of our officers and more Government departments including the Provincial Administration and the Forestry Department have taken the initiative of intervening to avert any clashes between the said communities. However, local leadership should also be actively involved in ensuring that peace in this region succeeds.

(b) On the issue that some herders are armed, the Government is not aware of any herdsmen who are armed in that particular area.

(c) To avert a possible confrontation, a meeting was held on 26<sup>th</sup> November, 2009, by all the parties concerned and it was agreed that the herders should leave the area latest by 30<sup>th</sup> November, 2009. Since the majority of North Eastern Province and Isiolo, in particular, have received high rainfall, we expect most of those herders to go back to their original districts.

**Mr. Ruteere:** Mr. Deputy Speaker, Sir, the Assistant Minister's answer is very shocking. One, he has said that the herdsmen are not armed when it is obvious that they are armed to the teeth. It is also obvious that what they have can be seen because they do not hide their guns. Those herders also threaten the local community.

Secondly, the Assistant Minister has said that there are over 4,000 camels, goats and sheep. When those camels and sheep move across the farms, is it possible for them not to enter the farms with recently germinated crops like maize and beans and destroy them? Is it the policy of the Ministry of Livestock Development that when there are ethnic clashes, those herders should take their livestock to the forests? Does the Kenya Wildlife Service (KWS) allow livestock to graze in forests? The Assistant Minister has

said that the herders should have left by 30<sup>th</sup> November this year and today is 3<sup>rd</sup> December, and yet those animals are in Imenti North Forest. What is happening? Why has the Ministry not driven them out?

**Mr. Duale:** Mr. Deputy Speaker, Sir, the hon. Member claims that the herders are armed and the Minister of State for Provincial Administration and Internal Security has stated that there is already a mop up exercise to collect arms from all the communities around the Isiolo ecosystem. On the issue of the camels, sheep, goats and the cattle which move around as a result of the drought, my Ministry in conjunction with the farmers association, the Kenya Livestock Marketing Council (KLMC) and the community at large, is talking to the agricultural farmers to ensure that they live alongside the pastoralist communities.

**Ms. Noor:** Mr. Deputy Speaker, Sir, this is a weighty matter. It is an issue that has caused a lot of conflict and I think it is due to the failure of the Government not to deliver services to the pastoralist communities. What is the root cause of all those problems? That is what we want to know.

**Mr. Duale:** Mr. Deputy Speaker, Sir, the Question was very specific. It was about livestock movement between Isiolo District and North Imenti. As the hon. Member has said, the security situation in Isiolo is complex. I am sure the Minister of State for Provincial Administration and Internal Security and all the security actors are addressing that problem. I have said earlier on that already, there is a mop up exercise in the area. The Government is addressing the root cause of the insecurity in Isiolo.

**Eng. Maina:** Mr. Deputy Speaker, Sir, my concern is that the herders have brought camels and other livestock to areas whose livestock is not used to camel diseases. This will lead to resurgence of new diseases. Is the Assistant Minister prepared to pay for the immunization of that livestock? Could he also confirm that he will pay the various farmers whose crops have been destroyed?

**Mr. Duale:** Mr. Deputy Speaker, Sir, it is the mandate of the Ministry of Livestock Development to ensure that any livestock, whether camels, goats or rabbits are treated and vaccinated whenever there is disease outbreak. I assure the hon. Member that we will do that. On the issue of compensation, if that is quantified and presented to us, we will look at it. We will also discuss this matter with the other Ministries which are involved.

**Mr. Ruteere:** Mr. Deputy Speaker, Sir, this is a very dangerous trend. Whenever there are ethnic clashes elsewhere, those who are evicted from their places go and cause havoc elsewhere. Could the Assistant Minister confirm to this House that whenever there are ethnic clashes elsewhere, they will not go and provoke other people into fighting because North Imenti people will not bear this any longer? Today is the final day!

**Mr. Duale:** Mr. Deputy Speaker, Sir, it is the mandate of any legitimate Government to protect its people and maintain law and order. We will make sure there are no ethnic clashes that will happen in our country at all times. I want to assure the hon. Member that North Imenti and Isiolo will be very peaceful and agricultural farmers and livestock farmers will co-exist as brothers and sisters in this country.

## ORAL ANSWERS TO QUESTIONS

*Question No.285*

IRREGULAR PROCUREMENT OF ENTERPRISE  
RESOURCE PLANNING SYSTEM

**Mr. Nyamai** asked the Deputy Prime Minister and Minister for Finance:-

(a) why the procurement of the Enterprise Resource Planning System (ERPS) at a cost of Kshs135 million by the Kenya Medical Supplies Agency (KEMSA) through tender No.KICT/KEMSA/2008-2009 was done through the Kenya ICT Board instead of KEMSA or the Ministry's established procurement framework;

(b) to provide details of the members of the tender evaluation committee, including their names, employer and their relevant competence as far as this job is concerned; and,

(c) whether he could also table a copy of the signed evaluation reports, the tender opening documents and the tender award notification.

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

(a) This matter was referred to the Public Procurement Oversight Authority (PPOA) for review and guidance on the way forward. The PPOA took cognizance of the concerns raised and transferred the procuring authority from KEMSA to the Kenya ICT Board who are more conversant with complex ICT systems. The transfer of the procuring authority is consistent with the authority given to PPOA by law. In particular, Section 27(6) of the Public Procurement and Disposal Act, 2005, provides as follows:-

“The authority (PPOA) shall have power to transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent in the event of delay or in such other instances as may be prescribed.”

Section 18(1) of the subsidiary legislation also provides:-

“Pursuant to the provisions of Section 27(6) of the Act, the Authority may transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent:-

(a) where the Authority is of the view that the procuring entity lacks the capacity to comply with the Act or these regulations or the directions issued by the Authority due to size or capacity.”

(b) Both the second and third Questions were addressed by my colleague, the Minister for Medical Services, Prof. Anyang'-Nyong'o, and the requested documents tabled in the House at that time.

**Mr. Nyamai:** Mr. Deputy Speaker, Sir, first of all, the minutes that Prof. Anyang'-Nyong'o, tabled are not signed. The valuation report has got 67 pages, but only 45 pages were tabled. He left out the technical and financial evaluation. So, the answer from the Minister for Medical Services is not satisfactory.

Nevertheless, on the issue of the transfer of the procurement to the ICT Board, the Assistant Minister for Finance has not shown how Kenya Medical Supplies Agency (KEMSA) lacked the capacity to procure. That is because as far as we know, KEMSA is empowered to procure medical services for this country and it has got the capacity. Mr.

Assistant Minister, could you demonstrate how KEMSA was unable to procure the ICT software?

**Dr. Oburu:** Mr. Deputy Speaker, Sir, the transfer of that tender to another procurement agency was done after KEMSA had attempted to procure. One of the people who tendered complained to the Public Procurement Oversight Authority that there were irregularities. Some of the irregularities that were noted in the original tender which was floated by KEMSA were:-

(a) The procuring entity failed to conduct proper evaluation of the technical and financial proposals as was in the tender document.

(b) The procuring entity did not visit any of the reference sites furnished by the applicant, contrary to the terms of the request proposal.

Mr. Deputy Speaker, Sir, because of that, it appeared that KEMSA did not have the capacity and that is why the tender was cancelled by the Public Procurement Oversight Authority (PPOA). That is when it was thought necessary to change the procurement from KEMSA to another procurement entity. Besides that, there were also reports from the United States Agency for International Development (USAID) and other Government oversight organizations which had issued some questions about the capacity of KEMSA. Those are the reasons that informed PPOA to appoint another authority.

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, according to the bid evaluation report and the recommendation for award of contract, the company that was awarded the tender by the name of Alliance Technology, gave a bid of Kshs110.4 million. When those people sat, they awarded them the tender and recommended that the company should be given the tender not at Kshs110.3 million which it had tendered, but at Kshs135.8 million. Could the Assistant Minister explain where he got the higher figure from?

**Dr. Oburu:** Mr. Deputy Speaker, Sir, it is not true that they tendered for 110 million only. If you look at the documents which were tabled here, the tender for construction and installation was for Kshs110,485,740. There was the element of recurrent expenditure. The recurrent cost was Kshs8,300,800. The total recurrent cost was Kshs24,902,400. That is what totalled to Kshs135,308,140. That was the recurrent costs over a period of five years. That is what the documents say.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. The document that I am referring to is the same one that was tabled in this House. If the Assistant Minister can care to check on page 18 of that document, he will see that he has given a figure of Kshs135.3 million. That is what you awarded. Then the bid was for Kshs110.4 million. That is found on page 12. Could the Assistant Minister tell us where he is getting the figure of Kshs24 million that he is using as a justification for the difference? Where are you getting it from? Could you table it so that we can also compare with what we have?

**Mr. Deputy Speaker:** Can you table the document that you are referring to, yourself?

*(Dr. Khalwale laid the document on the Table)*

**Dr. Oburu:** Mr. Deputy Speaker, Sir, maybe, I can have a look at that document, including the minutes that the hon. Member said were not signed. The amount of money which was awarded was Kshs135,308,000. The difference is the recurrent expenditure which was included in all the bids which were there. If you check carefully, all of them

included the element of recurrent expenditure. So, it is not only this particular one, but all the bids which were there included that recurrent expenditure.

**Dr. Monda:** Mr. Deputy Speaker, Sir, what was the involvement of KEMSA and the parent Ministry in that tender? If they were involved at all, who did the letter of the award of that tender?

**Dr. Oburu:** Mr. Deputy Speaker, Sir, the Authority which was given the responsibility to award the tender is the one which awarded the tender. But the Minister for Medical Services was before this House on this particular tender. Ours, as the Office of the Deputy Prime Minister and Ministry of Finance, was to deal with the reasons as to why the matter was transferred back. But every Ministry has its own tendering unit and carries out the process itself.

**Mr. Nyamai:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House that the reason why he is here is to answer about the transfer when, in fact, the reason why the Speaker ordered this Question to be referred to the Ministry of Finance is because the Minister for Medical Services said he could answer why the amount was increased from Kshs110 million to Kshs135 million? The HANSARD can bear me witness.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, I have answered why that difference is there.

**Mr. Deputy Speaker:** Which is what?

**Dr. Oburu:** Mr. Deputy Speaker, Sir, the difference is because of the recurrent expenditure which was included in all the tenders, including the one which they are referring to.

**Mr. Deputy Speaker:** A recurrent expenditure on a tender?

**Dr. Oburu:** Mr. Deputy Speaker, Sir, it was included in the tender for a period of five years. There was a tender---

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I had requested that he table the document that justifies the Kshs24 million. Surely, when he says that the Kshs24 million was for recurrent expenditure, it is only after we have read that we can appreciate what recurrent expenditure can be there on a tender, moving from Kshs110.3 million to Kshs135 million. What specific recurrent expenditure activities are you talking about?

**Mr. Deputy Speaker:** Hon. Assistant Minister, much as many of us have got very scanty financial knowledge but, nonetheless, an additional recurrent expenditure on a contract bid does not sound--- Maybe, you have the expertise or you can seek it somewhere else and educate us on that.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, there are tenders even for consultancy and there are others for various services. When you tender, the consultancy expenditure is included in the tender. It can only be wrong if it is not included in the tender documents. But for this particular one, it was included in the tender documents and all the people who tendered included this particular expenditure; and it is in the document which was tabled here.

**Mr. Deputy Speaker:** But that then would be the bid amounts. Why do you have the bid amounts as a separate amount? Ordinarily, in a tender, when you bid, you put all your costs and then you give that as the tender sum or the contract sum. I do not know,

but may be you can--- Can somebody with a financial background help us here? Yes, hon. Nyamai, are you an accountant by profession?

**Mr. Nyamai:** Mr. Deputy Speaker, Sir, yes, I am an accountant and a member of ICPAK and not only that. I was a director of finance--- So, at least, I know about the procurement conditions.

**Mr. Deputy Speaker:** Proceed!

**Mr. Nyamai:** But, Mr. Deputy Speaker, Sir, if the Assistant Minister looks at the document which was tabled here, the evaluation report, from Page 1 to 35, it says: "Whoever is quoting should include the recurrent costs." In fact, the Chair has got it right all through. You asked him the Assistant Minister: "How can one tender for something and in between, you start bringing in other components?" That is not possible under the procurement rules. So, that is the question the Assistant Minister is avoiding to answer and that is the reason why the Minister for Medical Services could not answer and Dr. Oburu is trying to avoid answering.

Mr. Deputy Speaker, Sir, it is also in your knowledge that, last week; this Ministry had refused to answer this Question and the Chair forced them to come and answer the Question today. As you can hear, they are still going round and avoiding giving a satisfactory answer.

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

**Mr. Deputy Speaker:** Dr. Oburu, are you inclined to accept a point of information from hon. Mbadi?

**Dr. Oburu:** I accept.

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, first, I want to inform the Assistant Minister that, consultancy forms part of capital expenditure. So, it can never be recurrent expenditure. But, besides that, I think the Assistant Minister can do justice to this House by telling us exactly what he is referring to as recurrent expenditure so that we can help him know whether it is recurrent or capital; because if he just says that it is recurrent without knowing what it is, then we cannot help him.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, when the award was given, in the tender, there was no separate recurrent, equipment and installation expenditure costs. The tender was awarded at Kshs135 million. What is there is only the breakdown which gave the installation, equipment and then recurrent expenditures separately and that is what came to Kshs135 million. Therefore, I do not know where they are getting this idea that there was Kshs110 million. This amount of Kshs110 million was only for installation and the equipment itself, then recurrent expenditure. That is what was awarded; the award was Kshs135 million. There is nowhere that these people tendered for Kshs110 million. They tendered for Kshs135 million shilling.

**Mr. Baiya:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is not responding to the Question that is being asked. Over and above, he has said that Kshs110 million was for the equipment and installation. Then to make that amount go up to Kshs135 million, we are asking; what is it that the Assistant Minister is calling the recurrent expenditure? What was that cost?

**Dr. Oburu:** Mr. Deputy Speaker, Sir, I have said that there was also a requirement for maintenance and servicing of the equipment for a period of five years.

**Mr. Deputy Speaker:** Hon. Assistant Minister, which company was awarded this contract?



**Dr. Oburu:** Mr. Deputy Speaker, Sir, the Alliance Technologies---

**Mr. Deputy Speaker:** But then here it says the Collected, Discounted, Supply and Installation price.

**Dr. Oburu:** Yes, Mr. Deputy Speaker, Sir. The installation cost---

**Mr. Deputy Speaker:** When you look at it, you see that it actually has got a better bid than the others; Collected Systems, EIM Solutions Limited and finally, the Alliance Technology Limited.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, the Alliance Technologies Limited were the lowest in this tender and they tendered for Kshs110 million---

**Mr. Deputy Speaker:** This tender shows Kshs110 million here on the documents that are here and which were tabled on the Floor of the House; the PV evaluation report and the recommendation for the award of contract.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, I have explained that the Kshs110 million was for the cost of equipment and installation. The balance was for the maintenance of the equipment for over a period of five years.

**Dr. Monda:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to start maintaining equipment which has not been installed in this case? What is he maintaining at the rate of Kshs25 million?

**Dr. Oburu:** Mr. Deputy Speaker, Sir, in the entire supplies contracts, there is always another contract component for maintenance. I do not know whether the hon. Member is hearing it for the first time, but this is very normal in all the contracts.

**Mr. Nyamai:** Mr. Deputy Speaker, Sir, I think you have to help us on this matter. This matter came before the Floor of this House in May this year and we have been going round and round with it. If what the Assistant Minister is saying is true, then that should have been a separate contract advertised and tendered separately. But however, he still has not been able to table the documents as requested by hon. Khalwale. What is it that he says that is recurrent cost? Let him show us so that we can understand. I think he was also informed by hon. Mbadi. So, I think the Assistant Minister is going round and round on this matter and his answer is not satisfactory. I would request that we refer it to – although in the past, the Chair has also ruled that you do not have to – the relevant Committee so that it can go deeper into this matter. Otherwise, we are going to take a lot of time on this matter and the Assistant Minister is taking us round and round and he is saying nothing.

Thank you.

*(Dr. Oburu stood up in his place)*

**Mr. Deputy Speaker:** Order, Mr. Assistant Minister! The Chair must admit that something does not seem to add up based on our scanty and limited knowledge of finance and accounts. I think I am inclined to proceed now and say that I direct – much as we do not need to direct, but this time, I would like to direct and to put more weight into it to be able to put to rest this very important issue. I direct that the Departmental Committee on Finance, Planning and Trade should take over this matter, investigate, scrutinize it and report to the House as soon as possible.

In the mean time, the Question is deferred until such time that the Departmental Committee on Finance, Planning and Trade is ready with its report.

*(Question deferred)*

*Question No.396*

MEASURES TO ENSURE ADEQUATE  
SUPPLY OF COINS

**Mr. Pesa** asked the Deputy Prime Minister and Minister for Finance what measures the Ministry will put in place to ensure adequate supply of coins to facilitate small-scale trade.

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

I wish to assure this House that there is adequate stock of currency, both notes and coins in circulation in the country. The amount of coins in circulation has been on the increase year-to-year, and as such, the increasing demand has been fully met. The Government, through the Central Bank of Kenya, will continue to increase issuance of currency to commercial banks through its branches located in Mombasa, Kisumu, Eldoret and at the Head Office in Nairobi to meet the existing demand.

The Government has ordered for 85.96 million pieces of coins to be delivered from September, 2009. The members of the public should be encouraged to utilize the coins in their possession for trading purposes instead of storing them away.

**Mr. Pesa:** Thank you, Mr. Deputy Speaker, Sir. The Assistant Minister has attempted to answer the Question, but ordering is one thing, whereas putting the coins into circulation is another. Is the Assistant Minister sure that the money that they ordered is actually in circulation?

**Dr. Oburu:** Mr. Deputy Speaker, Sir, we have just started receiving the coins. We are distributing them through the channels which I have mentioned. Therefore, they are in circulation.

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, this Question is not a simple matter because when many Kenyans go to a supermarket and purchase an item for Kshs99, they are given a sweet at the point of getting change, even when you are not feeling sweet that day. The reason for that is that there are no coins in circulation. Kenyans are being denied the rightful change in many places. When is the Assistant Minister going to make sure that we have enough coins in the economy, or is there a problem?

**Dr. Oburu:** Mr. Deputy Speaker, Sir, there are some problems in certain areas where we do not have enough branches for banks or microfinance institutions to help in the distribution of the coins. However, generally, even where we have enough banks, the other problem which arises is the careless manner in which our people keep coins. They tend to keep them aside. They do not put them into circulation. That could be one of the causes of that problem. However, we shall try to distribute as many coins as the economy would require.

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, the main reason why many coins are kept away from circulation by people is because of the damage they cause to their pockets. Why can the Ministry not consider printing notes in lower denominations like Kshs10

and Kshs5, so that we can do away with the coins? They are too costly to keep them in our pockets.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, that could be done. However, the cost must be considered. The coins last for a very long period. Once you print them, they last for a very long period. However, the notes wear out very quickly and, therefore, the cost is enormous. The coins are, therefore, still a substitute for the notes.

**Mr. Pesa:** Mr. Deputy Speaker, Sir, while the Assistant Minister is saying that he considers the cost, especially from the Ministry's point of view, does he also consider the cost of damage done to our pockets by the coins that he wants to put in the market?

**Dr. Oburu:** Mr. Deputy Speaker, Sir, there are many other ways of keeping coins. You do not have to keep them in your pockets. However, if you do and they damage your pockets, we will advise you to use other ways of keeping the coins.

**Mr. Washiali:** Mr. Deputy Speaker, Sir, before I ask the Question, I would like to add that as per the HANSARD of 17<sup>th</sup> November, many aspects of this Question had been answered. The only bit that the Minister is supposed to answer is on how he acted on the recommendation of the Attorney-General.

**Mr. Deputy Speaker:** Order, Mr. Washiali. You should just ask the Question. Have you asked the Question?

**Mr. Washiali:** This is the second time that this Question is coming to the Floor of the House.

**Mr. Deputy Speaker:** No! It is now on the Floor of the House. Unless you feel that it was disposed of adequately, you still have to ask the Question. Even if it is a quarter of it that had not been dealt with, you will still have to ask the Question.

**Mr. Washiali:** Mr. Deputy Speaker, Sir, thank you for that correction.

*Question No.217*

DISMISSAL OF POLICE CORPORAL RICHARD  
OMBWAYO NERIMA

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

(a) Whether he could explain the circumstances under which Police Corporal Richard Obwayo Nerima (Force No.53135) was dismissed from the service; and,

(b) whether due procedure was followed in his dismissal.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker Sir, indeed, what the hon. Member has said is true. The part which was remaining required the Attorney-General to advise the Ministry of State for provincial Administration and Internal Security.

We have already received letters recommending Mr. Nerima to be reinstated or be paid his dues. We will consider the recommendations from the Attorney-General's Office. In the meantime, I will ask the Questioner to ask Mr. Nerima to re-appeal for his case to be reconsidered, given the fact that we have the recommendations from the Attorney-General's Office.

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

**Mr. Washiali:** Mr. Deputy Speaker, Sir, I have no objection if the Assistant Minister will consider the recommendations by the Attorney-General's Office. He has also asked me to ask Nerima to re-appeal. I hope that the re-appeal will not be subjected to further scrutiny.

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. I do not know whether you heard the Assistant Minister. He was given advice by none other than the Attorney-General of the Republic to either reinstate or pay. Before he goes ahead to act on the recommendation of the advisor of the Government, he is asking Mr. Nerima to appeal. Why can he not act on the advice of Mr. Wako and reinstate Mr. Nerima without further ado?

**Mr. Deputy Speaker:** Hon. Assistant Minister, the hon. Attorney-General is the Principal Legal Adviser. He has advised you. The choice is yours. You should tell us whether you will reinstate or compensate him. Those are the only two answers you need to give. Which one do you intend to give now?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, I am very clear on this issue. I had already seen the Member and talked to him. We have agreed that we will consider the recommendations given by the Attorney-General. That is it!

**Mr. Deputy Speaker:** That is a fair answer; that you will either reinstate him or pay him. Thank the Attorney-General!

**Mr. Washiali:** Thank you, Mr. Deputy Speaker, Sir. I would like to thank the Assistant Minister. All I need to request is that whatever action they are going to take should be within the next two to three weeks.

**Mr. Ojode:** Mr. Deputy Speaker, Sir, I do not want to confirm or deny that we will fast-track it. What I know is that we will act on the recommendations of the Attorney-General.

*Question No.373*

TABLING OF PROTOCOL ON CATTLE  
RUSTLING IN EAST AFRICA

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

(a) Whether he could lay on the Table the proposed protocol on the Prevention, Combating and Eradication of Cattle Rustling in East Africa, signed by majority States in Eastern and Horn Region in Addis Ababa, Ethiopia in 2008;

(b) when the Kenya Government will ratify the protocol; and,

(c) what urgent steps the Government is taking to implement the protocol.

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

(a) I hereby lay on the Table, the proposed draft protocol.

*(Mr. Lesrima laid the document on the Table)*

(b) As to when the Government will ratify the protocol, this will be done soon after the Cabinet has duly approved the Cabinet Memorandum.

(c) The Government has not ratified the protocol. However, it has instituted several measures aimed at addressing the cattle rustling menace as follows:-

(i) Improve the capacity of security agencies through provision of vehicles and other equipment and by increasing security personnel by opening up additional security posts in affected regions.

(ii) The Government is also sensitizing the public to enhance community involvement and support through operationalization of peace committees at the provincial and district levels, training of 21 national master trainers and development of a training manual on peace and education; training of 6,000 peace officers; and, sensitizing of 3,800 secondary principals on peace education.

(iii) There have been several joint cross border operations aimed at reducing incidences of cattle rustling. Border Commissioner's Forums between Kenya and Uganda, Kenya and Tanzania and Kenya and Ethiopia have been established and several meetings held. Consultations are ongoing to organize for Kenya-Sudan Border Commissioners meetings. These efforts will improve the general border security.

Cattle rustling has been treated like any other crime under the law and the necessary judicial criminal procedure has been followed while dealing with suspects of cattle rustling. As a long terms measure, *Dumisha Amani II Programme*, which is a broad based approach, will be implemented to address the root causes of cattle rustling.

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I thank the Assistant Minister for the answer he has given. However, if you look at the response to part (c) of the Question, you will find that he has given standard responses like "I am sensitizing this or I am increasing the number of police personnel and vehicles". We need figures. But more importantly, if you look between 1990 and 1999, you will find that the economic loss came to about Kshs30 billion due to cattle rustling. Between 2000 and 2002, cattle rustling led to about 1,200 loss of lives. Therefore, there was urgency in the Government responding to this protocol and I thank the Assistant Minister for signing it in Addis Ababa in September last year. How long does a Minister in the Government, knowing the urgency and the magnitude of the problem, take to ratify a protocol that is necessary, needed and will solve this problem once and for all?

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, the protocol has taken a regional dimension because it involves co-operation between those countries. The protocol also requires legislation and there is a draft Bill on Anti-Cattle Rustling. The protocol also involves public education and peace building. I agree with the hon. Member that it has taken long to ratify the protocol but I have explained that this should be done through the Cabinet and that is already in place. The draft Bill is also in place. In the meantime, we have engaged ourselves, as agreed, between the Ministry and the Members of Parliament from the affected areas in our Naivasha meeting held recently. We have agreed on a disarmament programme. We have also given some amnesty for a period of time before we engage in the disarmament programme. I agree that this is a serious matter but it is receiving attention.

**Mr. Letimalo:** Mr. Deputy Speaker, Sir, could the Assistant Minister tell the House whether there is any input from the communities affected in the proposed protocol?

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, there has been a series of meetings and that protocol involves several countries. There have been consultations internally. I am sure the hon. Member is aware that in 2004, we agreed to carry out the disarmament exercise where our communities surrendered 60 per cent of guns voluntarily. Indeed, there is an input and I advise the hon. Member to read the various aspects on this matter. The hon. Member who has asked this Question is also a Member of the Parliamentary Select Committee that looks into matters regarding cattle rustling. That is part of the process of involving the people.

**Mr. Murgor:** Mr. Deputy Speaker, Sir, according to the answer given by the Assistant Minister, this will take forever, just like the findings which have taken forever. When will the Assistant Minister, the Ministry or the Government involve the people who practice cattle rustling because all the meetings that have been held have been held in hotels? Cattle rustling goes on in the villages as meetings are held in hotels. So, when will the meetings planned by the Government take place under trees so that the people practicing this vice can come up with a solution?

**Mr. Deputy Speaker:** You have made your point, Mr. Murgor.  
Proceed, Mr. Assistant Minister!

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, these meetings are taking place simultaneously. I am sure the hon. Member is aware the Government has moved in to mop up arms from the communities involved in cattle rustling. We will soon start with hotspot areas like Isiolo. We have met with the leaders including Members of Parliament and councillors. We are arranging a series of meetings on the ground with the religious leaders from various communities through the Provincial Commissioner. This is because part of the problem can be solved through dialogue and organized grazing and utilization of certain resources such as water by those communities.

**Mr. Deputy Speaker:** Mr. Ethuro, ask the last question!

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, this protocol was signed by the Minister in August, 2008 and today is on 3<sup>rd</sup> December, 2009. How long does the Cabinet take in order to ratify a simple protocol that we, as a third party, have signed? The protocol has many issues and that is why we are keen on its signing. Does the Assistant Minister want the Attorney-General of the Republic of Kenya to come to his aid to expedite the process?

**Mr. Deputy Speaker:** Mr. Attorney-General, this has to do with the ratification and the signing of protocols. I was at a loss initially as to how the Assistant Minister of State for Provincial Administration and Internal Security is supposed to give an answer on the ratification and signing of a protocol.

Mr. Assistant Minister, do you want the Attorney-General's assistance?

**Mr. Lesrima:** No, Mr. Deputy Speaker, Sir. Under the Kenyan arrangements it merely requires executive decisions to be taken through the Cabinet. We have prepared a Cabinet Paper and it does not require any other process. I have just explained to the hon. Member that the Cabinet Paper is ready but it has not been approved. So, I want to pursue this matter with the Cabinet because I am also affected by this menace.

**Mr. Deputy Speaker:** The hon. Member, conscious of the problems that this issue has brought to his community seeks from your Ministry some form of a time-frame. They lose lives and animals everyday. So, can you give a time-frame? You cannot come here one-and-a-half years later and say that they will still ratify that document.

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, the matter is before the Cabinet. I consider it very serious and I will pursue it through the Cabinet Office so that it can be brought forward as a matter of priority.

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. I have a lot of sympathy for this Assistant Minister because he suffers just like me. However, could he confirm to this House that his capacity to ensure that the protocol is ratified by the Cabinet is limited to the extent that he cannot sit in the Cabinet? That is why we call upon someone who sits in the Cabinet to confirm to this House about this matter which is serious.

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, there are many critical issues in that Cabinet Paper that call for the creation of an inter-Ministerial agency, a vote to provide the resources, the involvement of the Ministry of Livestock Development and the Ministry of Northern Kenya and other Arid Lands to provide resources. We are also required to bring a Bill to this House to increase the penalties because cattle rustling falls under other sections of the Penal Code. The penalties are not severe and we intend to recommend life sentence for people who engage in cattle rustling. I would like to say that while the Cabinet and Budget matters are being processed, there is nothing that can prevent us from pursuing a number of options. The hon. Member is fully involved in addressing these matters in different capacities.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. We, as a House, are very worried that on this most urgent matter, the Assistant Minister is telling us that the Cabinet will consider this. We are aware that this Cabinet is unable to sit, leave alone being able to agree. What assurances could he give the House that he will come here with an answer and when?

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, I do not have an answer to that, since I do not sit in the Cabinet. However, I will pursue this subject vigorously. We are only talking about being able to implement what at a national level, we should be able to implement.

Mr. Deputy Speaker, Sir, we also require co-operation from other countries. So, as we do our own internal implementation, we should also continue working with our regional neighbours.

**Mr. Deputy Speaker:** Next Question, Mr. Olago. Is hon. Olago, by chance, be out of Nairobi or country on official parliamentary business?

*(Mr. Deputy Speaker consulted  
with the Clerk-at-Table)*

I am made to understand that hon. Olago has sent his apology. He is unable to be with us due to circumstances beyond his control. So, we will defer this Question to a time when will be available.

*Question No.029*

LIST OF FATALITIES FROM SABA SABA  
RIOTS/POST ELECTION VIOLENCE IN KISUMU

*(Question deferred)*

*Question No.534*

ABSENCE OF DO IN SOOK/CHEPARERIA/  
KONGELAI DIVISIONS

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

(a) whether he is aware that Sook, Chepareria and Kongelai Divisions in West Pokot District have had no District Officers for the last one year; And,

(b) what the Government is doing to solve the problem?

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

(a) Yes, I am aware that Chepareria and Kongelai Divisions do not have District Officers for the last 5 months and Sook for the last one year.

(b) The Government is at the moment recruiting District Officers through the Public Service Commission. Once the process of recruitment is complete, divisions without District Officers will be filled immediately.

**Mr. Murgor:** Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for trying to answer the Question. However, it is the same reply we have received for the last two years. Sook and Kongelai Divisions have stayed for over two years without a DO. It was only Chepareria Division that had one who left in the last six months.

When exactly will the Ministry post DOs to these divisions? Kongelai Division is along the border and is prone to conflict between Kenya and Uganda. We are facing serious security situation in these divisions.

**Mr. Lesrima:** Mr. Deputy Speaker, Sir, shortage of Dos is very critical. This was necessitated by promotions of a number of Dos to become District Commissioners with the creation of a number of new Districts. Right now, we are interviewing about 200 District Officers. I am discussing with the District Commissioner for the possibility of sourcing for a DO within the province instead of waiting for the process of recruitment to be over. I do realize the serious security situation you are facing in your constituency.

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I would like the Assistant Minister to confirm to this House the criteria they use for posting DOs. I want him to confirm that because West Pokot District and my district have serious issues of security. We need every available Government officer to be posted as a matter of priority.

Could he confirm to this House that all the vacant positions in insecurity prone areas will be given priority when they post the new Dos?

**Mr. Lesrima:** Yes, indeed, Mr. Deputy Speaker, Sir, we will give priority to areas which are experiencing insecurity.

**Mr. Murgor:** Mr. Deputy Speaker, Sir, I am satisfied with the answer given by the Assistant Minister.

*Question No. 448*



ILLEGAL SALE MBOI KAMITI  
FARMERS COMPANY ASSETS

**Mr. Baiya** asked the Attorney General:-

(a) whether he could confirm that a farm measuring 530 acres in Kiambu owned by Mboi Kamiti Farmers Company Ltd was sold through the Court in Nairobi HCC 107 of 2005 for a debt of Ksh3.7 million and that some directors of the company sued the company for emoluments and were paid by the court in the aforesaid suit from proceeds of the sale of the farm; and,

(b) what action the Attorney General plans to take to curb the apparent conspiracies to illegally sell off the company assets at throw-away prices.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Neither the Attorney-General nor any Ministry or Department of the Government was party to the suit No.107 of 2005. Therefore, the Attorney-General is not in a position to either confirm as requested or deny it.

(b) If there are imminent conspiracies to illegally sell off the assets of Mboi Kamiti Farmers Limited at throw away prices, the parties adversely affected should seek legal remedy by way of appropriate civil proceeding and application and or report the same to the police for investigations.

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I am not satisfied by the answer given by the Attorney-General. I want to table documents in relation to this matter, showing a plaint was instituted claiming Kshs3.7 million against Mboi Kamiti. There was an order that was issued by consent in relation to that order. Following that order, the property of this company was actually sold to a company by the name Chrick Estates Limited for Kshs100 million. Subsequently, there are documents showing how this money has been received by third parties and not the owners.

Mr. Deputy Speaker, Sir, lastly, there is also a document showing that a plaint was drawn by the directors claiming Kshs87 million by purporting to be employees. These are directors paying themselves this money. There is a list of directors and how they paid themselves this money. There is also an affidavit by one lady of Mboi Kamiti---

**Mr. Deputy Speaker:** Hon. Baiya, much as the Chair would want to give you a leeway, conscious of the fact that there is a serious matter on your hand, but again, you are supposed to ask a question.

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I am touching on the last document showing that the Attorney-General's office has been implicated through certain fraudulent characters who have even purported to appoint directors on behalf Mboi Kamiti. Those transactions are being sanctioned from the Attorney-general's office. So, I am very surprised. I would want him to react to these documents.

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

**Mr. Wako:** Mr. Deputy Speaker, Sir, we were not party to this case and neither were we party to whatever happened thereafter. That is the position. I cannot confirm or

even deny what the hon. Member has said, because I am really a stranger to those allegations. But if it is true that, that is what has happened, then it is really up to the parties involved to take appropriate measures, either by way of civil action or by way of reporting to the police for appropriate investigations.

**Mr. Baiya:** On a point of order, Mr. Deputy Speaker, Sir. I am only complaining that even the Attorney-General has not seen the affidavit containing complaints about his office or even about crimes that have been committed from his office; he is asking the citizens of this country to go and complain to the police about maladministration of justice in his office. That is very unfortunate, and is a very casual way of handling this matter by the Attorney-General!

*(Applause)*

**Mr. Wako:** Mr. Deputy Speaker, Sir, the fact of the matter is that my office only gets involved, not in the activities of the companies, but it gets involved when it becomes an issue of election of directors and the filing of returns after the elections. My office then either registers them or does not. I can tell you - and this is a separate issue from the issue of this case - that as far as the disputes amongst directors is concerned as to who is or who is not a director, and whether meetings have taken place or not, there are more than four court cases pending on the matter. The courts have now ordered a consolidation of those cases, and they are due for mention on 9<sup>th</sup> December, 2009. Therefore, my office, particularly the Registrar of Companies, is involved in that aspect. As to the question he has asked, we are not involved in the internal running and management of companies.

**Mr. Deputy Speaker:** Hon. Baiya, I am trying to go through these documents to see whether there is anything that was directed to the Attorney-General and where he has failed to act. The assertion by the Attorney-General is that this is a company matter, hence a private matter.

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I would refer you to documents listed as Document No. 12 in that list. It is an affidavit sworn by a former director, where she did say that the Attorney-General's Office had been involved in registering particular persons as directors with a view to facilitating the transactions in question.

Mr. Deputy Speaker, Sir, this is a company with over 10,000 members and its properties are being fraudulently taken over with connivance from the Attorney-General's Office, but without his knowledge. We have tabled these documents for him and he does not even have the interest to even look at them! He simply says that he is not a party to the case.

**Mr. Deputy Speaker:** Order, Hon. Baiya! The documents I have here do not include Document No. 12. The last document here is Document No 11(L), unless I do not have the whole bundle; this is what you tabled.

**Mr. Baiya:** I am sorry, Mr. Deputy Speaker, Sir. It is numbered 11A, an affidavit by Gladys Waithe Kamau sworn on the 1<sup>st</sup> day of October. It is a statutory declaration.

**Mr. Wako:** Mr. Deputy Speaker, Sir, just taking---

**Mr. Deputy Speaker:** Do you want to acquaint yourself with the statutory declarations?

**Mr. Wako:** Mr. Deputy Speaker, Sir, just taking what he has stated, it confirms my version, that the issue of registration of directors--- That is an issue which is a subject matter of four cases. One is High Court Civil Application No. 127 of 2009, where the applicants are former directors of the company; they seek prerogative orders of *certiorari, mandamus and a* petition against the Registrar of Companies for registering some directors and they want the latter to be quashed. That matter is to be mentioned in court on 9<sup>th</sup> of December, 2009. Another application is by another set of people, directors and so on - High Court Civil Application No. 258 of 2009, which is also coming up for mention on 9<sup>th</sup> December, 2009. Then, we have another one of the same type, but with different people involved.

Mr. Deputy Speaker, Sir, what has been happening--- That is why I have said it is an issue of registration of directors, and this company is replete with disagreements between directors over a long period of time. What has been happening is that they have been having annual general meetings, or meetings, where they elect directors who then have submitted returns to the Registrar of Companies. Then there is no objection and then once they are registered, there has been another group objecting to the registration. Then they have held discussions with the Registrar of Companies who has advised them: "Why can you not, all of you – I do not know how many groups there are – sit down together and agree on when you can jointly have an annual general meeting and elect directors"? This has been going on and, consequently, there are four High Court applications pending. That is why we thought, quite rightly so, that for all these issues to be resolved, the issue of the registration of directors--- By the way, each set of directors is alleging that the other directors are about to sell off the assets of the company illegally. Now, in order to solve the issue of the directors of Mbo-i-Kamiti, it was thought wise that all these four different cases should be consolidated, and that is why the matter is coming up on 9<sup>th</sup> December, 2009. Then, I am quite sure the statutory declaration is, maybe, about one of the cases and so on. The matter will be sorted out properly and conveniently.

Mr. Deputy Speaker, Sir, what I will really urge the hon. Member to do is to try to bring together the different factions within this giant company. In Kenya today, if you have a giant company such as Mbo-i-Kamiti with a lot of assets or properties and so on, many groups normally emerge with various interests in those properties. That is why we have so many cases. It is necessary for them to be brought together, so that proper leadership is elected to deal properly with the affairs of the giant company. Otherwise, one will be elected and another group will also elect another set of leaders in another meeting. We will then continue with this problem *ad infinitum*. So, I would like to appeal to my learned friend to see how we can resolve the leadership dispute within Mbo-i-Kamiti. The Registrar-General had, in fact, directed all the wrangling factions to form a steering committee to prepare the company for elections. However, even that was disputed and we are back to square one.

**Mr. Mbugua:** Mr. Deputy Speaker, Sir, while I appreciate the answer that has been given by the Attorney-General, it is worth noting that property is still changing hands. What is the Attorney-General doing now that there are groups which are wrangling and yet property is still changing hands? What is he doing to stop property from changing hands before the issue of directorship is resolved?

**Mr. Wako:** Mr. Deputy Speaker, Sir, as I said in my answer, it is really up to the members of this company to go to the court to get injunctions – a proper court order. The

Attorney-General has no powers to order a stoppage of these sales which are emerging. Only the court can do so. Therefore, it is up to the people who are affected to go to court and apply for injunction. I believe that there are also a number of civil suits in court on that. I also hear that, in fact, a number of complaints have been reported at various police stations on this matter. Those matters are being investigated.

**Mr. Baiya:** Mr. Deputy Speaker, Sir, the Attorney-General has accepted that there are wrangles concerning the directors. We have also brought to his attention the fact that the company's properties are, in the meantime, being dissipated very rapidly. This means that there are people taking advantage to sell the 530 acres of land which is worth Kshs100 million in Kiambu. It is the Attorney-General's mandate to ensure that there is a list of directors. Is it, therefore, not true that the Office of the Attorney-General is best placed to resolve the wrangles involving the directors? That is precisely what the officers have failed to do.

**Mr. Wako:** Mr. Deputy Speaker, Sir, as far as the wrangling is concerned, the Register-General and the Registrar of Companies have tried their level best to meet the various factions to see how this matter can be resolved. As I stated earlier, they had been advised to form a steering committee of the various factions so that, at least, a general meeting could be held and the issue resolved once and for all. We even advised that in a letter. Do you know what happened? They decided to disobey the advice of the Attorney-General and filed yet another suit in court. That is why I am really pleading to Members of Parliament who might be having some influence in this particular company, if they can work with the Registrar-General so that they can bring together the various factions and organize a proper annual general meeting where the appropriate leadership of the company can be elected. If that is done, we will no longer have these allegations of the assets of the company being wasted.

*Question No.042*

TERMINATION OF ANGLO LEASING  
INVESTIGATIONS IN UK

**Mr. Ochieng** asked the Attorney-General:

(a) if he could confirm that investigations into the Anglo-Leasing related contracts by the Serious Fraud Office (SFO) in the United Kingdom have been terminated due to lack of co-operation by the Kenya Government; and,

(b) what steps the Government is taking to ensure that the matter is conclusively investigated and money and property stashed abroad is recovered to assist in meeting the growing needs of the country.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The investigations into 18 Anglo Leasing related contracts by the Serious Fraud Office (SFO) in the UK have not been terminated. They have only been suspended in two contracts where the High Court has issued an injunction order stopping further investigations and prosecution.

(b) The Kenya Anti-Corruption Commission (KACC) is doing its best to ensure that the matter is conclusively investigated and money and property stashed abroad are

recovered. However, this depends on mutual legal assistance KACC receives from foreign competent authorities.

The SFO of the UK and the Swiss Competent Authorities have extended good co-operation and are assisting in the investigations. The same cannot be said of the Competent Authorities of the USA who have failed to get key witnesses/suspects, Dr. Merlyn Kettering and Mr. Bradley Birkenfeld to co-operate with the investigations being carried out by the KACC.

**Mr. Ochieng:** Mr. Deputy Speaker, Sir, you have heard it all from the Attorney-General. As you know, this country is currently struggling a lot to raise money to buy Passats and even to settle IDPs. Here, you have heard the Attorney-General confirm that a lot of money is stashed outside. Nevertheless, which are these two contracts he is talking about? For what reason did the High Court put an injunction stopping further investigation and prosecution of this matter?

**Mr. Wako:** Mr. Deputy Speaker, Sir, with regard to these two contracts, I must say I will be very guarded because of the *sub judice* rule. We have filed an appeal and it is coming up for hearing on 2<sup>nd</sup> February, 2010. However, let me just mention something about the two cases, but not go too much into the content. It is the opinion of the Attorney-General that the ruling was completely wrong in law and cannot withstand a proper judgment and appreciation of the issues involved. It went completely wrong. In fact, I am agitated about it because it was wrong. That is why I know that in the Court of Appeal, which consists of three judges, we should be able to succeed. The two cases are the Medema Technology and the Euromarine Industries.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, it is always a pleasure to see the Attorney-General in this Chamber. He has said that they have only suspended investigations and prosecution into two cases and that it is not true that they have been terminated. Is it not on record, which is also well known to the Attorney-General that it is none other than the British High Commissioner in Kenya who issued a public statement complaining that the Kenyan Government had refused to co-operate and that is why the SFO had terminated the investigations?

Arising out of that, is the Attorney-General not misleading the House by saying that the USA Competent Authorities are not co-operating when we know that part of the reason the USA Government has issued travel bans against senior Cabinet Ministers and senior Government officials, including my very good friend, is because the Government has failed to co-operate with international organizations to do a thorough investigation on the Anglo Leasing cases?

**Mr. Wako:** Mr. Deputy Speaker, Sir, starting with the United States of America (USA), I speak with no fear of contradiction whatsoever by the Ambassador of the USA and the Federal Bureau of Investigations (FBI). The fact is that they have not succeeded in convincing the two key suspects. One of them was grossly involved, locally, in most of the Anglo Leasing deals. The other one was involved overseas in the same deals.

I am not really blaming the FBI; let it not be misunderstood. The fact of the matter is that they would also be the very first ones to admit that, according to the laws of the USA, they cannot force any person to co-operate with foreign investigative agencies. The FBI wants to help, but their laws prohibit them from doing so.

Mr. Deputy Speaker, Sir, this is not the first fraud case involving Americans. It may be recalled that during the Fourth All African Games, there was an American who

was key in a scandal, but as soon as he stepped foot on American soil, he got immunity. Consequently, we were not able to proceed any further with his case. Once a citizen of the USA steps on American soil, he is not obligated by law to co-operate with a foreign agency. I am quite sure that if the hon. Member who is a very close friend to the Ambassador of the USA, and he consulted him, he would confirm this fact. The Ambassador of the USA himself confirmed this fact in the latest request about Bradley. So, I do not see any contradictions on that one.

It is true that the British High Commissioner cited lack of co-operation. However, that lack of co-operation was due to the fact that the courts had enjoined the investigations of the two cases. In the United Kingdom (UK), under the law, mutual legal assistance can only be extended on an ongoing investigation. Therefore, the fact that the injunction had been obtained meant that the SFO could not continue with it. I am very pleased that, within a week or two, I engaged in very serious discussions with the SFO. I was in London at that time.

Mr. Deputy Speaker, Sir, we corresponded with the SFO, and they agreed with me on two things: That the judgements should be construed to, very strictly, only confine themselves to the two projects. Initially, they thought it was about all the projects. So, they have agreed only on those two projects. Investigations would continue on the other projects. I provided the necessary certification for those two projects. About a month ago, I received a letter from my counsel. The good news is that the SFO is going ahead with the case. My counsel requested us to provide the certificate, which we provided.

Mr. Deputy Speaker, Sir, there was an issue about returning of some evidence they had obtained prior to the injunction being obtained. According to the law in the UK, you have to return any evidence to the owners within 30 days. I am very pleased to inform you that the SFO has undertaken to the Attorney-General of the Republic of Kenya that, that evidence will not be returned to the owners until we have had the opportunity for the appeal to be heard. In case those people file the application there, we shall go there and defend the case. So, I want to assure the people of Kenya that the evidence is preserved.

Mr. Deputy Speaker, Sir, as far as the Swiss investigations are concerned, I am glad that they are ongoing. The information we received initially was not sufficient. I believe the Committee is aware of that fact, because we produced letters before it. Just before I came here, the Swiss Ambassador talked to me and said that they should be receiving more information in the course of next week. So, we are ready to receive that information to see what it is all about.

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. You have heard the Attorney-General say that he is not blaming the FBI. Who is he blaming, since he is blaming somebody? He knows that the FBI is the organisation that is investigating the cases, but he says that he does not blame that organisation. Who is he blaming?

**Mr. Wako:** Mr. Deputy Speaker, Sir, the Attorney-General of the Republic of Kenya is not in the habit of blaming people. He is just in the habit of explaining matters. I have explained that part of the problem in the USA appears to be the law, which prohibits the competent authorities there from ensuring that their citizens comply with overseas investigations. That appears to be the law that is there. So, I have just explained that fact.

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I am amazed that the Attorney-General of the Republic of Kenya wants to give us the impression that he is holding brief for the

Attorney-General of the USA, or the FBI. The Ambassador of the Government of the USA has been very clear that they are committed to fighting corruption in Kenya. In fact, they have gone ahead and banned our Attorney-General from visiting the USA. What sanctions are you preferring against the Government of the USA for the fact that they have refused to co-operate with us in releasing those suspects who are the masterminds of this fraud?

**Mr. Wako:** Mr. Deputy Speaker, Sir, I am appealing to this House, starting with Dr. Khalwale, to rise up in unison to condemn and urge the Government of the USA to co-operate with our investigations, so that we can unearth the whole saga of Anglo Leasing. Now that I have informed you, please, speak up. I am quite sure that Dr. Khalwale is capable of speaking up.

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

**Mr. Deputy Speaker:** Mr. Mbau, do you want to speak up?

**Mr. Mbau:** Mr. Deputy Speaker, Sir, I want to speak up. The Attorney-General has been asked to state who he is blaming, so that we can know where the buck stops. He explained himself in detail and eloquently. At this rate, will the Attorney-General of the Republic of Kenya be able to, at one time, squarely place the blame where it belongs and successfully convict the culprits?

**Mr. Deputy Speaker:** Mr. Mbau, the Attorney-General has told you that he is unable to prosecute because the authorities in the USA are not co-operating. So, can you ask a question that is relevant? You do not keep on asking the same question. He has explained himself.

**Mr. Mbau:** Mr. Deputy Speaker, Sir, if the authorities in the USA are unable to prosecute---

**Mr. Deputy Speaker:** They are unable to “co-operate”, and not “prosecute”.

**Mr. Mbau:** Mr. Deputy Speaker, Sir, if the authorities in the USA are unable to co-operate, how about the cases that derive their origin of wrong-doing from Kenyan soil?

**Mr. Wako:** Mr. Deputy Speaker, Sir, all these cases arise from Kenya. The agreements relating to the Anglo Leasing scandals were made here. The fact of the matter is that, in order for us to apprehend the key suspects and the initiators of these projects, we need the assistance of foreign investigation agencies. Particularly, if we are aiming at getting our money back from wherever it has gone, we require the co-operation of foreign investigation agencies. That is why I want to put it on record that, at least, we are receiving assistance from the SFO of the UK. The Swiss authorities are also extending the necessary co-operation. Therefore, maybe, using them, we should be able to make out a case on a few of those matters. However, I would love the USA authorities to get those two people, so that we can unravel the whole saga. So, please, speak up.

**Mr. Lessonet:** Mr. Deputy Speaker, Sir, last year, we got a very hefty refund. Could the Attorney-General tell this House who refunded that money?

**Mr. Wako:** Mr. Deputy Speaker, Sir, I think we should be happy that, at least, we have the money.

**An hon. Member:** How much? Who refunded it?

**Mr. Wako:** Mr. Deputy Speaker, Sir, that is a different Question. I can give the hon. Member details if specifically asked to do so. The details are with the Ministry of Finance.

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. You heard the Attorney-General clearly state that we should be happy that we got a refund. That means he is aware where that money came from. Could he tell us who refunded this money, now that he says we should be happy that it was refunded?

**Mr. Wako:** Mr. Deputy Speaker, Sir, I can only say what is within my competence; that is, I am happy the money was received. As to who refunded it, that is a different question which can be answered by the Ministry of Finance.

**Mr. Ogindo:** Mr. Deputy Speaker, Sir, aware that the Attorney-General is a signatory to most of these contracts; further aware that he is the chief prosecutor, and, possibly, his privy to Kenya being signatory to certain treaties, could he clarify whether there is an extradition treaty between Kenya and the United States of America (USA)?

**Mr. Deputy Speaker:** Is there an extradition treaty between Kenya and the USA for criminals?

**Mr. Wako:** Mr. Deputy Speaker, Sir, I am not aware of it now, but there exists arrangement for that to happen. I will be able to answer that question fully later. However, I know that we have been cooperating very much on the issue of drug trafficking and it all depends on the consent of the persons involved.

**Mr. Deputy Speaker:** Clearly, extradition treaty would be if there are criminals hiding in the USA, then you would seek them to be extradited here.

That is a very basic thing!

**Mr. Wako:** Mr. Deputy Speaker, Sir, I want the hon. Members to bear in mind that we use the extradition treaty when we have collected enough evidence to be able to apply to the court in the USA. We cannot use the extradition treaty for suspects. We use it where you have finalized the case and there is enough evidence---

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

**Mr. Deputy Speaker:** Hon. Attorney-General, you could be treading on very dangerous grounds there.

**Mr. Ogindo:** Mr. Deputy Speaker, Sir, I am a little bit disappointed by the response given by the Attorney-General. He says he needs evidence before he can go for the suspects. There is already some evidence. The thrust of my question is: If there exists a treaty, what steps he is taking to ensure that we get the suspects extradited to Kenya?

**Mr. Wako:** Mr. Deputy Speaker, Sir, when we reach a level where we can indict somebody, then that will be put in motion.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Obviously, when the Attorney-General contemplated to ensure that these people come back to this country to face our laws, he must have weighed the various options. Is he telling us, as a competent advisor of the Government, that he does not know that extradition was one of the options? If it was one of the options, how come he has not confirmed that we have signed such a treaty between Kenya and the USA?

**Mr. Wako:** Mr. Deputy Speaker, Sir, the first stage in any criminal proceedings is investigation. We were not requesting that these people come to Kenya. We were requesting that the investigators from the Kenya Anti-Corruption Commission (KACC) go to the USA and interrogate them there. That is the first stage! You do not jump a stage



and start extraditing people. I can tell you that for Dr. Merlyn, the investigators from the KACC went to the USA at the invitation of the Federal Bureau of Investigations (FBI), who had identified where he lives and so on.

They went there. When they arrived there, they were told that he had just left the house to visit another state. They stayed there for some time, but he could not be traced. They came back and they were told by the FBI that as soon as they trace them in the USA, they shall again invite them. We are still awaiting that invitation.

**Mr. Ogindo:** On a point of order, Mr. Deputy Speaker, Sir. This matter is very important to this House and this nation. From the responses we are getting from the Attorney-General, one sees very little commitment and determination to bring this matter to an end. What is the commitment in the Office of the Attorney-General to bring this matter to a logical conclusion?

**Mr. Deputy Speaker:** Mr. Attorney-General, you owe this House and the country a better explanation than that! As a matter of fact, there were Kenyans who were extradited from here without us carrying investigations on them or the USA investigators coming here. There is reciprocity; could you give a proper answer to the House?

**Mr. Wako:** Mr. Deputy Speaker, Sir, there are precedents, but there are procedures to be followed. An application comes in and it must disclose sufficient evidence against the person being sort for. It goes to court and the court has to agree and then extradition takes place. That is why I am saying, just because you suspect somebody, you cannot just ask for extradition. In fact, that application would fail if it goes to court. In an extradition case, the court must be satisfied that there is sufficient evidence against that person. It must also be satisfied that it is not an offence of a political nature.

Now I was asked what commitment the Attorney-General has; total commitment.

**Mr. Ogindo:** On a point of order, Mr. Deputy Speaker, Sir. What the Attorney-General is trying to outline, I believe, are squarely within his docket. When it is just in words and he is not telling us what he has done and how far he has gone, it leaves us bewildered---

**Mr. Deputy Speaker:** So what is your point?

**Mr. Ogindo:** Mr. Deputy Speaker, Sir, my point is that the Attorney-General apparently has abdicated his duty. Could he confirm that he has not abdicated his duties?

**Mr. Wako:** Mr. Deputy Speaker, Sir, the Attorney-General has not abdicated his duties. He is a prosecutor. The matter is still under investigation which is not the responsibility of the Attorney-General. However, because of my total commitment, I am trying to help the investigators to ensure that they get sufficient evidence.

**Mr. Lessonet:** On a point of order, Mr. Deputy Speaker, Sir. I want to believe the Attorney-General is misleading this House. We are all aware that he has been banned from travelling to the USA. Therefore, he will not even be able to visit the USA to bring the suspects back to Kenya. He will not even be able to write a letter to the USA because they cannot communicate with him. Is he, therefore, misleading this House that he is able to investigate the Anglo Leasing cases?

**Mr. Wako:** Mr. Deputy Speaker, Sir, we are still communicating with the Government of the USA. The hon. Member will be surprised that I am still communicating at very high levels. I would like to educate the hon. Member that a revocation of a visa does not stop communication. Therefore, communication between us

is still there. I also want to tell the hon. Member that it is not the Attorney-General who carries out investigations. It is not my mandate to carry out investigations. It is the Kenya Anti-Corruption Commission (KACC) that does that. I have learnt that the KACC or any of its officials has not been banned from going to the USA. Even today, I know that the KACC is statutorily responsible for investigations and not the Attorney-General. This is communicated to the Government of the USA. Therefore, what we can do, rather than engage in semantics, is to rise up and make some “noise” so that the KACC can successfully investigate Anglo Leasing cases so that I can prosecute because I am ready, able and willing.

**Mr. Kathuri:** On a point of order, Mr. Deputy Speaker, Sir. Is the Attorney-General in order to refer us even on very simple questions which have simple answers to the Deputy Prime Minister and Minister for Finance, like naming those who returned the money to Kenya, when he knows that he is just taking us round in circles so that we can get confused and behave like rats in a gourd?

*(Applause)*

**Mr. Wako:** Mr. Deputy Speaker, Sir, I answered that question because I was cognizant of the Standing Orders of this House. I was also cognizant on who is supposed to answer those Questions and the Organization of Government. I have said that, that question is different from the one before this House. Since the hon. Member wants to know the answer, I advise him to go to the appropriate Ministry. I think there is no harm in doing that. Is there any harm in doing this?

**Mr. Ochieng:** Mr. Deputy Speaker, Sir, maybe, the Attorney-General should shed some light on how much Dr. Merlyn and Mr. Bradley defrauded Kenya.

**Mr. Deputy Speaker:** How much are they suspected to have taken from Kenyans?

**Mr. Wako:** Mr. Deputy Speaker, Sir, I may not know the amount, but what we know is that they were both involved actively in concluding those contracts. These are some of the issues that we want to find out in our letter of request to interrogate them properly.

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. At some stage when the Attorney-General was answering these questions, he said that he can provide the answer to the existence or lack of an extradition treaty between Kenya and the USA later. When will he do that? When is that later? Can he come back to this House on a particular day and give that answer that he says he will give later so we can follow up the matter?

**Mr. Wako:** Mr. Deputy Speaker, Sir, by the way, that is a matter of law, and my learned friend is a lawyer, and the books are here.

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. I am merely following up on the Attorney-General's undertaking. He has said on the Floor of this House that, that is a question he can answer later on. It is a matter of law but he undertook in this House, just a few minutes ago, to provide evidence of the existence of a treaty.

**Mr. Wako:** Mr. Deputy Speaker, Sir, I think the HANSARD will bear me out. I did not undertake to provide that evidence as the hon. Member alleges. I undertook to answer later.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. I have also had occasion to interrogate the Attorney-General in the Departmental Committee on Justice and Legal Affairs. Is he in order to evade this issue? The same thing he did in that Departmental Committee is the same thing he is doing here. He has referred the matter back to Mr. Imanyara who is not the Attorney-General of Kenya and does not draw salaries every month end as the Attorney-General of Kenya? Is the Attorney-General in order to do that?

**Mr. Deputy Speaker:** Mr. Attorney-General, the Chair remembers vividly that you were not very certain whether there is an extradition treaty between Kenya and the USA. You said that you can find that out later on. That seems to be the core of these points of order. You have also put it that there are suspects who are principle in this issue. So, can you give an undertaking on when you will provide that information to this House so that the nation and the House can know whether there is that kind of arrangement between the two countries?

**Mr. Wako:** Mr. Deputy Speaker, Sir, I will give the answer. However, Ms. Odhiambo was wrong to ask whether I was in order because I never even stated what made her rise on the point of order.

**Mr. Ogindo:** On a point of order, Mr. Deputy Speaker, Sir. The Attorney-General is still being evasive. Instead of starting with the first question, he has started with the last question and sat down. However, he is willing to tell us whether there is an extradition treaty between Kenya and the USA. The question is: When will he do that?

**Mr. Deputy Speaker:** Mr. Attorney-General, the Chair is conscious of this and the concerns raised by both the House as well as the nation. Therefore, I direct that this Question be put on the Order Paper on Thursday, next week, and you come up with an elaborate and comprehensive answer that literally answers every concern of Kenyans and this House.

*(Applause)*

**Mr. Wako:** Mr. Deputy Speaker, Sir, I am not challenging your ruling but the fact of the matter is that the Clerk of the National Assembly and the Speaker are aware that I will not be here next week. Could you defer this Question to the following week?

**Mr. Deputy Speaker:** Nonetheless the Question should be placed on the Order Paper on Thursday the following week!

*(Question deferred)*

**Mr. Wako:** That is okay, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Hon. Members, today is Supply Day and the Chair is conscious of the fact that a lot of time was taken by a matter that is very serious and Kenyans are passionate about. The Chair had to deliberately give the kind of leeway that is required to try and save the money of Kenyans or find where the money is. Under the

circumstances, the Chair directs that Questions Nos.338, 455, 523, 488, 494 and 526 be all put on the Order Paper and spread out between Tuesday and Thursday, next week!

*Question No.338*

RAISING OF CAR PARKING CHARGES WITHIN NAIROBI

*(Question deferred)*

*Question No.455*

DEVELOPMENT PROJECTS INITIATED BY  
WATER MINISTRY IN KURESOI CONSTITUENCY

*(Question deferred)*

*Question No.523*

COMPENSATION FOR LAND ACQUIRED FOR  
CONSTRUCTION OF MANOONI DAM

*(Question deferred)*

*Question No.488*

IRREGULAR ALLOCATION OF LAND  
INTENDED FOR DISTRICT HEADQUARTERS

*(Question deferred)*

*Question No.494*

EFFECTS OF GREENHOUSE GAS  
EMISSIONS ON ENVIRONMENT

*(Question deferred)*

*Question No.526*

NON-PAYMENT OF LEVIES BY KPLC  
TO LOCAL AUTHORITIES

*(Question deferred)*

**Mr. Deputy Speaker:** Next Order!

**POINT OF ORDER**

## PROGRAMME TO SECURE NEW CONSTITUTION

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, I rise to demand a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs with regard to the programme of securing a new Constitution in Kenya, which he administers on behalf of the Government, in relation to the proposed time that we will go on recess. It is public knowledge that on Thursday, next week, Parliament should go on recess. Traditionally, we will report back in the month of March, 2010. Being aware of the fact that the country is anxious to get a new Constitution, we want to know how the Minister intends to deal with this matter.

Could we have an undertaking from him or from the President - through the Minister - that Parliament will not be prorogued, delay and in the process delay the Constitution making process?

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

**MINISTERIAL STATEMENT**HOUSE CALENDAR TO CATER FOR  
CONSTITUTIONAL REVIEW PROCESS

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, because of the extreme urgency of this matter, I would prefer to make the Statement now. The Statement is as follows:-

I have already tabled, through a Ministerial Statement last week, a calendar of the constitutional process. That calendar envisages this House being seized of the Draft Constitution at the very latest by mid February. I want to give an undertaking that I have already raised this matter with the House Business Committee (HBC). I have alerted them that as they design the calendar for Parliament, they should ensure that proper advice and recommendations are made all round to ensure that the House is sitting at the time it will be seized of the Draft Constitution. I have been given an assurance by the HBC that His Excellency the President will be advised. Even if it is a prorogation, the House will be recalled before that time, failure to which Parliament merely remains in recess and the Fourth Session starts when that time comes. Therefore, it is a firm undertaking that the House will be sitting when it is supposed to be sitting to seize that document.

Thank you.

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, the Minister knows that the Chair of the HBC is currently the Speaker. Had it been the usual way where the Chair is the Leader of Government Business, then such an assurance being given to the HBC would have been conveying the word of the President, who has the sole prerogative of proroguing Parliament. Who has assured you that the President has said that?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, that is a very good question. I have not said that

the President said that. I said that I advised the HBC on Tuesday this week and the Speaker was on the Chair himself. So, for that purpose, he was the Chairman of HBC and within that framework, he was the Leader of Government Business. The Speaker assured me that he was well aware. The meeting was also attended by Rt. Hon. Prime Minister. Therefore, I have every comfort in saying that the Grand Coalition is well aware of my request and express demand on behalf of those Kenyans who want a new Constitution, that the House will be made to be sitting at the time that it should seize the Draft Constitution in mid February.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I do appreciate that this Minister does appear to be well-intentioned when he gives the commitment that he does wish us to have a new Constitution. Given that the Standing Orders, as framed now, enable the President to send Communications to the Chair, rather than the Minister dealing with the HBC, could he take the opportunity provided by the Standing Orders and get a Communication from His Excellency the President and deliver it to this House before the end of this week, so that we can be assured that, indeed, we will get a new Constitution?

*(Applause)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, indeed, I agree. I will suitably advise His Excellency the President about the remarks made by the hon. Member and the interest that the House has. He will then make a decision and I am sure that he will issue a Communication. But I want to assure hon. Members that from the interest that His Excellency the President has shown in this process, I have no doubt that the proper assurances will come forth.

**Mr. Deputy Speaker:** Mr. Imanyara, you wanted to seek a Ministerial Statement.

## POINTS OF ORDER

### REFUND OF MONEY TO ANGLO LEASING SUSPECT

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Deputy Prime Minister and Minister for Finance. Let this House know how much money was refunded by one of the suspects in the Anglo Leasing Scandal, the amount involved, from what bank, when it was received in Kenya, what account that money went to and the name of the suspect.

**Mr. Deputy Speaker:** This is for the Deputy Prime Minister and Minister for Finance. But in the light of the fact that he is not here and I cannot see his Assistant Minister, any Minister can make an undertaking on his behalf.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I will communicate that to the Deputy Prime Minister and Minister for Finance. Perhaps, you can allow the Statement to be issued on Wednesday, next week.

**Mr. Deputy Speaker:** It is so directed that the Minister issues this Statement on Wednesday, next week.

ILLEGAL ACQUISITION OF PLOT LR/  
NAIROBI/BLOCK 93/1418

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Lands in respect of a Question which I asked in this House on 15<sup>th</sup> September, 2009, concerning the illegal acquisition of plot No.LR/Nairobi Block 93/1418 which is an environmental carbon sink and buffer zone against noise between Plainsview Estate and the busy Mombasa Highway. In answering the Question, the Minister indicated that investigations had been initiated to ascertain the circumstances under which the plot, which is a public utility, was allocated to a private developer. To quote the Minister, he said:

“In the meantime, the Ministry has placed---

*(Loud consultations)*

**Mr. Ogindo:** On a point of order, Mr. Deputy Speaker, Sir. There are very loud consultations going on. We cannot even follow the proceedings.

**Mr. Deputy Speaker:** Order, hon. Members! Order, hon. Otieno and your colleagues in the Front Bench! Hon. Deputy Prime Minister and Minister for Local Government, Mr. Mudavadi, can we have some silence? Can you consult in very low tones? There are Back Benchers who are seeking Ministerial Statements. It could even be from your own Ministry. You are all consulting in very high tones. Let us have a bit of decorum in the House!

Proceed, Dr. Khalwale!

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I was quoting the Minister who said:-

“In the meantime, the Ministry has placed a restriction on the title deed to forestall any transaction on the land until the matter is fully investigated and determined.”

Mr. Deputy Speaker, Sir, despite the answer given to this House by the Minister and the undertaking he made, I am very sorry to report to this House that the private developer has gone ahead and started constructing a petrol station on that land. Could the Minister, therefore, clarify whether it is him and not the private developer who is taking this House for a ride? Secondly, could he report to this House the current status of the investigations that he ordered into this matter? Could the Minister also order the law enforcement officers to move in against that rogue developer? Finally, I demand that the Minister immediately visits the site and stops the construction work for, if nothing else, to protect the pupils of Highway Educational Complex Primary School, which is situated right next to the site.

NON-PAYMENT FOR MAIZE DELIVERIES TO NCPB

**Mr. Wamalwa:** On a point of order, Mr. Deputy Speaker, Sir. I had requested for a Ministerial Statement from the Minister for Agriculture over a week ago with regard to payment for maize delivered by farmers who have not been paid up to date. The Statement has not been issued.

**Mr. Deputy Speaker:** We expect one Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs. But before that, there was a Ministerial Statement sought from the Minister for Lands by hon. Dr. Khalwale.

Hon. Minister, could you give an undertaking on behalf of the Minister for Lands?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): I do, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** When shall we have the Ministerial Statement?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, it will be delivered on Wednesday, next week.

**Mr. Deputy Speaker:** Fair enough! Yes, hon. Ethuro!

#### CHOLERA EPIDEMIC IN TURKANA/POKOT REGIONS

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. I want to remind you that I actually asked for a Ministerial Statement on the outbreak of cholera, particularly for Turkana and Pokot, last Thursday and the Chair directed that it should be given on Tuesday afternoon. That did not happen and the Minister is here today.

#### IRREGULAR ADVERTISEMENT FOR RECRUITMENT OF CLERKS/DRIVERS

The substantive Ministerial Statement I am seeking – and I hope my good friend the senior counsel will convey the message to the relevant Minister – is from the Ministry of State for Provincial Administration and Internal Security. An advertisement was made on the recruitment of clerks and drivers all over the country. This recruitment gave a seven days' notice. Fortunately, it was extended to mid December, 2009. But that advert is in contravention of a circular by the Minister of State for Public Service, Mr. Dalmas Otieno, which decreed that all cadres of employment between Job Groups "A" and "F" must be recruited at the district level.

So, I would like to the Minister to state why he is recruiting nationally disregarding the circular by the Government. When is he going to revert to the provisions of the circular and, if possible extend the period for the advert to 2010?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, indeed, it is true that the advertisement says the "newly created districts". When you look at the advert, you will see that we have actually mentioned those newly created districts.

So, in other words, all clerical officers within the newly created districts will be interviewed and absorbed within those districts. We have also extended the period by two more weeks. I think we have gone by the circular which was issued by the Public Service Commission (PSC).

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. I would like to have a clarification through the Chair whether the Assistant Minister is responding to my statement now. If he has responded to the statement now, then I would like to seek further clarifications from him.



**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, I was responding to the allegation that we are nationally absorbing the clerical officers. I was giving the impression that the allegation by hon. Ethuro is wrong.

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

**Mr. Deputy Speaker:** What is your point of order, hon. Ethuro?

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Assistant Minister in order to claim that I am making an allegation when I made specific reference to an advert which he has acknowledged and he goes further to say, "he is also creating an impression?" Mr. Assistant Minister, this is not the House for creating impression. This is a House where we transact serious business of national importance!

**Mr. Deputy Speaker:** Did you seek a Ministerial Statement?

**Mr. Ethuro:** I did, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Indeed, under the circumstances, you do not turn this into a debate. When the hon. Member seeks a Ministerial Statement, the sentiments that you are expressing now form part of the body of the clarifications.

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

Order, hon. Assistant Minister! Give an undertaking on the day you will give a Ministerial Statement on the matter that essentially was raised by Mr. Ekwee Ethuro.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, I thought I have responded to what he was seeking and he is very satisfied.

**Mr. Deputy Speaker:** Mr. Ethuro, are you satisfied with the response?

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, the Assistant Minister would like me to be satisfied, but I am not satisfied.

**Mr. Deputy Speaker:** So, you are seeking a full Ministerial Statement?

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I would not mind seeking clarifications on the Statement. I think he has made a Statement and we need to interrogate it.

**Mr. Deputy Speaker:** You just sought a Ministerial now?

**Mr. Ethuro:** Yes, Mr. Deputy Speaker, Sir, I have just sought a Ministerial Statement now and the Assistant Minister has attempted to answer it now---

**Mr. Deputy Speaker:** Order! Order, Mr. Ekwee Ethuro! You seek a Ministerial Statement, you get an undertaking from the Minister, and he comes and delivers the Ministerial Statement another time! For today, there are Ministerial Statements that were undertaken weeks back and they are the ones which are going to take precedence over yours.

Can you give an undertaking when you are going to bring the Ministerial Statement?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, I will give the Ministerial Statement on Wednesday morning.

**Mr. Deputy Speaker:** It is so directed!

ERADICATION OF CATTLE RUSTLING  
IN BUURI DISTRICT

**Mr. Ruteere:** On a point of order, Mr. Deputy Speaker, Sir. Yesterday, I sought a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the insecurity situation in Buuri. They promised to issue it on Wednesday afternoon. Since the Assistant Minister is here, he can issue that Ministerial Statement.

**Mr. Deputy Speaker:** We have a Committee of the whole House today. We are not going to take any more Ministerial Statements except the ones from the Minister for Justice, National Cohesion and Constitutional Affairs, because of the urgency of the matters that are essentially going to be addressed here.

TERMINATION OF NEW KCC MANAGING  
DIRECTOR'S CONTRACT

**Eng. Maina:** On a point of order, Mr. Deputy Speaker, Sir. Yesterday, the Chair made a ruling that a Ministerial Statement regarding the sacking or removal from office of the New Kenya Co-operative Creameries (KCC) Managing Director be issued today---

**Mr. Deputy Speaker:** Indeed, the Chair is concisious of that issue and it has communicated to the Minister that he issues a Ministerial Statement next week on Tuesday.

**Eng. Maina:** Mr. Deputy Speaker, Sir, the Minister is extremely anxious to issue that Statement and he is in the House!

**Mr. Deputy Speaker:** Order! Yes, indeed, you have one Ministerial Statement. When can you issue the Statement? Can you do that on Tuesday?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Deputy Speaker, Sir, I would seek the indulgence of the Chair to issue some of the Ministerial Statement which I have. If there is no time, then I would request that I issue all those Ministerial Statements which have been sought by Wednesday morning.

**Mr. Deputy Speaker:** Fair enough! It is so directed. Your point of order is well taken care of. This is now regarding the Ministry of Agriculture.

**Mr. Wamalwa:** On a point of order, Mr. Deputy Speaker, Sir. You did not give any direction regarding my request for a Ministerial Statement and I have seen the Minister exiting the House. It is a matter of great urgency because the farmers have not been paid.

**Mr. Deputy Speaker:** Order! The Ministers take the liberty to approach the Chair to find out whether actually there will be time for them to issue a Ministerial Statement and the Chair has been consistent on this. We can only do it next week because today, we have a Committee of the whole House.

Yes, can you seek your Ministerial Statement?

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I wanted you to direct the Minister for Public Health and Sanitation, who is present, to issue a Ministerial Statement on the situation of cholera in the country.

**The Assistant Minister for Public Health and Sanitation** (Dr. Gesami): Mr. Deputy Speaker, Sir, I am aware of the problem and I will issue a Ministerial Statement on cholera on Tuesday afternoon.

### COMMUNICAITON FROM THE CHAIR

#### POSTPONEMENT OF MEMBERS RETREAT ON HARMONIZED DRAFT CONSTITUTION

**Mr. Deputy Speaker:** Order, hon. Members! Earlier on, I had made a Communication from the Chair. The Communication was based on the information for a request that was placed to the Chair or the Speaker by the Parliamentary Caucus for Reforms, in which I indicated that, actually, that retreat was going to take place on 4<sup>th</sup> and 5<sup>th</sup> December, 2009. I have since been made aware that because of other functions that are taking place in Mombasa and other places in the country, these dates of 4<sup>th</sup> and 5<sup>th</sup> December, 2009, might not be the best dates to be able to attract the biggest number possible of hon. Members to discuss and deliberate on the Harmonized Draft Constitution of Kenya so that we get a consensus at the Parliamentary level as much as possible.

Under the circumstances now, hon. Members will be advised accordingly on the dates of the retreat. You will all get it. We cannot do it on Friday and Saturday next week because Saturday next week is Jamhuri Day, it is our Independence Day, 12th December, 2009. So, you will get the communication on the appropriate dates.

Next Order!

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Deputy Speaker left the Chair]*

#### IN THE COMMITTEE

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

#### THE ARBITRATION (AMENDMENT) BILL

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, we are in the Committee of the whole House. If you look at your Order Paper, you will see that, under Order No.8, we have the Arbitration (Amendment) Bill and the National Youth Council Bill. We will consider the first one only, the Arbitration Bill, Bill No.2.

*(Clauses 2, 3 and 4 agreed to)*

*Clause 5*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended in paragraph (a) by deleting the words “takes the appropriate procedural step to acknowledge the legal proceedings against that party” and substituting therefor the words “or otherwise acknowledges the claim against which the stay of proceedings is sought”.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Attorney-General! You will need to justify why you are bringing that amendment!

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I am bringing this amendment basically to have a better phraseology. It clarifies the issue.

**The Temporary Deputy Chairman** (Mr. Ethuro): That is fine.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 5 as amended agreed to)*

*(Clauses 6 and 7 agreed to)*

*Clause 8*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8 of the Bill be amended in the proposed Subsection (3)(c) by deleting the words “reasonable time” and substituting therefor, the words “fourteen days”.

The reason for this amendment is to stop arguments as to what is the “reasonable time” by putting a specific time of 14 days.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 8 as amended agreed to)*

*(Clauses 9, 10, 11 and 12 agreed to)*

*Clause 13*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 13 of the Bill be amended in the proposed Section 16B by

adding the words “or withdrawal” at the end of Subsection (3).

Mr. Temporary Deputy Chairman, the word “withdrawal” had been left out. It is necessary that this word be there.

*(Question of the amendment proposed)*

*(Question, that the words to be added be added,  
put and agreed to)*

*(Clause 13 as amended agreed to)*

*(Clauses 14, 15, 16, 17, 18, 19, 20, 21, 22,  
23, 24, 25 and 26 agreed to)*

*Clause 27*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 27 of the Bill be amended in the proposed Section 36 by adding the following new subsection at the end thereof-

(5) In this section, the expression “New York Convention” means, The Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations General Assembly in New York on 10th June, 1958, and acceded to by Kenya on 10th February, 1989, with a reciprocity reservation.

Although we have used the word “New York Convention” in the Bill, there is no definition of what the “New York Convention” is. It is important that it be defined appropriately.

*(Question of the amendment proposed)*

*(Question, that the words to be added be added,  
put and agreed to)*

*(Clause 27 as amended agreed to)*

*(Clauses 28, 29 and 30 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report to the House its consideration of The Arbitration (Amendment) Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

### **THE ARBITRATION (AMENDMENT) BILL**

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, I beg to Report that a Committee of whole House has considered The Arbitration (Amendment) Bill and approved the same with amendments.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Youth Affairs and Sports** (Prof. Sambili) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Arbitration (Amendment) Bill be now read the Third Time.

**The Minister for Gender, Children and Social Development** (Ms. Mathenge) seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

## **MOTIONS**

ADOPTION OF SESSIONAL PAPER NO.3 OF  
2009 ON NATIONAL LAND POLICY

THAT this House adopts Sessional Paper No.3 of 2009 on National Land Policy laid on the Table of the House on Wednesday 18<sup>th</sup> November, 2009.

*(The Minister for Lands on 1.12.2009)*

*(Resumption of Debate interrupted on 2.12.2009)*

**The Temporary Deputy Speaker** (Mr. Wamalwa): Who was on the Floor? Is Mr. Baiya in the House? He is not here. He still had 16 minutes. Is there anyone who would like to contribute to this Motion?

**Dr. Otichilo:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make my contribution on the National Land Policy. First and foremost, I want to take this opportunity to thank the Minister, the Ministry and all those who were involved in the preparation of the National Land Policy. This Policy has taken too long. The process started in 2004 and it is in 2009 that this Policy is being brought to this House. I also note that the process that was involved in the formulation of this Policy was elaborate and all inclusive. I participated in this process. I confirm that the process was all-inclusive and many Kenyans participated in it. Therefore, those who have been raising issues that this process has not been all-inclusive are misplaced.

Mr. Temporary Deputy Speaker, Sir, I would like to say that we now have a policy in our history that provides an overall framework and defines the key measures required to address critical issues regarding land in this country. The critical issues that this Policy addresses include land administration, which has been a major issue in this country as regards to land management. The other major issue is land use policy. This Policy gives us a window for us to come up with a land use policy which is crucial for this country because without a land use policy, we cannot regulate our land use. It is because of lack of land use policy, for many years, that this country has had many problems regarding land use and environmental management. Therefore, this Policy will enable us come up with a land use policy which will define how we use our land.

The other issue that this Policy addresses and which is very important is the restitution of historical injustices. We have had very many historical injustices as regards land and this Policy will address it. This is an issue that many Kenyans have raised but nothing has been done. I believe that we will have a framework that will address the historical injustices regarding land acquisition and land administration within this Policy.

Mr. Temporary Deputy Speaker, Sir, environmental degradation is an issue that this country is suffering from. It is an issue of concern to every Kenyan. This Policy has taken the liberty to address this issue which is very important. Therefore, I congratulate those involved for including the issue of environmental conservation, which is so important, if we have to use our land sustainably for the present and future generation.

Most of our legal frameworks on land are outdated. This Policy is proposing that we review and amend our legal frameworks on land. So, this will create an opportunity

for us to review our land laws which are outdated. For example, the Surveying Act is out of date and many other Acts regarding land. Also, this Policy proposes a very good institutional framework that will oversee the management of land in this country.

The other issue that this Policy is addressing which is of great importance to this country is the issue of land information management. Management of land information in this country is in a total mess. With the enactment of this Policy, I believe we will come up with a proper land information system that will allow Kenya to access information regarding land very easily from the local level to the national level. There are quite a number of key issues that this Policy addresses which I want to highlight as being very important. One of the key issues is the need to have security of tenure for all Kenyans as regards land. Some of the key areas that this Policy is addressing are ownership of land. It has clearly defined how we should address the issue of ownership as regards public land, community land and private land. As regard to community land, I want to congratulate those who involved in the formulation of this Policy because for the first time, they are allowing communities to take charge of their own land resources.

Mr. Temporary Deputy Speaker, Sir, you recall that we have had the Land Trust Act which gave authority to local authorities to hold land in trust for the local communities. Due to corruption, most of the land that belongs to the communities was given out to undeserving people. So, by giving the local communities an opportunity to manage their own land resources, I think this Policy is taking the right direction.

The issue I want to address is ownership of land as regards leases. We have had in the previous laws where some people who are not nationals have had a chance to own land for 999 years. I think that is too long a period. So, this Policy is proposing 99 years lease for foreigners who want to lease land for productive purposes. I think this a step in the right direction.

Mr. Temporary Deputy Speaker, Sir, most of the land in this country is not put to productive use. We have had people who have acquired land for speculative purposes. We have had people who have acquired large chunks of land and they do nothing on this land. I, therefore, believe that this Policy is addressing this issue. It is proposing very drastic measures that will make sure that those who own large tracts of land either put them into production or they pay taxes for them. I think this is a very important direction.

The other area which I want to highlight and has been doing well is the area where this Policy is trying to ensure that sound and sustainable environmental management of all land based resources is maintained or done properly. In this case, the issue of land use policy is very important. I hope once we have this Policy enacted, we will be able to have a land use policy that specifies how our land resources are utilized.

I also want to note that we need to strengthen the institutions involved in land management, particularly in the area of survey and mapping. Our Surveying and Mapping Department needs to be overhauled. They lack modern equipment and need more staff. They also need capacity building. This is an area where we need to address. I am happy to note that this Policy addresses these issues.

We also need to look at some of the issues that have been very important in this country and are issues of concern to Kenyans. These issues include the following: Adjudication procedures and processes, land registration and allocation systems, as well as land markets. We need to create land markets in this country, so that people can make use of the land. Those who can hire or lease the land should be able to use it. We also



need to establish an efficient and effective land information system. This should cover all aspects such as standards. We need to come up with clear standards on land information systems. We need to come up with proper geo-referencing system. Currently, we have our land title deeds, but they are not well geo-referenced. So, if we want to prepare a proper land information system, we need to do a proper geo-referencing; meaning that we have to use modern technology. This is where the Ministry of Lands needs to be strengthened for them to acquire new equipment such as the Global Positioning System (GPS). They should be able to start using satellite technologies to map land and come up with modern maps.

We need security of information. We need to come up with procedures on how to ensure that security of land information is secured and is in good format. We also need to look at issues to do with intellectual property rights and procedures and ways on how to disseminate information and to provide information on land. We have to come up with a proper way of dissemination of information, whether we will charge for it or not.

Lastly, I want to note that the Policy has come up with a very good institutional framework to ensure that there is devolution of power and authority as regards land. In this case, I am talking about the District Land Boards and Community Land Boards, so that information regarding land can get to the lowest level of our society. I also want to note that this Policy must be harmonized with the Draft Constitution, so that whatever is in the Constitution should not contradict what is in this Policy.

With those few remarks, I want to support this policy.

**The Minister for Gender, Children and Social Development** (Ms. Mathenge): Thank you, Mr. Temporary Deputy Speaker, Sir. I want to thank and congratulate the Minister and his team for bringing this National Land Policy (NLP).

Indeed, it is a shame that we have only been able to come up with the NLP after over 40 years of Independence. Yet, every five or six years, we have a conflict. When we ask why we have conflict, we are told we have various conflicts between communities and families because of land issues.

So, Mr. Temporary Deputy Speaker, Sir, it is a policy that is very welcome and I want to recommend that all hon. Members of this House make it their Bible and make our chiefs have it as a Bible because this is the only way we shall be able to address the perennial conflicts that we have within our society. Indeed, we are told that the landmass of Kenya is 582,642 square kilometers. We know land is not elastic; land does not grow, yet the population of Kenya continues to grow. We have estimates showing that the focus of the population census that was done is close to 40 million people. It is obvious that each Kenyan cannot own a piece of land in this Republic of ours. We, therefore, need to make sure that the 20 per cent that we are told is between medium and high density agricultural and urban is utilized and, indeed, that this rate is also increased further. We have seen countries which have a less landmass and we often go to borrow and beg food from them. I think we should borrow a leaf from them and make optimum use of the land that is available to us.

Mr. Temporary Deputy Speaker, Sir, I love this National Land Policy because, for the first time, it has also taken note of the vulnerable groups. It has taken note that a lot of our orphans – who today are totaling to over 3.5 million – should not be disinherited and it is going to take care of that. So, this is very commendable. It is also recommending that the Matrimonial Properties Act – which has sent a lot of people shivering – should be

enacted as soon as possible so that property that is owned by spouses is not left to the whims of judges to decide who owns what or you are required to produce some fake receipts so that your property can be divided equally.

Mr. Temporary Deputy Speaker, Sir, I would also like the Minister to look at the issue of the security of tenure. Although the Sessional Paper had specified the security of tenure, we know that the rights of people have been dispossessed over time, especially during the political upheavals. We would want him to really look into this, especially if we have valid titles so that we know their rights to ownership of land are properly taken care of and are not just thrown on the side, yet we hold titles.

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

Thank you, Mr. Temporary Deputy Speaker, Sir.

**Mr. Mbadi:** Thank you very much, Mr. Temporary Deputy Speaker, Sir. I would also like to support this Motion that is before us. Let me, first of all, say that I am happy to be in the ten Parliament that is, probably, going to pass the first land policy since Independence of this country.

Mr. Temporary Deputy Speaker, Sir, land issues have been very emotive in this country and a lot of problems that we have witnessed – they were most pronounced from 1992 - are, of course, linked to elections. But if you look at the problems critically, you realize that land has really played a big role in the problems that we have gone through. It, therefore, means that, as a country, we need to have some land policies that have been lacking for a long time.

Mr. Temporary Deputy Speaker, Sir, I believe this Policy is going to address some of the historical issues that we have been talking about. A lot of times, we have complained of title deeds which are issued illegally. This time round, I believe the Minister, who is a reformist, is going to make sure that we bring some sanity in the issue of title deeds. Yes, the sanctity of title deeds needs to be respected but this is only if they are given out legally. We have heard a number of cases in this country where people acquire land illegally and then later on, come flashing the title deed and telling everybody who cares to listen or hear that there is sanctity of title deeds. I believe that, this time round, we are going to correct some of these anomalies.

Mr. Temporary Deputy Speaker, Sir, I also wanted to talk about the attachment that people have on land in this country, which is really amazing. It is high time, with the current growth in population, that we de-emphasize on land and concentrate on space. Let us start thinking more on how we can claim space rather than land. Because you realize that some people just take pride in owning land. Someone owns thousands of acres land and he does nothing with it! I will not mention names, but there are some pieces of land where, if you drive from here going to western Kenya, you are told that this land belongs to so-and-so. Ever since I started passing there when I started coming to Nairobi, I have not see any economic activity taking place. This time round, even if the National Land Policy is not going to address some of these issues, I believe the new Constitution that, probably, will be passed will address the issue so that we do not have speculators. It is not right for the majority of landowners in this country to be speculators rather than users of the same resource. I think it is high time that land speculation is made expensive so that people will own land that they want to put into some productive use.

Mr. Temporary Deputy Speaker, Sir, I want to also talk about this issue of historical injustice, which I believe is properly addressed in the current National Land

Policy. When we talk of historical injustice, sometimes it becomes a bit confusing on how far back would historical injustice be addressed or how far back one would consider that some historical injustice was committed. This terminology of “historical injustice” differs from region to region. You will find that what is considered as historical injustice in the Coast Province is not the same thing as it is in the Rift Valley Province. So, I think, as a country, we now need to address some of these issues so that some of the Kenyans do not feel like they do not belong to this country. I have a case in point about the Coast Province. Many, many coastal people are squatters in the Coast Province. You find that the people who own land in the Coast Province are absentee landlords. Why should we have such a situation to continue for a very long time? Since we attained Independence to date, we have not corrected or even attempted to correct some of these anomalies. So, it is high time, as a country, that this is corrected.

Mr. Temporary Deputy Speaker, Sir, because we have been on this issue for a long time and I see there is a lot of interest from some of my colleagues, I would want to stop there by saying I support the Motion.

**The Assistant Minister for Information and Communications** (Mr. Godhana): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to add my voice to the National Land Policy.

I want, first and foremost, to congratulate the Minister for having spared all the time with members of his staff and the Kenya Land Alliance to put together this very historic document that, us, as hon. Members and Kenyans in general plus our ancestors will live to remember.

Mr. Temporary Deputy Speaker, Sir, I want to restrict myself to only three issues because most of the issues have been dealt with. However, allow me to give the Minister special credit for the manner he has moved this Motion. When he was moving the Motion, I remembered two very critical phrases. These are: “the rights” and “our people”. He kept on repeating “our people” every time as he moved the Motion. That is a very unique sentiment from a leader, especially one of this generation. Over the years, leadership in this country never appreciated the wholesome representation and diversity in Kenya. Although it was spoken of, it was never practised. I want to recognise the sentiments of the Minister. I want to urge the hon. Members, especially all leaders in this country, from now on to copy the Minister whenever they speak. They should speak for the interests of our people and not “the people” because the latter are those who matter.

Mr. Temporary Deputy Speaker, Sir, I also want to congratulate the Minister for the sense in which he has articulated the principle of popular sovereignty and democracy by recognising all types, categories and status of people including women, children, disabled, vulnerable communities and groups. I also want to congratulate him especially for recognising the various ways in which Kenyans contribute to the economy of this country. That is a very unique character of somebody who has taken time to understand what Kenya is composed of.

Mr. Temporary Deputy Speaker, Sir, in Article 171.3.6, that is Land Issues Requiring Special Intervention, I recognise that the Minister looked into historical injustices. He recognised the value of pastoralism in Kenyan economy – one thing that has never been articulated properly in our legal system. He looked at the coastal region as an area of concern. He looked at the land rights of the minority and marginalised groups, women, children and informal settlement issues.

Mr. Temporary Deputy Speaker, Sir, allow me to congratulate the Minister first for raising the issues of the pastoral communities. This is one of the most unique communities as per their way of life. For many years, this is a community that has not been looked at properly, but I am impressed that all its issues have been captured properly. This is first by recognising that pastoralism is a legitimate land use and productive system.

He goes further to put some emphasis on regulating transactions in land in pastoral areas. There is only one thing that I want to raise as regards pastoral communities – the issue of giving grazing rights. It might be a question of interpretation or misinterpretation. When we come to the implementation, we have to be careful that we do not play into cultural practices or cultural interpretations of the issue of grazing rights by what it means in English. When a pastoralist talks about grazing rights, you have to understand that in pastoral tradition there are no boundaries. No wonder you will find pastoral communities clashing with agriculturalists in Isiolo, Meru, Ukambani, Voi and all over the country. We need, as a safeguard, some provision within this policy so that when we come to applying what is in this policy, then we can also safeguard certain interests of certain communities. This is so that at the end of day, we do not get back to the same situation of clashing all the time.

Mr. Temporary Deputy Speaker, Sir, I come from one very unique community that I really want to shed light on, and this is a riparian community. I am taking issue with this because I know the situation that, that community is in. One thing is that the riparian communities have a very unique characteristic, in that they practise almost all ways of living. One, they are pastoralists themselves. Two, there is no other term that you can give them. They are just riparian, because all through they have lived along rivers and practise everything along the rivers, in the sense that they practise fishing, bee keeping, poultry, pastoralism, agriculture, and all sorts of ways of life. This puts this community at risk, because of the source of water. They have never lived anywhere else. I have tried in my research to look for any other terminology to give them, but there is no other other than “riparian”. That is how you can refer to them.

Mr. Temporary Deputy Speaker, Sir, over the years, there have been conflicts, that if you remove one economic way of life, then you have done away with all ways of life for them. Their cultures and traditions are based on the river. Looking at these communities, you will find them living at the lower riparian stages, where we have the Ox-bow lake; so, if you remove the Ox-bow lake, you have destroyed one way of their life. If you remove the forest, you have destroyed their hunting, gathering and bee keeping. If you remove them from the river, you have destroyed their fishing. So, automatically, you have messed up with their whole way of life.

I am saying this because I have noted in the Harmonised Draft Constitution that all the land between the highest water mark and the lowest water mark has been removed from this community and placed under the proposed National Land Commission. That is a very big risk to these communities. I wish to request the Minister to make a special provision in this document that can safeguard the interests of these particular communities, because as much as they are a minority, they are also a major community as per their way of life.

Mr. Temporary Deputy Speaker, Sir, I also want to look at the issue of the coastal region, and I am happy that yesterday one Member of Parliament said that they are

almost getting over the Rift Valley problem, but the Coast is a time bomb. I come from the Coast and I can assure you that it is a real time bomb. You know, and so do the Members of this House, that we have been having a lot of problems of skirmishes between coastals and other people from the rest of Kenya.

However, because of the erosion of the feeling of belonging, these people keep on feeling that as much as they are living with their brothers and sisters, they are not recognized. Instead, they keep on attaching names to them, for instance, they are called “lazy” or “Swahili”. Most times, they say that our people sit down under coconut trees waiting for coconuts to fall. These titles or references really affect their sense of belonging. It makes them believe that they are neglected.

Hon. Mbadi just said that it is sad to see that most people who own property like land in the Coast Province are from elsewhere including absentee landlords and yet there are so many tenants living on plots owned by absentee landlords. This is one of the unique situations that the people of Coast Province have found themselves in. I think it is important that the Minister captured this as an issue that requires attention.

Mr. Temporary Deputy Speaker, Sir, there is a saying that goes: “Nothing stops an organization faster than people who believe that the way they worked yesterday is the best way to work tomorrow.” I think the leadership of this country should be encouraged by that saying. The way we used to do things in the past cannot necessarily be the best way to approach things tomorrow. So, it takes a spirit of sacrifice for us to rectify those anomalies and forge a way forward, especially when it comes to bringing back nationhood to our country.

I would like to look at the National Land Commission. I agree that we need to have this kind of institution to be able to manage and handle issues of land. However, there is a mismatch which I think is necessary to look at. When I look at this structure, I find it not different from the structure that used to exist before in the sense that communities have been having some sort of land administrative system. In the districts, we have been having a system that addresses land issues. For us to administer land directly from the National Land Commission to the District Land Board, that is dangerous. My feeling is that when we have somebody in the district talking to the Commissioner of Lands, I do not believe such a person would have the guts to resist whatever the Commissioner of Lands would tell him. Now that we are going towards accepting a devolved system, it is necessary that we have a regional land commission or board so that there is, at least, somebody between the two in a position to check and balance issues of land.

Mr. Temporary Deputy Speaker, Sir, I want to conclude by giving the Minister for Lands and his staff credit for the effort they put in developing this land policy.

With those few remarks, I beg to support.

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. Right from the outset, I would like to support the Motion and congratulate the Minister for Lands for such a good policy.

One of the things that has been said is that this land policy is about undertaking a position on the far left of the far right. For me, it is about taking into consideration the interest of the poor and marginalized Kenyans. That is the reason I support this Motion. If taking into account the interest of poor and marginalized Kenyans is a leftist approach, I am very happy to be leftist. If it is rightist, I am equally happy. This is because, at the end

of the day, we are here to represent Kenyans. Statistics show that in this country, 10 per cent of Kenyans manage or own 80 per cent of the country's resources. It is untenable and that is why we have the crises of untold proportions in this country.

Mr. Temporary Deputy Speaker, Sir, if I were to draw a problem tree of this country, I would put land right at the centre of it. The reason I would do so is that if you look at the issue of IDPs and listen to the Parliamentary debates, you will realize that there is a Question on IDPs every week whether they are those of 1992, 1997 or 2007. We will never get rid of the issue of IDPs unless we address the land question. At the end of the day it is about land. If you look at the issues of *Mungiki*; insecurity, squatters and poverty, it is all about the land question. So, unless we put the land issue at the heart of all issues we are dealing with, we can never progress as a country.

Mr. Temporary Deputy Speaker, Sir, I would like to laud this Policy especially because of the principles and values that it espouses especially on intra and intergenerational equity. It realizes and acknowledges that this country has young people who have a stake in the ownership of this country. It also acknowledges the principle of gender equity in land management and ownership; effective regulation of land development, transparent and good democratic governance. One of the things that people actually look at as negative, but which I think is a positive is the involvement and inclusion of non State actors. One of the things I would like to note, which we take for granted, is that this Policy is so user friendly. Even a child in Class Five can read it and understand. We need to demystify Government policy. We always think that when we have a Government policy, it must be in a language that can only be decoded by lawyers. We must move to a situation whereby we know that not every Kenyan is a lawyer. Kenyans must be able to communicate with its Government and the Government to communicate with its people. I am happy because the involvement of non State actors, I am sure, contributed greatly to a user friendly document.

I would like to laud the principle and value of sustainable use of land as a finite resource. As I was going through this document, I was trying to count – and I gave up along the process – how many times the word “sustainable” is used. Whenever we use the word “sustainable”, it means that we are concerned about the children who are the present and the future of this country.

Again, I would like to thank the Minister for Lands for the positive responses that are suggested in this Policy. There is the issue of rationalization of matters to do with holding of public land through harmonization of the legislative framework. I was actually joking with one of my friends and I said that if there is one subject that I hated in Law School, it is Land Law. The reason is that--- I can see the Temporary Deputy Speaker is smiling because I am sure he also hated Land Law. We hated it, not because it was bad, but because it was a nightmare. Before you start reading the Registration of Titles Act (RTA) and Registered Land Act (RLA) and before that, you would have gone to the Registration Regime; the Legislative Framework on Land Use and the Legislative Framework on Environment. There is a whole lot of legislative framework on land use and you might as well stop dealing with land. It is confusing and no wonder we have cases of land staying within the Judiciary for over 20 years.

At one point, when I joined the Federation of Women Lawyers (FIDA), I was helping a poor woman from Murang'a who had been trying to get her right to land. By the time I took over the matter, the case had been in court for 20 years.

I dealt with it for six years and, by the time I left, we had been taken back to a lower court for us to start afresh. I am wondering whether that woman lived to see her rights in land ownership given to her, because she was already old. Unfortunately, this is not an isolated story. This is the story of many Kenyans who are disposed of land but, because of the complicated regime of the legal framework in this country, we are not able to deal with those cases as expeditiously as we would want.

Mr. Temporary Deputy Speaker, Sir, there are other positive responses in the decentralisation of State responsibility over land, and also in doing away with the issue of injustices, for instance, through the first registration, under the Registered Land Act. There was an infamous case that we dealt with, which involved a woman who was dispossessed of her land by relatives. Since the land was registered using the Land Reference Number, she was not able to get her rights due to technicalities.

The other positive response that is suggested is enhanced governmental accountability in governance, which has to do with irregular land allocations. One of the things that I wish was mentioned in this nice and elaborate policy document is implementation. That is what this country needs. There is only one area I disagree with – where we mention the issue of building capacity. I am looking at the technocrats, who are listening to me carefully. These are experts. They do not need any capacity building.

Mr. Temporary Deputy Speaker, Sir, there is no place I have seen excellent people like in the Government of Kenya. What we have is lethargy. As a country, we must get rid of lethargy. We have excellent people. I have said on the Floor of this House before that I was recently in Botswana. The people who are running and managing that country are Kenyans who were trained in Kenya. Even in South Africa, there are Kenyans who were trained in Kenya. So, if we have Kenyans who were trained in Kenya, working in Kenya and living in Kenya, why can we not manage effectively what we have?

Therefore, I would like to urge the Minister for Lands that the issue is not about building technical capacity but rather about getting people to do their work. If people do not do their work, they need to go home. There are many young people who need jobs. We need brave leaders, who must take the bull by the horns. If you cannot work, you must be told: “Please, take a walk.”

**An hon. Member:** Please, say it again!

**Mrs. Odhiambo-Mabona:** If you cannot work, take a walk!

*(Laughter)*

I am sure that it is not the Minister who needs to take a walk, because he is working well. He is working well because the road from Homa Bay to Suba is about to come.

Mr. Temporary Deputy Speaker, Sir, the other issue I want to laud this policy document for is on resolution of genuine historical and current land injustices. I have, in the past, alluded to the fact that because of these injustices, we have perennial tribal clashes. Unless we deal with historical injustices, we can never deal with the problems affecting this country. I was speaking informally to my friends. I was saying that, to me, this Policy is about the “landed” against the “landless”. I stand with the “landless”.

In this country, we must be brave and deal with landlessness. There are many landless Kenyans. It is a shame that when you travel from Nairobi to Mombasa, or to western Kenya, you see large tracts of idle land, and yet we say that we have squatters in this country. Why do we have squatters? There is absolutely no reason for us to have squatters in this country given that we have large tracts of land lying idle.

Mr. Temporary Deputy Speaker, Sir, that is why for me, this Policy is about the “landed” against the “landless”. I stand with the “landless”. I cannot stand with the “landed” because I have no land. Firstly, I am a woman. As such, I am not allowed to own land. Secondly, I am not rich. On that note, I want to laud this Policy because it recognises the fact that we have changed history. So, this Policy is actually writing “her-story”, which is the woman’s story, and not “his-story”, the man’s story.

I am both Suba and Luo tribeswoman. Amongst the Luo community, the names of all the locations start with the prefix “*kanya*---“, meaning “the home of the daughter of---”, which means it is women who own them. In the Suba community, I come from a clan called “*Wamusaa*”. The “*Musaa*” is a woman, and not a man. That land belongs to “*Musaa*”, who is a woman. So, the home of my father should be called “*Wamilly*”, and not “*Odhiambo*”. That is what the cultures of the Abasuba and Luo people dictate. I am confirming that we have re-written history in the last 30 years, when we started issuing title deeds. Suddenly, we are seeing “*K’orengo*”, “*K’nyang’-nyong’o*” and “*K’mbadi*”.

*(Laughter)*

Mr. Temporary Deputy Speaker, Sir, Rachel has just given me the equivalent of what I have explained amongst the Kikuyu community. We have just changed gender. In history, land was a woman’s thing. Even in English, you say “motherland”, and not “fatherland”. Even in Spanish, which I speak, is “*mapayis*”. It has to do with motherhood, and not fatherhood. Land is always about mothers. Even during the last Referendum on the Draft Constitution, I voted “No”. Whenever I was asked about the side I would vote during the referendum, I said I would vote “No”, except on the land issue.

Therefore, it is time that we addressed historical injustices, including those touching on women. I have a lot to say, but I will not say them now. I only want to add that one of the most positive things about this piece of policy is that it deals very well with cross-cutting issues. It is one of the excellent pieces of documents I have seen in this House. I am not exaggerating. You will see that for yourself, if you look at the cross-cutting issues. It deals with issues relating to environmental conservation, child rights, women and gender issues as well as HIV/AIDS issues. So, I want to laud this as an excellent piece of policy.

Mr. Temporary Deputy Speaker, Sir, finally, this Policy not only recognises the issue of land as a resource in itself but also recognises other resources that are on the land. It acknowledges intellectual property rights in other resources such as plant genetic resources. One of the issues that we have not put very strongly is that of access to our plant genetic resources. I want to encourage the Minister that this must be predicated upon transfer of technology.

We do not want foreigners to come to this country and take away plant genetic resources of value; that our communities have protected over the years, and whose beneficial values they have passed on from generation to generation. We do not want



foreigners to take away such plant genetic resources, patent them and sell them back to us as chloroquin. We must refuse and, therefore, access must be predicated upon transfer of technology.

With those few remarks, I beg to support.

**Mr. Kivuti:** Mr. Temporary Deputy Speaker, Sir, I am happy today, as a professional in land matters, to support the introduction of the first National Land Policy in Kenya. Everybody has been waiting for this document for so long. It took four years for it to mature. There are very good points about it. There are some points which need to be looked at with a view to streamlining them. There could be a few points that the Minister may need to look at with another eye.

The problems we have had since Independence relate to very many contradictory land laws. You get land registered in so many different ways. We now have a chance to have only one land law. That is a point for which we need to congratulate the people who formulated this Policy. With a few amendments, this Policy will form the basis for reference when we create other laws to administer land issues, and upcoming technologies such as geo-information.

Mr. Temporary Deputy Speaker, Sir, the change outlined on page 63 of this document is one of the most intriguing issues. I cannot wait to see a situation where we shall be in a position to transact land online. The Minister should know that in Siakago, we have even started digitizing all the spatial data in readiness for the activation of this policy. When this happens, I hope we are going to make a move in the geodetic world having established the National GNSS reference stations around the country. That way, we shall be sure that the issue of double allocations and boundary disputes will be a thing of the past.

I would now like to comment on some issues which need to be looked into in this document. I think there is need to remove generalities. By generalities, I mean the following:-

Mr. Temporary Deputy Speaker, Sir, if we say in a document that land shall only be given to people who want to develop; it is obvious that everybody who wants land will say: "I want to develop it". Therefore, it does not inform anything to say that any applicant does not wish to develop the land. Everybody will say: "I want to develop the land!"

Mr. Temporary Deputy Speaker, Sir, at the same time, you will find several sections which are addressing equity as opposed to sanctity. If you want to distribute land, you must compromise on the sanctity. I submit that it would not be good for this country to compromise on the sanctity of land ownership. That is because the moment you have a title deed--- I remember in Section 62 (b), if you are going back to adjudicate through a land tribunal, who owned what before the land was registered, we shall be going back to the time when the *wazungus* came here. That means we will actually be undoing all the historical land records that we have today. I do not think that is practical.

Mr. Temporary Deputy Speaker, Sir, when we say in Section 66(d)(iv) that we are going to reverse all the title deeds for Government land in the Coast Province, you can see the impact of that. It is next to impossible. If you do that, you will be brewing trouble. When people own land, you can have trouble in the family, clan, tribe or nation when you try to reverse land ownership. I would like to submit that some of these clauses need to be relooked into. If we are thinking of redistribution and reversing the titles that have

already been issued, it might be a good idea to say any other new title being issued from the time this document is enacted will have to follow the provisions of the document. I think to cancel the old law and retrogress on it is a chance to brew chaos in this country.

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

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

Mr. Temporary Deputy Speaker, Sir, I would like to make some two or three suggestions. The main important thing about land management and land administration is the integrity of the transactions. If you are able to prove to anybody that everything done in a transaction has some integrity and that integrity is maintained, even the present law can be administered. The problem has been: How do we get so many clauses and laws and follow the integrity with paper work? Everybody needs land in Kenya; from the young to the old. With this in mind, a suggestion on how this integrity can be maintained is contained in this document. It only needs a proactive implementation. That is very clear in Section 163.

Without taking too much time, I would like to laud the Minister for including the work of public /private partnership. All over the world, if we wait until the civil servants do everything--- They do the survey, administration and judgment, we will end up with the frustrations that have been around us all the time. The moment we bring in the private sector and a check mechanism which is computer-based, integrity can be guaranteed.

Last but not least, the openness of the data that we deal with is very crucial. I can tell you there is nothing as good as telling a thief in public that he or she is a thief. The thief will run away. The moment we make the data available to the public--- We should find a way of making it open such that each and every person has access to it. If you want to know how many transactions took place at the lands office today, you can be able to see them instead of discovering that your land was stolen sometime ago. If we do that, even the people who are planning to steal land will stop.

Mr. Temporary Deputy Speaker, Sir, I think the proposed national land law will be contained in a big book. I do not think there is a chance that it will be done and become a final document. It will have to be reviewed the way we are doing with our Constitution. We will look at issues which come day by day. Even technology changes day by day. I laud the Minister because he has already put a comment on that, by introducing a new lands information management law which will be guiding the implementation of this Policy.

With those many remarks, I beg to support.

**Mr. Midiwo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Given that everybody seems to be repeating the same things on the Motion and all are in general agreement, would I be in order to ask the Chair to call upon the Mover to reply.

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Ethuro): Prof. Anyang'-Nyong'o, please, proceed!

*(Laughter)*

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, thank you for rescuing me. I rise to support this Sessional Paper No.3 of 2009 on the National Land Policy.

This Paper could not have come at a better moment. It has come at a time when this nation is reviewing its Constitution. It is moving from the first to the second Republic.

The first Republic was the post-colonial Republic that was handed over to us by the colonialists. We now want to have a homegrown Constitution which will deal with our indigenous problems and set a lasting framework for social, political and economic relations in this country. In that regard, land becomes very important. Land, as a factor of production; land as a means of production; land as an important force in a market economy and transiting from pre-capitalist economy to a capitalist economy. In this regard, you will realise that one of the mischiefs that this Policy is trying to deal with is to remove the fetishism in land. That in this period of transition from pre-capitalism to capitalism, we tend to have a lot of fetishism in land; in that we tend to hold land as a security without using it for productive purposes. So, from peasants to commercial speculators, many people hold land.

Mr. Temporary Deputy Speaker, Sir, if you go to the rural areas and more so in my constituency, you will find large parcels of land lying idle mainly because people are speculating with that land. One of the things that this Policy will introduce is a land tax which will force land to enter into the market place as a commodity and make it possible to be used for productive purposes. There is a belief in this country that the more land you have the richer you are. I have seen my friends, including myself, hoarding land from the age of 30 to 65 and still thinking that they have valuable property when all this time they have not used it, and only a few years to their grave they are still happy that they have property. Land is only useful in so far as it can lead to production, and in so far as it can have value for you. The potential value land has in the market place is always potential. It can crash at any time. For example, when there were clashes in this country in the post-election period, a lot of land lost value because their owners found that they could not immediately sell it to make use of it. All over a sudden, they realised that it is useless to have this fetish about land.

Secondly, there is a lot of speculation in land as collateral in having commercial transactions. This speculation has led to a lot of distortions in our economy. Housing prices in the urban areas are very high because few people hoard land, speculate, put it as security in banks and borrow money against it. In so far as this land is kept as security, when people get money from banks, one only hopes that the money that is received from the bank is used productively. Quite often, this money is not used productively and it leads to a lot of distortion in the economy, particularly in the 1990s when we had the Goldenberg problem. The issue was also complicated by a lot of land which banks were holding in terms of collateral but which quite often had passed two or three hands and one could not determine who was the rightful owner. This is one of the mischiefs that the

Policy is trying to cure by making sure that there is proper recording of land, proper indexing of land and proper data that can make land transfer proper in this country. So, I laud this Policy Paper for doing two things: First, is to introduce tax on land. This is to make land to be a real commodity in the market place so that it can be used productively in the economy.

Secondly, this Policy Paper seeks to reduce speculation in land. The idea of using land as a collateral by two, three or four people in a faulty system whereby it is possible to manipulate records at the lands office and have one title deed being owned by three or more people, will be a thing of the past.

Mr. Temporary Deputy Speaker, Sir, the other thing that I like about this Sessional Paper is the policy on public land. I want to say something about this because when I was the Chairman of the Public Investments Committee (PIC) of this House in the mid 1990s, I saw horrendous practices in our nation where, with a stroke of pen, the then President could allocate public land to people. Those people could take those letters of allocation to the National Social Security Fund (NSSF), which could pay five or six times above the market value of that land. Those people could then use that money for all kinds of speculation. When I was the Chairman of the PIC, we did an analysis and found out that the difference between the market value of the land and the price that NSSF paid for that land was, on average, ranging from between Kshs20 million and Kshs100 million in the mid 1990s. Just imagine how much money the public sector lost in those kind of transactions. That is another mischief that this Sessional Paper is trying to cure.

Mr. Temporary Deputy Speaker, Sir, let me refer to page 16 of the Sessional Paper on public land. It reads:-

“Public land comprises all land that is not private land or community land and any other land declared to be public land by an Act of Parliament.”

Mr. Temporary Deputy Speaker, Sir, if you look at all public corporations, including Kenya Railways, National Hospital Insurance Fund, NSSF, schools, hospitals and so on, you will realize that the only other body that owns more land in this Republic, other than the Government and the public sector in general, is the Catholic Church. The Catholic Church is the only other single body in this nation that owns more land than the Government and the public sector in general. If you ask the Catholic Church whether it has records of its land you will be surprised how accurate it keeps records of its land and property in this nation. That is why it is very difficult to defraud the Catholic Church of its land and property. My friend here, hon. Musyimi, was the Secretary-General of the National Council of Churches of Kenya (NCCCK). I wonder whether NCCCK can boast of as much accurate records as the Catholic Church.

Mr. Temporary Deputy Speaker, Sir, one of the things that this Policy Paper is trying to do is to ensure that it establishes mechanisms for the repossession of any public land acquired illegally or irregularly. I was going to ask Parliament “*kupiga makofi hapo*”, but one of the things that must be done in this nation is to ensure that all public land that was acquired illegally and irregularly is returned to the public domain. I would like Parliament to go into the annals of history of the records kept by the PIC and we shall recover a lot of land and money for the public coffers.

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

(Applause)

**The Minister of State for Special Programmes (Dr. Shaban):** Mr. Temporary Deputy Speaker, Sir, I just want to congratulate the Minister for Lands, who has worked with his team, on this very difficult and touching subject for all Kenyans. I just want to point out a few things about community land which he has captured, but not in totality. Whereas everybody is fighting for public land to be reclaimed back from people who acquired it illegally, we are fighting also for the community land. That is because most of the community land, otherwise known as the trust land, has been given out to people who did not deserve to be given that land. Those particular chunks of land, some of which were protected in our current Constitution, were overlooked. The laws were flouted and, in the process, other people - and not the communities involved - were actually given that land.

Although we were given this land, we were finally told; "Oh; this is private land, you cannot touch it." How can it be private land when the law has not been followed? How can it be private land when the land was not set aside and even the councils and the communities were never involved?

Mr. Temporary Deputy Speaker, Sir, people have suffered and I am very happy that the Minister for Lands has specifically pointed out the serious issues in the Coast Province. This is because the Coast Province has got issues which are so different from the rest of this country. Everybody thinks that the Coast Province is where they can learn how to play football as far as land is concerned. Everybody goes down to the Coast Province and that is the only place where other communities cannot really fight when it comes to land grabbing. Our land has been grabbed with impunity. We have land which was grabbed by individuals, people who knew the law very well and decided to flout it. We would like to see that land reverting back to the communities.

Mr. Temporary Deputy Speaker, Sir, the Kenya Wildlife Services which used to be known as the National Parks then, also grabbed land from the communities. We have trust land which has been annexed to the parks. We want to see the Minister for Lands repossessing that land and giving it back to the communities. The people of Taita-Taveta who house the biggest national park in this country, even after they had taken away all our land to be a national park, they still took our trust land.

Mr. Temporary Deputy Speaker, Sir, the Minister for Lands has got a lot of work to do; he has a very big war ahead because nobody would want to hear these corrections being done. Unscrupulous individuals have decided to enrich themselves using our community land. I want to support the Minister and we hope that Kenyans are going to have a better---

**Mrs. Shebesh:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker (Mr. Ethuro):** Hon. Minister, do you want to be informed?

**The Minister of State for Special Programmes (Dr. Shaban):** No, thank you! My colleague, who comes from Nairobi, has not really seen a lot of land problems in Nairobi. They have to live in the Coast Province to understand some of these things.

Mr. Temporary Deputy Speaker, Sir, we want the Minister to be empowered by this House to be able to carry out what he intends to do plus more and uphold whatever is in the current Constitution which protects community land. We want the Minister for

Lands to be able to be given a free hand to reverse everything that was done incorrectly even in the current Constitution.

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

**Ms. Karua:** Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support the Motion before the House. I have actually looked through the policy document and it is very well-thought out. But when the Minister comes to formulate the legislation that will follow, it is very important that he institutes checks and balances. I do not think that we should put the National Land Commission in the Constitution. But I think that the policy in the Constitution on how land should be dealt with is what we should aim at and, that the power to allocate land should be in the National Land Commission but the Executive too should have a say and Parliament should also have a say on certain issues. So, you have checks and balances by involving more than one institution. It is possible to have a rogue land commission which can do the very same things we are running away from. Let us believe not in the persons that we will put there, but also in the institutions and in the checks and balance.

Mr. Temporary Deputy Speaker, Sir, this Policy is long overdue, I do not want to repeat what the rest have said, but I wanted to go on record as having supported this policy document. It is time we revolutionised our land policy and land laws.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Minister and Members! Since there is no more interest by hon. Members to contribute to this Motion, I will call upon the Mover to reply.

*(Applause)*

**The Minister for Lands** (Mr. Orenge): Thank you very much, Mr. Temporary Deputy Speaker, Sir. First, I want to congratulate all the hon. Members who have spoken on this Motion. I can assure you that my team from the Ministry of Lands is here and taking notes to ensure that the contributions that have been made are going to be used, particularly when we prepare legislation. As I said at the beginning, the land policy is not cast in stone and is not legislation. It gives a broad view and vision for the way forward.

Mr. Temporary Deputy Speaker, Sir, since I did not do it in the beginning, I also want to thank the people who have worked with me in the Ministry; they are here and include the Permanent Secretary and the various heads of departments. I thank them for work well done. Thanks also go to all those stakeholders who have taken part in this process.

Hon. Otichilo has been with this for a long time. He has contributed immensely to this document that you see today. I also want to thank the Chair of the Departmental Committee on Lands and Natural Resources, hon. Mutava Musyimi, with whom we have had discussions on this matter. I think this is not the end of the road. You will help us when we come to the more difficult task of enacting enabling legislation.

Mr. Temporary Deputy Speaker, Sir, however, I think other than legislation on the Constitution questions which we must address, as the Minister for Lands, there are certain things on which I am prepared to bite the bullet for. With the passing of this

Policy, even as we await legislation, I am prepared to take the decisions that are necessary to move forward. I think in the areas that relate to land grabbing or historical injustices, we do not quite need to wait for legislation. There are instances, and hon. Eugene Wamalwa knows this, where there is outright fraud. There are people who are sitting on land which they have fraudulently taken away. I hope the House will give me support when I take some action on this.

Mr. Temporary Deputy Speaker, Sir, with those remarks, I beg to move. Thank you.

*(Question put and agreed to)*

Next Order!

ADOPTION OF KENYA ECONOMIC REPORT OF 2009

**The Temporary Deputy Speaker** (Mr. Ethuro): Is the Minister of State for Planning, National Development and Vision 2030 here? He seems not to be here.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, the Minister has been around quite a lot from yesterday, but I think he gave up and went away

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Minister! That is no excuse. He should always be aware that his Motion is next and should stay as long as possible.

THAT, this House adopts the Kenya Economic Report 2009 laid on the Table of the House on Tuesday 24<sup>th</sup> November, 2009.

Next Order.

*(Motion deferred)*

ADOPTION OF REPORT OF FIRST SESSION OF  
SECOND LEGISLATURE OF PAP

**The Temporary Deputy Speaker** (Mr. Ethuro): Leader of delegation!

*(Mrs. Shebesh moved to the Dispatch Box)*

**The Temporary Deputy Speaker** (Mr. Ethuro): Order! In view of the fact that even hon. Shabesh might not be prepared, and considering that there are, maybe, a few seconds to go, I think we need to terminate here.

THAT, this House adopts the Report of the First Session of the Second Legislature of the Pan African Parliament held from 26<sup>th</sup> October to 5<sup>th</sup> November, 2009 in Midrand South Africa laid on the Table of the House on Wednesday, 18<sup>th</sup> November, 2009

*(Motion deferred)*

**ADJOURNMENT**

Order, hon. Members! It is now time to interrupt the business of the House. The House stands adjourned until Tuesday, 8<sup>th</sup> December, 2009 at 2.30 p.m.

The House rose at 6.28 p.m.