

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 1<sup>st</sup> December, 2009

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:

The Quarterly Economic and Budgetary Review: First Quarter Report, 2009/2010

*(By the Assistant Minister, Office of the Deputy Prime Minister  
and Ministry of Finance (Dr. Oburu) on behalf of the Deputy Prime  
Minister and Minister for Finance)*

The Report of the Departmental Committee on Labour and Social Welfare on the National Youth Council Bill, 2009.

*(By Mrs. Noor)*

### QUESTIONS BY PRIVATE NOTICE

#### MEASURES TO ADDRESS SOFAPAKA/AFC LEOPARDS FINANCIAL PROBLEMS

**Dr. Khalwale:** Mr. Speaker, Sir, I beg to ask the Minister for Youth Affairs and Sports the following Question by Private Notice.

(a) Is the Minister aware that two Kenyan community football clubs; AFC Leopards and SOFAPAKA, which have qualified to represent Kenya in continental championships risk failure to participate due to financial constraints?

(b) What is the Minister doing urgently to arrest the above threat since the two teams have to immediately go into camp for training?

**The Minister for Youth Affairs and Sports** (Prof. Sambili): Mr. Speaker, Sir, I beg to reply.

**Mr. Speaker:** Order, Minister! You owe the House an explanation as to why you were not available last week to answer this Question.

**The Minister for Youth Affairs and Sports** (Prof. Sambili): Mr. Speaker, Sir, I would like to explain to the House that on 18<sup>th</sup> November, 2009 to 26<sup>th</sup> November, 2009, I was out of the country officially to attend to functions of the Ministry of Youth Affairs and Sports.

The answer to this Question had been prepared and I had hoped that my Assistant Ministers would have answered it. It is unfortunate that it was not done. I only arrived in the country over the weekend.

**Mr. Speaker:** Do you, therefore, apologize to the House? You know you have to do that! It is not for the Speaker to organize and manage your Ministry. It is not for him to direct your Assistant Ministers to answer Questions if they fail to do so in your absence. You have no explanation as to why they failed to answer the Question. You, therefore, should apologize to the House and undertake to streamline things in the Ministry.

**The Minister for Youth Affairs and Sports** (Prof. Sambili): Mr. Speaker, Sir, I will apologize to this House a second time. About four months ago, there was a Question on the Order Paper which was to be answered. My Assistant Minister could not answer it and I wrote to apologize to this House. I want to apologize again. It is unfortunate that that happened. However, I would like to undertake that this will not happen again because I have committed myself to answer all Questions directed at the Ministry of Youth Affairs and Sports if my colleagues are not willing to answer them.

It is good for this House to know that although I have been depicted as the demon itself, I am not the kind of person that has been described in the media and other various places. I have a very clear conscience to serve the youth of this country regardless of where they come from. It does not matter even if they come from communities that are not known. I am committed to helping every youth of this country because I believe that they are the future of our great nation.

In fact, I have just come from starting a match in Mathare. The match is supposed to mark the UN HIV/AIDS Day---

**The Assistant Minister for Information and Communications** (Mr. Khaniri): Give us the answer!

**The Minister for Youth Affairs and Sports** (Prof. Sambili): I am going to give the answer, Mr. Khaniri!

**Mr. Speaker:** Order, Minister! Would you, please, address the Chair?

**The Minister for Youth Affairs and Sports** (Prof. Sambili): I am sorry Mr. Speaker, Sir. I said that I am just from starting a match in Mathare where there was a *Juala* that has been made by the youth of this country showing the potential that our young people have. So, I would like to tell this House that I am not the person that has been described in the newspapers. I would like them to ask me questions. Let no one put words in my mouth.

Mr. Speaker, Sir, thank you for the opportunity to explain myself. Last time when we had a meeting, I was not given an opportunity to defend myself when one of my Assistant Ministers tried to show me in bad light.

Now, I beg to respond.

**Mr. Speaker:** Order, Minister! I have understood the explanation and on behalf of the House, I accept the apology. You may now proceed.

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

**Mr. Speaker:** Order! Order, Dr. Khalwale! Let the Minister be heard!

**The Minister for Youth Affairs and Sports** (Prof. Sambili): Mr. Speaker, Sir, I thank you for your protection.

I beg to answer.

(a) The Ministry is aware that the AFC Leopards has qualified to represent the country in the Continental Cup, while SOFAPAKA Football Club (FC) has qualified to represent us in the African Cup of Champions. I take this opportunity to congratulate both teams on their well deserved victory in their respective qualification matches. I further note that SOFAPAKA FC made a historic achievement by winning the National Premier League in its very first attempt thus qualifying to represent us in the continental tournament next season.

However, due to inadequate funding levels currently, the Ministry is not in a position to support community football clubs while at the same time support clubs that take part in various championships. As such, we mainly concentrate our little resources in supporting our national team in its various obligations, which we have done very effectively in our recent efforts to qualify for the 2010 FIFA World Cup and Africa Cup of Nations.

(b) I note with appreciation and thank the many corporate organisations that have risen to support our various sport teams. Only a few weeks ago, SOFAPAKA FC received a handsome sponsorship package from our leading cement manufacturer, namely, East African Portland Cement's Blue Triangle. I am sure that more of such sponsorship packages are on their way for both our teams, which performed very well in the past. These being our top teams, we shall not close the door on them. Their requests, which are yet to reach the Ministry, will be given due consideration in their own merit.

I also take this opportunity to wish both teams success at their respective continental championships.

Thank you, Mr. Speaker, Sir.

**Dr. Khalwale:** Mr. Speaker, Sir, what the Minister has done is to merely congratulate SOFAPAKA FC and AFC Leopards. She has also gone ahead to pray for them to do well. The Question is about fair treatment of football clubs, just in the way the Ministry pays for volleyball, athletics and rugby teams. Why can they not pay for football clubs? Through the constituencies, the Ministry gave Kshs210 million to youth at the grassroots level to develop soccer in this country. How does she want them to grow if she does not perfect the top? So, part "b" of the Question seeks to know how much she will pay them, and not prayers.

**Prof. Sambili:** Mr. Speaker, Sir, prayers are important. In response to part "b" of the Question, we are willing to support all teams. The problem is the funding levels, which are not sufficient. However, we will do our best to support them. We are willing to share the little resources that we have with teams from various federations. So, we will support them, if we can, when the requests get to the Ministry. I want to confirm that we are willing to support the development of all sports, especially football, in this country.

**Mr. Imanyara:** Mr. Speaker, Sir, I am one of those who believe that this is a very hardworking Minister who ought to get the support of this House. Having said that, I would like her to assure this House that, in terms of encouraging sports in this country, when companies offer to sponsor sports, they will not run into difficulties similar to the ones that Coca Cola Company fell into with regard to Nyayo Stadium; and that in this

regard, she will soon be announcing that she has allowed Coca Cola Company to take over Nyayo National Stadium, as they had planned initially.

**Prof. Sambili:** Mr. Speaker, Sir, I thank the hon. Member for those comments because we are committed to partnership. As the Minister for Youth Affairs and Sports, we are talking with Coca Cola Company. So, let no one take advantage and say that this Minister is not committed to public-private partnership. Other corporations are also welcome to support our young people.

**Mr. Chanzu:** Mr. Speaker, Sir, I also find the Minister very proactive compared to what I have seen before in this Ministry. Now that there are strong indications that the management team, starting with the Chairman of AFC Leopards, have either resigned, or are on their way to resigning, what will she do to make sure that there are no internal wrangles with the club, if that happens?

**Prof. Sambili:** Mr. Speaker, Sir, on 5<sup>th</sup> February, 2009, I stood here and said that I had formed a reconciliation committee to try and get the two wrangling groups that had been running football in this country to come to their senses and let the youth of this country play football and, if possible, manage it. With regard to the AFC leopards, I want to beg them to come to their senses and give an opportunity to young people, who are very talented, just as I said about Peter, who manufactured the *juala* that got to the UN. As for the hon. Member's supplementary question, I will do my best to try and get these teams to work together. However, I do not want to do it now because, as everyone is aware, I have had more than enough in my plate from everybody, including the Youth Enterprise Development Fund Board whose members went to the media to demonise me. I will take care of it if God gives me the opportunity to do so.

(Applause)

**Dr. Khalwale:** Mr. Speaker, Sir---

**Mr. Speaker:** Dr. Khalwale, the Member of Parliament for Nyando Constituency wants to give you some help, but he has not learnt the art of catching the Speaker's eye.

**Mr. Outa:** Thank you, Mr. Speaker, Sir. Next time, I will make sure that I rise on time to catch your eye.

I want to thank the Minister, who means well for sports in this country. She has said she will get some money to support our champions to represent the country in the continental championships. If there could be constraints in terms of getting money to enable our footballers to go to the continental championships, could she be willing to set an account into which even we, Members of Parliament, can contribute so that these great Kenyans can represent us?

**Prof. Sambili:** Mr. Speaker, Sir, I want to truly thank the hon. Member, who is my "brother", for that suggestion. I am willing to open an account into which we, hon. Members, can donate what we can, so that we support our team. I want to appreciate the suggestion.

Mr. Speaker, Sir, with your permission, I will go to my car and bring the *juala* that was made by the boy called "Peter". Let this day be a day that we, as hon. Members of this House, will go out of our way to support our young people in practice. I am willing to set up that account.

Thank you, Mr. Speaker, Sir.

**Dr. Khalwale:** Mr. Speaker, Sir, I want to congratulate the professor. She has told us that as soon as the AFC Leopards reaches out to her officially, she is willing to help. I want to thank her for that undertaking. I want to use this opportunity to table a copy of a letter from the Office of the Secretary-General of AFC Leopards, dated 24<sup>th</sup> November, 2009, requesting for assistance, which was delivered to her office. I am sure that the slow processes in her office are such that she has not received this letter. I would like her to act on it.

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

Finally, the Minister has confirmed that she is willing to set up a fund. AFC Leopards has opened an account and in fact, they are meeting on the 9<sup>th</sup> of this month to raise funds. Again, they have invited all Members of Parliament. I have circulated the letters to Members including Ministers. Here is a letter which I Table.

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

*(The Minister for Youth Affairs and Sports  
(Prof. Sambili) stood up in her place)*

**Mr. Speaker:** Order, Minister! You may not respond. This is Question Time and the Member for Ikolomani has not asked any question. He has merely Tabled documents which you will have access to.

Member for Mutitu!

#### CRITERIA FOR SELECTION OF KMTC DIRECTOR

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I beg to ask the Minister for Medical Services the following Question by Private Notice.

(a) How was the current Director, Kenya Medical Training College (KMTC) selected and could he provide the list of the shortlisted candidates and explain how the final selection was done?

(b) Could the Minister explain why the former Director's contract was not renewed despite recommendation by the Board?

(c) Could the Minister provide the report of the human resource firm contracted by the Board to interview the shortlisted candidates?

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

(a) In response to the advertisement placed in two leading local dailies by a human resources consultant firm; Hawkins and Associates, for recruitment of the Director of the Kenya Medical Training College (KMTC), a total of 43 applications were received. After evaluation by the consultant, 18 candidates qualified for the interview. Of the 18 qualified candidates, 16 attended interviews held at the consultant's offices between Thursday 14<sup>th</sup> and Saturday 23<sup>rd</sup> May this year.

Out of the 16 candidates interviewed, the consultant shortlisted ten candidates for final interview by the KMTC Board of Management. Subsequently, the Board conducted interviews for the ten shortlisted candidates and they scored as follows:-

1. Dr. Jebich Maswani	-	75 per cent
2. Dr. Mildred Mudany	-	72 per cent
3. Dr. Maurice Simiyu	-	71 per cent
4. Dr. Timothy King'onde	-	70 per cent
5. Dr. John Okoth	-	66 per cent
6. Dr. Waqo Ejersa	-	66 per cent
7. Dr. Joshua Lusi	-	64 per cent
8. Dr. Robert Ayisi	-	64 per cent
9. Dr. Maryanne Ndonga	-	64 per cent
10. Dr. James Oloo	-	60 per cent

Following the results of the final interview, the Board forwarded to me the names of Dr. Jebich Maswani, Dr. Mildred Mudany, Dr. Maurice Simiyu and Dr. Timothy King'onde to appoint a Director from among them. The final selection was based on my discretion as the appointing authority as by law established.

(b) I exercised my discretion not to renew the former Director's contract.

(c) The report of the human resource consultant firm contracted by the Board to interview the shortlisted candidates is hereby Tabled.

*(Prof. Anyang'-Nyong'o laid the document on the Table)*

**Mr. K. Kilonzo:** Mr. Speaker, Sir, today is a very sad day yet again for this country. Kenyans have been applying for jobs expecting meritocracy to be the guiding principle for being employed. Members of the public applied for this job. They were shortlisted by a firm called Hawkins and Associates which was appointed by the Board. You have heard the names which have been Tabled here. Among the ten and the final four which the Board directed and forwarded to the Minister to appoint, he decided to ignore all the names. He appointed somebody from wherever he got him from. I would want the Minister to tell this House whether the person who is serving now is among the four who were recommended by the Board for him to appoint from. His discretion does not mean that it should be punitive. If he has any reason why he did not appoint any of the four, he should tell the House.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. This is a very serious issue. Is it in order for Mr. K. Kilonzo not to specify what provision of the Medical Training College Act was contravened so that the Minister can deal with the issue?

**Hon. Members:** Aaah! Aaah!

**Mr. Speaker:** Order, hon. Members! The Member for Mutito asked a question that as far as the Chair is concerned passes the test of a question.

Minister, please, respond!

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, if I could satisfy both Mr. Olago---

**Mr. Speaker:** Order, Minister! I have ruled Mr. Olago out of order. So, you answer the Member for Mutito!

**Mr. Anyang'-Nyong'o:** Mr. Speaker, Sir, if I could satisfy the hon. Member on the issue of discretion and impunity; because he said discretion does not mean impunity. It does not! Kenya Medical Training Act, Cap.261, Section 8 says the following:-

“There shall be a Principle (read Director) of the college who shall be appointed by the Minister on the advice of the Board of Management”.

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

**Mr. Speaker:** Order, Dr. Khalwale! We need to hear the Minister first! Dr. Khalwale I know you belong to that profession.

**Prof. Anyang'-Nyong'o:** It says, “on the advice” but the Minister can choose to take or not to take the advice. I chose not to take the advice.

**Mr. Affey:** Mr. Speaker, Sir, the Minister is a serious professor. He has read the law very clearly to the House. He went ahead to commit funds for advertisement of this post. If he only required his discretion and not the Board's, why did he not use it initially and not subject the Board and taxpayers' funds for the process?

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, you realize that I was very detailed in giving you information on the people who were shortlisted and the scores they had. Those scores are not there for a show. They are there to guide the Minister on whether they passed the mark or not. The Minister could easily have put a benchmark that, “I will only appoint people who score more than 80 per cent”. Yes, because I am concerned about excellence and quality.

*(Loud consultations)*

Let me explain!

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

**Mr. Speaker:** What is it, Dr. Khalwale?

**Dr. Khalwale:** On a Point of Order, Mr. Speaker, Sir. The Minister was asked to state the scores the candidates achieved in this interview. I have with me a copy of the results of the interview; they have listed all the candidates from number one to ten, showing the scores. This is my profession, and some of the candidates who are here are personally known to me. They are outstanding doctors, or minds, in this country. They include Dr. Maurice Simiyu, who was the Chairman of the Association of Medical Students of the University of Nairobi (AMSUN) when I was in the medical school. They also included Dr. Ayisi, who is my aunt's son. They scored very highly. I did not even go to influence it. The Minister went ahead and picked somebody from his home area, who never scored in this particular interview. This is the impunity we are talking about! Could he tell us how many marks this candidate of his scored in this interview? I table the results.

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

**Mr. Speaker:** Order, Dr. Khalwale! You stood on a point of order. In other words, you ought to have pointed something out of the answer that the Minister had

given. You should have proceeded to show a breach of our rules, but you have not done so. I am afraid there is no valid point of order raised. You have instead asked a question. Yes, Member for Gichugu!

*(Dr Khalwale stood up in his place)*

**Mr. Speaker:** Dr. Khalwale, there is no point of order. Order, Dr. Khalwale!

**Ms. Karua:** Mr. Speaker, Sir, the Minister has said that he did not have to rely on the advice. Section 5 of the Act is very specific. It says that there shall be a principal of the college, who shall be appointed by the Minister on the advice of the board of management. The Minister has absolutely no discretion to appoint on his own. The Minister can reject the advice of the board, or the list, they give him, but he has to return it to the board for fresh advice. Could he tell us which specific section of the Act gave him discretion to get a list from his own head, rather than the list he got from the board?

**Prof. Anyang'-Nyong'o:** The list did not come from my own head. The list came from the applicants to that position; the applications were received by the board. Let me go further. The board of management of the Kenya Medical Training College (KMTC) has had a lot of problems running that institution. As this process was going on, it was accompanied by the process of admitting students to that college, and it came to my attention that there was a history of mismanagement of the college by---

**Ms. Karua:** On a point of order Mr. Speaker, Sir.

**Mr. Speaker:** What is it, Member for Gichugu?

**Ms. Karua:** Is he in order to go on a zigzag route and avoid answering the specific question? He said he did not have to rely on the board's advice: Which particular section of this law gives him discretion to appoint a person without the advice of the board? That was my specific question.

**Prof. Anyang'-Nyong'o:** If the hon. Member for Gichugu could be patient with me, I would explain to her why the Minister did not take the advice of the board on this issue. The Minister must appoint somebody who will run the college properly. The law says that there shall be a principal of the college who shall be appointed by the Minister on the advice of the board of management. Therefore there was a process.

*(Several members stood up in their places)*

If you want an answer from me you have to listen. If you do not want an answer you can make noise; but you must listen---

*(Loud Consultations)*

**Mr. Speaker:** Order, Minister! Members of Parliament do not make noise in this House. There have been several directions on this!

**Prof. Anyang'-Nyong'o:** I apologise to Members of Parliament.

If you want an answer, let me explain very properly. One of the reasons why I instituted a very elaborate process of appointing a director of the college was because of the problems that that college has been having. As this process was going on, there was also a process of selecting students to that college. Members of this House are aware of the

number of letters I have received from them complaining of selections to the KMTC. I, therefore, decided to request the Efficiency Monitoring Unit (EMU) to vet both the running of the college as well as the selection of the students.

Apart from the voluminous reports I had about the college, both on the then director and on the board, by the time this selection was done and the names were submitted, I had ample information with which to do due diligence both on the process of interviewing and on the process of preparing the list to me.

Our advertisement had given a very specific profile of the kind of director we needed for that college. One, I had made it very clear that I would not appoint anybody who was already serving in that college, precisely because of the report of EMU that I had. Secondly I needed to have somebody---

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

**Mr. Speaker:** What is it Dr. Khalwale?

**Dr. Khalwale:** On a point of Order. Mr. Speaker, Sir. The Minister should not mislead the House by suggesting that he failed to appoint Dr. Maurice Simiyu and Dr. Robert Ayisi because they were serving at that college. Dr. Ayisi serves at the NASCOP, and Dr. Simiyu is a consultant in private practice. They do not work at the KMTC. He is out of order to mislead us.

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir. I do not know why Dr. Khalwale is so fixed on Dr. Simiyu and Dr. Ayisi. I was saying that I had made up my mind due to the report that I had received from EMU that I would not appoint anybody to be head of that institution who was already serving there. Secondly, other officers within the Ministry, like Dr. Simiyu and Dr. Ayisi and even Joshua Lusi, are many---

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

**Mr. Speaker:** Order, Mr. Ruto! Let us hear the Minister!

**Prof. Anyang'-Nyong'o:** If you are talking about people who are already serving in the Ministry, it was not only Dr. Simiyu or Dr. Ayisi, Dr. Joshua Lusi is also still serving in the Ministry. I think Dr. Maryanne Ndonga is also serving in the Ministry. So for those serving in the Ministry, we would have good reasons not to appoint them to head the KMTC.

Having considered the kind of qualities that I needed to appoint as head of the KMTC, I believe I have appointed a qualified and competent person: Dr. Olang'o Onundi is a very qualified person. He has been a Director of Medical Services, a member of the Kenya Medical Practitioners and Dentists Board, and is qualified to serve as a director of the KMTC.

**Mr. Kapondi:** Mr. Speaker, Sir, the Minister has been at pains trying to explain exactly what transpired and led to the appointment of the said Director. He has said that he had in mind the causes of corruption and a report from the Efficiency Monitoring Unit (EMU). He has also said that he had made up his mind that whoever is a serving member should not be appointed. Why was that condition not attached to the advertisement so that Kenyans could not be taken for a ride to make an application, while the Minister had a fixed mind?

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, the English language is rather difficult. I have said that the two processes went on concurrently. So, it could not have been a condition in the advertisement.

**Ms. Karua:** Mr. Speaker, Sir, it is clear that the Minister has failed to answer my question on the section of the law which allows him to bypass the Board. It is also clear that this is another appointment akin to that of Justice Ringera. Would I be in order to call upon the Committee on Delegated Legislation to take up this matter in view of the Minister's refusal to answer the question?

*(Applause)*

**Mr. Speaker:** Order, hon. Members! Mr. Minister, the Chair is satisfied that you have not answered the question by Ms. Karua. She wanted you to cite a specific Section of the Act that allows you to make an appointment without the advice of the Board. Mr. Minister, you have not answered that question.

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, I do not think I made the appointment without the advice of the Board. The Board gave me advice and I have explained to the House that the two processes took place concurrently. I had the report of the EMU when I got that advice. I made a decision on that basis which is good for the Ministry and the college. I am prepared to appear before the Committee to explain this further.

**Mr. Nyamweya:** On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to mislead the entire country that he has power and authority to disregard a board set up by the Act which entitles him to appoint? In that case, what did we do with Justice Ringera? Did the President not have the authority to recommend regardless of what we had in mind?

*(Applause)*

What did we do with the defunct Electoral Commission of Kenya (ECK)? Did we not disregard the Constitution about removing the Commissioners? Is that the direction we want to go? Could the Minister, therefore, confirm that there is no need even for the Departmental Committees to take up this case because Ministers have impunity to do whatever they want regardless of the law?

*(Applause)*

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, I do not think it is a matter of disregarding the Board. I have explained to the House, and it should bear with me that it is in the interest of the country that when we make such an appointment, the Minister finds out whether the Board is doing a good job or not. If I go into the history of the Kenya Medical Training College (KMTTC); the problem of selection of candidates and the manner in which the board has been implicated in some of these things --- I decided not to dismiss the Board. I am prepared to discuss with the Departmental Committee on Health or the Committee on Delegated Legislation in detail the report of the EMU. I am also prepared to bring to the attention of the Departmental Committee on Health or the Committee on Delegated Legislation the whole history of how I have tried to restructure

and reform that institution. People may think that a Minister acts capriciously, but in this regard and with reference to the future of the KMTC, if I had allowed this process to determine my action, I think the frame of people that I had been given, some of whom I could have appointed and some of whom I would like to do other things in the Ministry, I do not think I would have done justice to the KMTC.

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

**Mr. Speaker:** Order, hon. Members! Mr. Minister, there is something that I put to you from the Chair and you have still avoided it. I think that is what has raised all this anxiety. Ms. Karua had asked why you acted without the advice of the Board. You have now interpreted it very narrowly. This question implies that you acted outside the advice given by the Board. We know that you received a report of the Board which made a recommendation, but notwithstanding that report, you appointed somebody who was not recommended in the report. So, that is what you need to deal with.

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, maybe I am not putting it very clearly. But I was trying to explain to the hon. Member, and I hope the House can bear with me, that the KMTC has gone through a very tumultuous period. Let us not take the Board as having been as clean as Caesar's wife. It is because we were having those problems that I asked the EMU to come in and help me solve the problem. By the time the Board was giving me---

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

Mr. Speaker, Sir, can I explain? By the time the Board---

**Mr. Speaker:** Order, Mr. Ruteere! Let the Minister be heard!

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, I am trying to answer Ms. Karua's question because she has asked me under what law I did this. My response is that I did it under Cap.261(8)(1) but one of the reasons why I did not accept those names was precisely because of the report I had from the EMU at that point in time.

**Hon. Members:** What did the report say?

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, I cannot go into the details of that report now. I agree with Ms. Karua. I am prepared to appear before a Committee which is a small group and go through the report of the EMU for them to see exactly what I mean. I am confident that the person that we have appointed to run the KMTC is qualified and competent and the Ministry expects him to discharge good service. One of the reasons why I decided not to dissolve the Board is because its life will come to an end this November. Thereafter, we shall constitute a new board which will carry the KMTC to a new height.

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

**Mr. Speaker:** Order, hon. Members! We have spent a lot of time on this Question. This matter has to come to an end now.

Mr. K. Kilonzo, please, ask the last question!

**Mr. K. Kilonzo:** Mr. Speaker, Sir, even if the Minister wanted to appoint his clansman, it required some intelligence and not just to do things like this.

*(Applause)*

If the Minister feels for Kenya and can stand the test of integrity, could he put that appointment on hold until this matter is referred to the Departmental Committee on Health and the Committee on Delegated Legislation? If he really believes that he was transparent and meant well for this organization--- We do not doubt the integrity of the person he has appointed or his competence but we doubt the methodology. It is the process which is flawed. Is the Minister willing to put the appointment on hold as he prepares to appear before the two Committees?

**Mr. Speaker:** Order, Mr. K. Kilonzo! You have made your point! Mr. Minister, do you have any response?

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, the director has been duly appointed, he has signed his contract and he is working well, but I am prepared to appear before the Committee on Delegated Legislation to explain to them the lacuna between the report of the EMU and the competence of the Board at that point in time to advice me competently.

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

**Mr. Speaker:** Order! Order, hon. Members! I will give directions as follows: That the request by the Member for Gichugu to have this matter referred to the Committee on Delegated Legislation is acceptable, except that I do not have to give express instructions for the Committee to commence investigations. But any Committee of the House that feels that this matter is within its mandate is at liberty to commence investigations.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. When this Parliament was faced with a similar challenge in the case of the appointment of hon. Ringera by the Executive, the Chair came out categorically and very clearly; that this House cannot abandon its oversight role when the Executive is seen to abuse the law. Could the Chair also use this opportunity to find that it is necessary that the appointment be set aside until Parliament has gone to the bottom of the issue?

*(Applause)*

**Mr. Mungatana:** On a point of order, Mr. Speaker, Sir. From the answer and on the face of it, there was discrimination. That is because Dr. Midred Mudany, who is a female, was discriminated and marginalized by the Minister. There was also Dr. Waqo Ejersa, who is from the marginalized community, who was also marginalized by the Minister. So, in your direction, I am requesting that you order the Minister to go and also face the Committee on Equal Opportunity, under Standing Order No.192. We will not have discrimination in Kenya.

*(Laughter)*

**Mr. Speaker:** Order, hon. Members! In light of the interest that this matter has attracted, I direct that the Committee on Equal Opportunity, Committee on Delegated Legislation and Committee on Health jointly commence investigations into this matter and file a report within the next four weeks.

*(Applause)*

CONSTRUCTION OF ROAD TO  
MASALANI-HOLA BRIDGE

**Mrs. Noor:** Mr. Speaker, Sir, I want to bring to your attention the fact that I have not received a written reply. However, I beg to ask the Minister for Roads the following Question by Private Notice.

(a) Why has the road leading to Masalani-Hola Bridge from Hola side not been constructed despite the bridge having been completed and officially inaugurated in 2007?

(b) What plans does the Ministry have to make Masalani-Hola Bridge accessible from both sides, particularly from the Hola side?

**The Assistant Minister for of Roads (Mr. Kinyanjui):** Mr. Speaker, Sir, I apologize to the hon. Member if she has not received a written answer. I will ensure that I give her a copy of the answer. However, I beg to reply.

(a) Following the completion of the Masalani-Hola Bridge, the Ministry recognizes the need to improve the Hola-Masalani Road in order to make it accessible throughout the year, especially, during the rainy season. That has, however, not been possible due to budgetary constraints.

(b) The approach road on both sides of the bridge will be prioritized for improvement in the financial year 2010/2011. Tenders for the design to build the Masalani Bridge approaches were advertized in the year 2008. Bids were received and evaluated, but the contract could not be awarded due to budgetary constraints occasioned by the high number of ongoing projects under the development account.

**Mrs. Noor:** Mr. Speaker, Sir, since I told you that I did not get a written response and the hon. Members were consulting loudly, I did not get what the Assistant Minister has said. However, the purpose of starting a project is to achieve the desired end results. But here is a project – Masalani-Hola Bridge – which was started seven years ago and officially inaugurated in 2007 by none other than His Excellency the President of this country. The hope of the people of Ijara was raised. They finally thought that they could see the light at end of the tunnel, but that was false hope. That bridge was heavily funded using taxpayers' money and it is not accessible.

**Mr. Speaker:** Ask your question!

**Mrs. Noor:** Mr. Speaker, Sir, could the Assistant Minister answer my second question as to when the project will be completed.

**Mr. Ogindo:** On a point of order, Mr. Speaker, Sir. With due respect to hon. Noor – and she is elegantly dressed - she has covered her ears. How does she expect to hear?

**Mr. Speaker:** Order! Hon. Noor, is that by any chance the explanation as to why you were unable to hear the reply; that your ears are covered?

**Mrs. Noor:** Mr. Speaker, Sir, I have just heard what you have said. That is a wrong allegation against me. I have covered my ears, but I am hearing. I need your protection over this!

**Mr. Speaker:** Hon. Ogindo, you owe the hon. Member an apology!

**Mr. Ogindo:** Mr. Speaker, Sir, I withdraw and apologize.

**The Minister of State for Defence (Mr. Haji):** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, hon. Haji! Let that matter rest where it is. I know that, that is a decent dress in the Islamic community and I guess that is where you want to go.

Proceed, Mr. Assistant Minister!

**The Assistant Minister for Roads (Mr. Kinyanjui):** Mr. Speaker, Sir, I want to repeat the answer, given that the hon. Member has indicated that she did not hear it.

(a) Following the completion of the Masalani-Hola Bridge, the Ministry recognizes the need to improve the Hola-Masalani Road in order to make it accessible throughout the year, especially, during the rainy season. That has, however, not been possible due to budgetary constraints.

(b) The approach roads on both sides of the bridge will be prioritized for financing in the financial year 2010/2011. Tenders for the design to build Masalani Bridge approaches were advertised in the year 2008. Bids were received and evaluated, but the contract could not be awarded due to budgetary constraints occasioned by the high number of ongoing projects under the development account.

**Mr. Affey:** Mr. Speaker, Sir, the Assistant Minister seems to treat the Question in a very trivial manner. That project was inaugurated in 2007 by the President. When the Government was designing it, the idea was to have a complete set. The intention was to connect North Eastern Province to Coast Province from Ijara. I want to know from the Assistant Minister what happened to the funds that were allocated for that project, before you start seeking for more.

**Mr. Kinyanjui:** Mr. Speaker, Sir, to the best of my knowledge, we had not set aside any money for the completion of the road. It was a bridge. I have already indicated that we have finished with the design work and opened the tenders. We will be prioritizing it in the next financial year. My Ministry considers that section of the road to be an important link to North Eastern. I want to assure hon. Members that, indeed, we will factor it in next year's budget.

**Mr. Speaker:** Last question, hon. Noor!

**Mrs. Noor:** Mr. Speaker, Sir, I would like to request the Assistant Minister to physically go and see that project. That is because it was completed and approved by the engineers on the ground according to the report that came to him. Since there was poor workmanship on the project, could the Assistant Minister and his technocrats physically go and inspect the project? After that, you can understand and tender for the project. When are you going to physically inspect the project because I know that you were given the wrong information?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I welcome the request from the hon. Member to visit that project and, indeed, at the Ministry level, we will ensure that we dispatch a team to visit the site. But, I am not able to give a clear date. But at least, within sixty days that can be done.

## ORAL ANSWERS TO QUESTIONS

*Question No.296*

IDENTITY OF CONTRACTORS ON  
KISUMU-KAKAMEGA ROAD

**Mr. Chanzu** asked the Minister for Roads:-

(a) to reveal the identity of the two contractors awarded the contract to patch up Kisumu-Kakamega road as well as the criteria used to select them;

(b) the respective contract sums for the two sections (Kisumu-Chavakali and Chavakali-Kakamega); and,

(c) the action he will take against the contractors, especially the one at the Kisumu-Chavakali Section, in view of the shoddy work done, which is peeling off even before completion of the works.

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

(a) The Kisumu-Chavakali section of the road was awarded to M/s Wallukat Investments, while the Chavakali-Webuye section was awarded to M/s Tai Enterprises Limited. The criteria used in the selection of contractors was post-qualification of Regional Term Contracts (PQRTC).

(b) The contractor sum for the Kisumu-Chavakali section is Kshs84,680,615, while the sum for the Chavakali-Webuye section is Kshs122,976,498.

(c) The two contractors were procured to undertake emergency repair because the road was in a deteriorating state. The contractors carried out the works as specified in the contract.

**Mr. Chanzu:** Mr. Speaker, Sir, I have got very serious concerns about this Question, particularly part “c” of the answer because the Assistant Minister has not satisfactorily answered it. One, the selection of the contractors by the Post-Qualification Regional Term Contracts (PQRTC) is causing a lot of favouritism. Two, anybody using that road knows very well that the workmanship from Kisumu to Chavakali is totally different from the workmanship beyond those two places.

Mr. Speaker, Sir, when the Assistant Minister says that the contractors carried out the work as specified in the contract, he is implying that either there is something amiss about the specification or something is totally wrong about the contract. The money that has been spent on this road was not worth it. The road started peeling off even before a kilometre was done. What is the Ministry doing about the contractor who did a shoddy job, particularly the one from Kisumu to Chavakali? I am told that the same contractors are being awarded the job from Luanda to Majengo and the work is not being done. The same thing is happening on the road from Chavakali to Kapsabet.

**Mr. Kinyanjui:** Mr. Speaker, Sir, I share the concerns raised by the hon. Member. But I wish to state clearly that the contract clearly specified that we were doing emergency repair to make the road motorable. We were not reconstructing the roads and I want to---

**Mr. Chanzu:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is saying that they were doing emergency repairs. Why are the emergency repairs from Kisumu to Chavakali done differently from the ones from Chavakali to Webuye?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I want to assure the hon. Member that the report we have clearly states and, I would like to say that, the work which was specifically given to the contractor, included the following: Excavation and cleaning of drains of the existing culverts, grading, processing and gravelling of shoulders; base and sub-base repairs, and patching with asphalt concrete. That does not include reconstruction of the road. I want to clearly note that, I have stated the different amounts for the specific roads; and if you look at the amounts and the distance we are talking about, this money was just for emergency repairs. However, I want to assure the hon. Member that the design work for that road is complete and we will ensure that we start the reconstruction of that road, just like we are doing with the Mau Summit-Kericho Road, where we did the emergency repairs last year. This year, we have already sent a contractor to rebuild the whole road.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to completely avoid answering part “c” of this Question which states, “even if the contractor was given emergency works to do, how come that the road is peeling off even before the work is completed?”

**Mr. Kinyanjui:** Mr. Speaker, Sir, the reports that we have are that, the time when we gave out the work, like I have said, it included patching up with asphalt concretes where the potholes were. But, since then many others have emerged. I want to assure the House that our team of engineers has clearly said that what we gave out as work to be done has, indeed, been done. But, if that report is not accurate, I will send another team of officers to verify that position as stated by the hon. Members.

**Mr. Yinda:** Mr. Speaker, Sir, I think the Assistant Minister is still avoiding the Question. The works that were actually designed by the Ministry have not been done. The culverts were not cleared, the shoulders were not addressed. Could we hear from the Assistant Minister how Kshs84,680,615 was spent on that stretch of the road, because already this road has very big gaping holes in less than three months?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I have indicated that the report that we have from the resident engineer is that the works, as I have read them out, were actually done. However, as indicated to this House, if indeed, there is a contradiction between the report we have and what is on the ground, as hon. Members have indicated; we will be able to report to this House and, indeed, communicate to the hon. Members.

**Mr. Shakeel:** Mr. Speaker, Sir, we use that road every day. The Assistant Minister has not been very clear and we would like to invite him to come and see that road. Is he ready to come this weekend so that we can look at the road and the work done?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I will not have any problem visiting that part of the country and, as I have indicated, we will indeed, be able to do that.

**Mr. Chanzu:** Mr. Speaker, Sir, there is a serious disconnect between what the Assistant Minister is telling us and what they are getting from the officers. One of the reasons is that the engineers are the ones who are contractors. What is the Assistant Minister doing to ensure that the Ministry has proper linkages in terms of the information

they get from the engineers and the head office to ensure that they remove some of the engineers who are contractors on the same project?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I am not aware of any engineers who are also contractors. But, indeed, if there are any engineers who are working for the Ministry and who also have their private constructing firms, we will like to take immediate action.

However, I also want to take this opportunity to assure the hon. Member that whenever there is a disconnect between the reports we get and what is on the ground, my Ministry has been on the forefront to ensure that we visit the actual roads and the constituencies. For instance, yesterday we were in Bomet and many of the others roads within that larger constituency. So, I take the concerns raised by the hon. Member and we will take the necessary action.

**Mr. Speaker:** Order, Mr. Assistant Minister! You were asked to indicate when you will visit the site. When will you do so?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I will consult with the Ministry, but within sixty days.

**Mr. Shakeel:** On a point of order, Mr. Speaker, Sir. We are going to have the next visit within sixty days---

**Mr. Speaker:** Order, Mr. Shakeel! You asked the question and you received an answer. You asked the Assistant Minister to indicate when he will visit the road. The Assistant Minister has said he will do so within the next sixty days, so you have an answer! You cannot complain.

Next Question by the hon. Member for Eldama Ravine!

*Question No.362*

DETAILS OF SURPLUS COLLECTIONS/INTEREST  
INCOME OF FUEL LEVY FUNDS

**Mr. Lessonet** asked the Minister for Roads:-

(a) to table the details of surplus collections and interest income of the Fuel Levy Funds for the year 2006/07, 2007/08, 2008/09 as well as the beneficiaries of the above surplus; and,

(b) to clarify whether the above distribution conforms to the requirements of the Kenya Roads Board Act.

**The Assistant Minister for Roads** (Mr. Kinyanjui): Thank you, Mr. Speaker, Sir. I beg to reply.

(a) I would like to lay on the Table a list of details containing surplus collections and interest income of the Fuel Levy Fund for the Financial years 2006/2007, 2007/2008 and 2008/2009 as well as the beneficiaries of the same.

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

(b) I confirm that the surplus collections and the interests for the financial years 2006/2007 and 2007/2008 were distributed to various roads agencies as per the Kenya Roads Board Act distribution criteria and the Kenya Roads Act, 2007. The surplus

collections and interests for the Financial Year 2008/2009 have not yet been distributed.

**Mr. Lessonet:** Mr. Speaker, Sir, I would like to thank the Assistant Minister for that brief answer. In terms of what the Assistant Minister has laid on the Table - and which he has given me a copy - this is a global distribution. Could he give us further details by explaining to us exactly how much each constituency got and how much each district got?

**Mr. Kinyanjui:** Mr. Speaker, Sir, while I appreciate the concerns of the hon. Member, that is clearly a different question. He did not ask for the details that he is asking for now. However, I can avail those details to the hon. Member at the earliest possible opportunity.

**Mr. Lessonet:** On a point of order, Mr. Speaker, Sir. That is not a different question.

**Mr. Speaker:** Order, Mr. Lessonet. Please, resume your seat. You have, in part (a) of your Question, asked the Minister to lay on the Table the details of the collections. The Assistant Minister has complied by laying on the Table those details. The supplementary question is different in the sense that in the original Question, you did not ask the Assistant Minister to give the details as per the constituency or district. So, to that extent, it is different. So, unless the Assistant Minister had equipped himself with that information, he is justified in asserting that it is different.

Could you, please, ask the last question?

**Mr. Lessonet:** Mr. Speaker, Sir, I still want to insist that, that is not a different question.

**Mr. Speaker:** Order, Mr. Lessonet! You want to insist, notwithstanding my directions?

**Mr. Lessonet:** Mr. Speaker, Sir, I do not know what to call it, but just allow me to try and explain that it is not a different question.

Mr. Speaker, Sir, it is not a different question because we cannot have a beneficiary called MOR constituency. We can only have a beneficiary in the name of either a constituency or a district.

**Mr. Speaker:** Mr. Lessonet, could you, please, ask your last question?

**Mr. Lessonet:** Mr. Speaker, Sir, I will file another Question, if I must do that. However, for now, in terms of the 2008/2009, which the Assistant Minister has said that he is not yet through with the calculations, once he is through, will he distribute as per the Act that was amended last week on Thursday or you are going to use the old Act?

**Mr. Kinyanjui:** Mr. Speaker, Sir, before I answer that question, I would like to quote the Act that gives the Ministry the criteria to distribute the money. That is the Act that the hon. Member has referred to. The Act says that based on a five year road investment programme, the Ministry of Roads shall collect funds from the Kenya Roads Board. Section 1 says that 20 per cent of the money from the Fund is allocated equally to all constituencies in the country to be administered by the Rural Roads Authority.

(c) 12 per cent of the monies from the Fund is collected and distributed to districts in respect of rural roads which are administered by the Rural Roads Authority. So, it does not go as per the constituency or per district. I want to invite the hon. Member to look at that.

With regard to the last question, he has asked whether the amounts that have not yet been distributed will be distributed in accordance with the new law that came into effect

last week. I want to remind the hon. Member that the funds we are talking about are those of 2008/2009. The law was passed last year. I believe that we will use the old law.

*Question No.040*

ASSISTANCE TO KENYANS TO  
OBTAIN HOUSING LOANS

**Mr. Lekuton** asked the Minister for Housing what action he is taking to assist Kenyans who are unable to obtain housing loans from commercial banks.

**The Minister for Housing** (Mr. Shitanda): Mr. Speaker, Sir, I beg to reply.

My Ministry recognizes that there are several reasons why many Kenyans are unable to obtain housing loans from financial institutions and commercial banks. The Ministry has identified and summarized these challenges and recommended incentives and re-engineering measures that need to be implemented to make housing more affordable. To this end, the following incentives and initiatives are being undertaken.

The Retirement Benefits Act has been amended to allow retiring members assign their benefits for mortgage purposes as this will take away the burden of security from borrowers. The limit on deposits whose interest is exempt from tax has been increased to a maximum of Kshs3 million for savings under the Home Ownership Savings Plan. We are also urging banks and financial institutions to allow multi-generational mortgages as this will increase the repayment period and reduce the monthly repayment, hence, making housing loans more affordable.

Additionally, we are still negotiating with the Ministry of Finance with a view to establishing a guarantee scheme and tax concessions to promote enhanced utilization of micro-finance institutions for savings mobilization and extending of credit to low income urban households. The Government, through prudential regulations, is looking into ways and means to cause financial institutions to give more favourable terms to home savings accounts.

Finally, the Government is also trying to take the initiative in the establishment and capitalization of the public/private owned mortgage insurance institutions for credit enhancement to low income households.

**Mr. Lekuton:** Mr. Speaker, Sir, I would like to thank the Minister for an excellent answer. Considering that we have 5.4 million people in this country living in slums and informal settlements, what is the Government's direct role in giving incentives to co-operatives, private foundations and NGOs to direct more resources to the housing market?

**Mr. Shitanda:** Mr. Speaker, Sir, the Government is trying to help households living in the slum areas by mobilizing them into co-operative societies so that they can access housing. For example, the Government has helped to establish about 35 co-operative societies in the slum area of Kibera with a view to enabling members of those co-operatives to own the houses that the Government is coming up with in those areas.

Mr. Speaker, Sir, more importantly, the Government is trying other interventions through public-private partnerships. In fact, we have advertised a public-private partnership whose tender was opened yesterday for the Kibera Slums. We want to engage

the private sector in re-developing those slums and also try to give out those houses at affordable rates. We have also sent an appeal to our international development partners to come and assist in slum up-grading programmes.

**Mr. Olago:** Mr. Speaker, Sir, every great country like Kenya has a master-plan for the provision of affordable housing to its citizens, particularly the ones who live in the slums. What is the Ministry's master-plan in respect to the provision of housing to low income earners in Kenya as a national policy?

**Mr. Shitanda:** Mr. Speaker, Sir, we have a slum master-plan that was developed after the Sessional Paper on Housing was passed in this House in 2004. Our projection, as a Ministry, is that we should have housed most of the people who live in informal settlement not just in Nairobi but in all our urban areas by 2020. We are doing this in collaboration with the UN Habitat in conformity with the Millennium Development Goals (MDGs) target of trying to house the 5.4 million Kenyans who live in informal settlements.

**Mr. Speaker:** Ask the last question, Mr. Lekuton.

**Mr. Lekuton:** Mr. Speaker, Sir, I would like to thank the Minister again. Considering the fact that housing in this country is in a crisis, and considering the fact that countries like India and Bangladesh have developed a research unit within the concerned Ministry, is the Government willing to start a research unit that will not only make people afford homes but also make them access cheap building materials?

**Mr. Shitanda:** Mr. Speaker, Sir, my Ministry is in the process of putting up an appropriate building technology centre in Mlolongo. Its construction commenced a few weeks ago. This is phase one of the centre that will cost about Kshs130 million. We intend to collaborate with research institutions to come up with different forms of building materials in the centre. At the same time, we have a draft Bill that will be brought before this House soon. We have proposed major changes to the existing building code which confines building technology to brick and mortar. We want to open up so that we can apply other forms of technologies that can avail houses to many Kenyans.

*Question No.473*

RESETTLEMENT OF IDPS  
IN KYENI FOREST

**Mr. Waibara** asked the Minister of State for Special Programmes:-

(a) whether she is aware that there are thousands of Internally Displaced Persons (IDPs) who have been camping in the Kyeni Forest, Gatundu North Constituency for 17 years, following the 1992 post-election violence;

(b) what measures she is taking to ensure that they are resettled in their original homes or given alternative land so that they may rebuild their lives and when it will be done; and,

(c) when she will also resettle hundreds of other IDPs affected by the 2007 post-election violence in various camps in Gatundu North

Constituency and make arrangements to provide them with basic living necessities.

**The Minister of State for Special Programmes** (Dr. Shaban): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that there are thousands of IDPs who have been camping in Kyeni Forest, Gatundu North Constituency, for 17 years following the 1992 post-election violence.

(b) My Ministry has not taken any measures towards resettling the said IDPs. The mandate of the Ministry in resettling the IDPs is limited to those affected in the 2007 post-election violence as per Legal Notice No.11 of 30<sup>th</sup> January, 2008.

(c) My Ministry does not have records of the IDPs affected by the 2007 post-election violence from Gatundu North Constituency. All registers of the IDPs were closed on 31<sup>st</sup> December, 2008. However, according to the list of 1,195 households laid in Parliament by the hon. Member, 149 families are confirmed to be IDPs and 13 families are confirmed to have been paid Kshs10,000 while another 23 families have been confirmed to have been paid and yet they are not registered as IDPs. The balance of 1,046 households in the list are squatters emanating from the 1992 post-election violence as confirmed by the District Commissioner.

**Mr. Waibara:** Mr. Speaker, Sir, the Minister is again misleading this House the way she did last time. She has said that she is limited to resettling the IDPs from the 2007 post-election violence. Is it lack of a clear Government policy on resettlement or an indication that this Government has failed to resettle the IDPs who were affected in the previous years?

**Dr. Shaban:** Mr. Speaker, Sir, we can only take care of Kenyans who have been displaced as we have been mandated. Do we still refer to people who have been in a place for 17 years as IDPs or squatters? I get confused by the two terms.

**Mr. Mwangi:** Mr. Speaker, Sir, from the answer the Minister has given, could she organise a similar *harambee* and invite the Deputy Prime Minister and Minister for Finance as they did for the people evicted from Mau Forest to resettle the people of Gatundu?

**Dr. Shaban:** Mr. Speaker, Sir, I have been invited to many *harambees*. It is the duty of the hon. Member for Gatundu North, if he so wishes, to invite us and we will be there.

**Mr. Imanyara:** Mr. Speaker, Sir, it is good to note that the Minister is answering the Question today. This Question was deferred last week so that the Minister could go and look at the list that was laid on the Table by the hon. Member for Gatundu North. I have not heard her make any mention to that list other than confirm that there are IDPs in Gatundu. Could she tell the House the findings from the report laid on the Table by the hon. Member for Gatundu North?

**Dr. Shaban:** Mr. Speaker, Sir, we went through our IT system to check whether the list of 1,195 households that the hon. Member laid on the Table comprised of the IDPs. Out of the 1,195 households, 149 were found to be IDPs but were registered elsewhere. Those IDPs were not registered in Gatundu because we have not been given a list from there. Again, from that list, 13 households had received funds for the resettlement of the IDPs.

**Mr. Speaker:** Are you repeating the answer that you gave earlier on?

**Dr. Shaban:** Yes, Mr. Speaker, Sir. That is for the benefit of the hon. Member who has asked the question.

**Mr. Speaker:** You do not have to do that. Mr. Imanyara ought to have been listening!

**Ms. Karua:** Mr. Speaker, Sir, I am shocked by the Minister's answer that she is not aware of any displaced persons camping in Gatundu North Constituency. The clashes of 1992 were of public notoriety. The act of the Government of the day at that time of dumping the IDPs from the Rift Valley in a lorry at Kirigiti Stadium in Kiambu is also a matter that received public notoriety. It is some of those IDPs that now camp at Gatundu. What has the Minister done to identify the IDPs of 1992 clashes? What has the Government done to ensure that those people are resettled; recover their lost farms, some of which they had title deeds and generally, provide for the squatters?

**Dr. Shaban:** Mr. Speaker, Sir, the exercise of identifying and resettling all other IDPs, except the 2007 ones, will require funding. At the moment, the only funds that have been availed to us, are for the resettlement of 2007 IDPs as per the legal notice. I have so far asked for further mandate and instructions on whether we should deal with anybody who was displaced prior to 2007. Even after 2007, there are other people who have been displaced for other reasons. Apart from election violence, there are others who have been displaced because of conflict, drought and *El Nino*. So, it is a long list. We would require to be given further mandate to be able to deal with those ones.

**Mr. Baiya:** Mr. Speaker, Sir, I want the Minister to clarify whether it is in order for the Government to discriminate IDPs merely on the basis that they were displaced prior to 2007?

**Dr. Shaban:** Mr. Speaker, Sir, if we were to deal with only the issue of IDPs in this country, most likely we would stop all the other programmes. However, I believe that we can deal with them in phases. The rest of the IDPs and squatters will be dealt with in phases.

**Mrs. Odhiambo-Mabona:** Mr. Speaker, Sir, going by the Minister's answer and considering the number of IDPs in this country, when does the Government intend to develop a comprehensive policy and legislation dealing with IDPs?

**Dr. Shaban:** Mr. Speaker, Sir, in partnership with the Ministry of Justice, National Cohesion and Constitutional Affairs and UN agencies we are in the process of developing a policy for IDPs.

**Eng. Maina:** Mr. Speaker, Sir, the last time this Question came up, the hon. Minister alleged that some politicians dream and come up with IDPs list and say that those are genuine IDPs. I wish to request that the hon. Minister withdraws that statement because no hon. Member of Parliament here can dream and come up with a list of IDPs.

Secondly, she has already admitted that these people are IDPs by compensating 13 of them. She says 23 of them are genuine IDPs. I am wondering on what basis the Minister can say some people are IDPs while others are not.

Finally, there is *Nyayo* Tea Zone next to these people who are landless and it was actually envisaged that these IDPs would be settled there. Madam Minister, what will you do to ensure that these IDPs are allocated that land?

**Dr. Shaban:** Mr. Speaker, Sir, as for politicians coming up with lists, it is a fact. Even 149 people out of these, are people who have been registered elsewhere and yet this

list is being produced as a Gatundu North list. So, it is a pity that politicians are still coming up with this kind of a list.

Secondly---

**Eng. Maina:** On a point of order, Mr. Speaker, Sir. The list is not just from politicians. First of all, in this House, we are not just politicians, we are hon. Members of Parliament.

**Mr. Speaker:** Order, Eng. Maina! As a matter fact, the Chair let that pass, but the Minister was so rational as to give you a response. But you do not complain about a matter several days after it has transpired. So, if that is your point of order now, it is actually not valid.

**Eng. Maina:** Not really, Mr. Speaker, Sir!

**Mr. Speaker:** Order, Eng. Maina! That point of order is not valid for the reasons I have given.

Madam Minister, proceed!

**Dr. Shaban:** Mr. Speaker, Sir, the mandate of resettling anybody who has been living next to the *Nyayo* Tea Zones or wherever they have been living, is with the Ministry of Lands. They have a department which actually deals with resettlement. There is a Director of Resettlement whose duty is just to make sure that most of the squatters in this country are resettled.

**Mr. Farah:** Mr. Speaker, Sir, we have had displaced people in this country right from the time we got Independence; right from the Shifta War, Wagalla Massacre, droughts, problems that are there between the Pokots and Marakwets and others up to what is happening right now in Isiolo. Could the Minister assure us that the hundreds of thousands of Kenyans who have never been assisted as IDPs in the past will now be included in the master-plan she will come up for assisting and helping the IDPs in this country?

**Dr. Shaban:** Mr. Speaker, Sir, most of the Kenyans have been displaced at one time or another; some by flash floods, conflicts, droughts, among other reasons. Resettlement is something which requires a lot of funding. That is why I have asked for specific mandate to be allowed to go back and register all the other people, so that the Government can come up with funds for resettlement of all other IDPs.

**Mr. Speaker:** Last question, Member for Gatundu North!

**Mr. Waibara:** Mr. Speaker, Sir, although I am not satisfied with the answer, I would like the Minister herself to accompany me to Kyeni Forest and see the pathetic situation these people are living in. They live in the cold forest of Kyeni. Could the Minister tell us when she can visit these people?

**Dr. Shaban:** Mr. Speaker, Sir, it is one of my mandates to go and check who lives in Kyeni Forest. Since the hon. Member has basically put an official request, I will accompany him to his constituency and visit all the people who require assistance from the Government.

**Mr. Speaker:** Hon. Members, that brings us to the end of Question Time. We have run out of time. Questions Nos.106, 417 and 441 are deferred to tomorrow afternoon. The balance of Questions will be deferred to Thursday afternoon. In both cases, they will take priority over Questions due then.

**Mr. Kathuri:** On a point of order, Mr. Speaker, Sir. There were Questions that were deferred last week to tomorrow. Which ones will come first, is it the ones that were deferred last week or the ones that were deferred today? I think there is a bit of confusion.

**Mr. Speaker:** My directions are clear that the Questions deferred this afternoon to tomorrow afternoon and Thursday afternoon respectively will take priority over Questions due then.

Good English!

Proceed, next Order!

*Question No.106*

ISSUANCE OF TITLE DEEDS TO RESIDENTS  
OF KOIBARAKA/KOSUBWA/  
SUNGURUR/TUIYOBEI LOCATIONS

*(Question deferred)*

*Question No.417*

POLICY ON FUNDING OF AQUA CULTURE/  
CONSTRUCTION OF FISH PONDS

*(Question deferred)*

*Question No.448*

ILLEGAL SALE OF MBOI KAMITI  
FARMERS COMPANY ASSETS

*(Question deferred)*

*Question No.441*

MONEY DISBURSED TO TETU  
PSII PROGRAMME

*(Question deferred)*

*Question No.482*

EX-GRATIA PAYMENT TO FORMER  
MEMBERS OF PARLIAMENTS

*(Question deferred)*

*Question No.523*

COMPENSATION FOR LAND ACQUIRED  
FOR CONSTRUCTION OF MANOONI DAM

*(Question deferred)*

*Question No.534*

ABSENCE OF DOS IN SOOK/CHEPARERIA/  
KONGELAI DIVISIONS

*(Question deferred)*

**POINTS OF ORDER**

TERMINATION OF NEW KCC MANAGING DIRECTOR'S CONTRACT

**Eng. Maina:** Mr. Speaker, Sir, I wish to request a Ministerial Statement from the Minister for Co-operative Development and Marketing regarding employment of Mr. Mwangi, who is the Managing Director of the New KCC. Mr. Mwangi has performed quite well. As it stands now, the Minister intends to terminate Mr. Mwangi's services. This is a man who the farmers have confidence in. He has taken the New KCC from the woods where it was a loss making organization to a profit making organization. These are not the kind of things expected from a good Government that is out to uplift the economy of this country.

I, therefore, wish to seek a Ministerial Statement from the Minister regarding why the contract of Mr. Mwangi should not be extended. We have already seen the saga of Ministers wishing to appoint their kinsmen to senior positions.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

**Mr. Deputy Speaker:** Mr. Shitanda, when will you have that Ministerial Statement?

**The Minister for Housing (Mr. Shitanda):** Mr. Deputy Speaker, Sir, I will inform the Minister to come and issue a Statement maybe on Thursday afternoon.

**Mr. Deputy Speaker:** The Chair so directs!

STATUS OF ELDORET-CHAVAKALI ROAD

**Mr. Koech:** On a point of order, Mr. Deputy Speaker, Sir. Last week, the Minister for Roads promised to deliver today a Ministerial Statement on the status of Eldoret-Chavakali Road.

**Mr. Deputy Speaker:** Yes, the Chair remembers that very well. Where is the Minister for Roads?

Let us go to the next point of order!

INSECURITY IN MIGORI MUNICIPALITY

**Mr. Pesa:** On a point of order, Mr. Deputy Speaker, Sir. Last Tuesday, I requested for a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the rising insecurity in Migori and he promised that he will give an answer today. I wonder whether one of the Assistant Ministers is here to deliver that particular Statement.

Mr. Deputy Speaker, Sir, people are being butchered there. In fact, the situation is so bad---

**Mr. Deputy Speaker:** Order! Order! Minister, do you have a Ministerial Statement for the same?

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

Order, Assistant Minister! Could we have hon. Members who want to seek Ministerial Statements do so now before Ministers issue Statements?

Hon. Baiya? Are you seeking a Ministerial Statement?

CHANGE OF SECONDARY EDUCATION SYLLABUS

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I am not seeking a Ministerial Statement; I sought a Ministerial Statement last week but one from the Ministry of Education concerning the directive by the Ministry on the syllabus on secondary schools, specifically about the sciences---

**Mr. Deputy Speaker:** Order! Wait and see whether the Minister is available with the Ministerial Statement or not. You do not pre-empt!

Yes, can we have the Ministers now?

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

Order! Order, Mr. Olago! I know you sought a Ministerial Statement!

**Mr. Olago:** It is something else, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Okay, what is your point of order?

NON-ISSUANCE OF DELEGATED LEGISLATION BY  
CHIEF JUSTICE

**Mr. Olago:** Mr. Deputy Speaker, Sir, apart from the Statement that I expect from the Minister of State for Special Programmes, on the 19<sup>th</sup> of August, I asked the Ministry of Justice, National Cohesion and Constitutional Affairs why the Chief Justice had failed to issue delegated legislation. Hon. Cheptumo was here at that time and he promised to deliver the Statement on the 26<sup>th</sup> of August, but up to now, he has not. This is number 18 on the tracker; overdue Statements, page 4.

STATE OF DONOR FUNDING TO  
GJLOS PROGRAMME

Mr. Deputy Speaker, Sir, again, on 25<sup>th</sup> June, I sought a Ministerial Statement from the Ministry of Justice, National Cohesion and Constitutional Affairs on the state of donor funding for the GJLOS and the honorable Minister promised to deliver one on 25<sup>th</sup> of August, but up to now, he has not delivered it.

**Mr. Deputy Speaker:** Is there a Minister who can take an undertaking on behalf of the Ministry of Justice, National Cohesion and Constitutional Affairs?

*(Mr. M. Kilonzo consulted with Mr. Kiunjuri)*

Order, Minister for Justice, National Cohesion and Constitutional Affairs! When your Ministry has some Business to do in the House and execute its own mandate, you should be listening to hon. Members!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I beg for your indulgence. I was listening to the hon. Member and I apologize. Could, he perhaps repeat the question?

**Mr. Deputy Speaker:** Hon. Olago, could you repeat that?

**Mr. Olago:** Mr. Deputy Speaker, Sir, I had two requests for Ministerial Statements from the Ministry of Justice, National Cohesion and Constitutional Affairs. The first was on the 19<sup>th</sup> of August, on why the Chief Justice had failed to issue delegated legislation in respect of sexual offences. The other one, on the 25<sup>th</sup> of June, was on the state of funding for the GJLOS programme.

**Mr. Deputy Speaker:** Okay, hon. Minister, you heard that!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I beg your indulgence to make a Ministerial Statements on those issues on Wednesday next week, if you permit me.

**Mr. Deputy Speaker:** Indeed, you have to apologize to the House because you were supposed to have done this much earlier!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): As a matter of fact, Mr. Deputy Speaker, Sir, this is the first time that I am aware of the issue pertaining to regulations to be made by the Chief Justice and I apologize if that would make the Chair happy, because it is very important.

**Mr. Deputy Speaker:** It is not going to make the Chair happy!

*(Laughter)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, Actually I am a very serious man. I undertake to make those Statements, because they are issues very close to my heart; both GJLOS as well as the regulations, on Wednesday next week so that I can be thorough in my usual manner.

Thank you.

**Mr. Deputy Speaker:** Wednesday morning next week?

*(Laughter)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): I can do it on Wednesday morning if---

**Mr. Deputy Speaker:** That is fair enough. The Chair so directs!

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

#### STATE OF AFFAIRS AT NAKURU HIGH COURT

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. Mr. Deputy Speaker, Sir. On the same note, could he also remember to give a Statement regarding the situation at the Nakuru Law Courts, because the Ministerial Statement was to be issued today?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, the Ministerial Statement on Nakuru High Court, if my learned friend allows, I propose to make it on Thursday this week. It is under preparation and I want to be thorough.

Thank you.

*(Laughter)*

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

Dr. Shaban, could you make your Ministerial Statement?

#### MINISTERIAL STATEMENTS

##### PLIGHT OF MAU FOREST EVICTEES

**The Minister of State for Special Programmes** (Dr. Shaban): Mr. Deputy Speaker, Sir, on 18<sup>th</sup> of November, 2009, the hon. Member for Kisumu Town West, hon. John Olago Aluoch, requested for a Ministerial Statement from the Minister of State for Special Programmes, on the issue of the ongoing evictions from the Mau Forest and the apparent problems affecting the people evicted pertaining to shelter and food sustenance. In the Statement, he wanted us to address ourselves to:-

- (a) What steps the Minister has taken to ensure timely delivery of food and shelter to those evicted; and,
- (b) Why the Ministry staffers are unwilling or are not ready to work proactively and promptly.

Mr. Deputy Speaker, Sir, the Mau Forest reclamation operation is a national exercise and my Ministry is not the lead Ministry but one among many Ministries and Government agencies with responsibilities to assist the evictees. The planning of the evictions of the Mau illegal settlers is being undertaken by the Interim Co-ordinating Committee under the Prime Minister's Office. A detailed plan of action has been prepared by this Committee allocating various tasks to Ministries to respond to any humanitarian needs that may arise due to the evictions. Under the plan, the Ministry of

State for Special Programmes was asked to provide food and non-food relief items at designated points determined by the task force for one month and to provide lorries to relocate the evictees. The request for food and non-food relief was based on the profiling that is carried out by the task force in conjunction with the District Commissioners around the area of the Mau Forest Complex. My Ministry delivered food and non-food relief supplies to the District Commissioners in Bureti, Bomet and Kuresoi for free distribution to the evictees and all this was worth Kshs7 million, on the 14<sup>th</sup> of November as shown below. There is a table giving the breakdown.

Mr. Deputy Speaker, Sir, my Ministry through the Crisis Response Centre also provided five GK lorries from the National Youth Service for transportation of the squatters and their luggage. The vehicle registration numbers are as follows: GKA 297G, GK0166F, GK163A, GK163F, GKA157F and GKA166F. It is important to take note that according to the information and plans for the Co-ordinating Secretariat, the squatters were to move from the forests back to their farms and not to be in camps. Hence, there was no plan for camping utilities like shelter, water and sanitary. My Ministry was tasked to provide adequate food rations for one month.

Mr. Deputy Speaker, Sir, my Ministry acted promptly and delivered food and means of transport on time. The actual food distribution process is being managed by District Commissioners. There is a profiling exercise going on and, from them, we discovered that most of these people relocated to Kuresoi. They did not go to Bomet and Bureti and we have had to relocate the food back to Kuresoi.

Thank you

**Mr. Olago:** Mr. Deputy Speaker, Sir, I am satisfied with the explanation by the Minister. However, the clarification I would wish to seek is this: Now that the debate on the evacuation from the Mau Forest is taking a different turn and looking political, what steps is the Ministry taking to ensure that humanitarian efforts are truly directed to the evictees and that they are taken where they ought to be?

**The Minister of State for Special Programmes (Dr. Shaban):** Mr. Deputy Speaker, Sir, towards the end of last week, I was given a further mandate as far as these evictees are concerned. I will be visiting the area tomorrow. Since the profiling exercise is going on, we are going to make sure that the evictees are resettled so that they can join other Kenyans in the development of this country.

**Mr. Pesa:** Mr. Deputy Speaker, Sir, if I remember well, the Minister attended a *Harambee* organized for these people we are talking about. I am wondering why the Minister could not have got money from the Government to support these people instead of going for the *Harambee* that we saw last weekend.

**Mr. Deputy Speaker:** Order, Mr. Pesa! Order! You are supposed to seek clarifications on the content of the Minister's Statement. She did not talk of a *Harambee* that she was part of or organized.

Mr. Njuguna, are you seeking clarification?

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, I want to ask a question.

**Mr. Deputy Speaker:** Mr. Njuguna, you cannot ask a question. You are supposed to seek clarification. We are on a Ministerial Statement!

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, I will be within that range.

**Mr. Deputy Speaker:** Okay, proceed!

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, I would like the Minister to clarify when the Ministry is going to extend immediate humanitarian assistance to the Mau Forest evictees who are currently residing by the roadside. These people have children and are suffering for lack of any shelter.

**Dr. Laboso:** Mr. Deputy Speaker, Sir, with regard to the profiling exercise that is going now, does the Minister not think that the profiling should have been done before they were removed from the forest? That way, we would not have them by the roadside. In fact, we would have really known who the genuine squatter is. We would also be in a position to know who is supposed to go back to Bureti or Bomet and who is to stay in the forest.

**Mrs. Shebesh:** Mr. Deputy Speaker, Sir, last week, the Minister together with her colleagues in the Prime Minister's Office sought to clarify through the media the status of the evictees. She is now talking about going there tomorrow. Could she clarify, therefore, if the information that we were given by the Task Force and those in charge, including the DCs on the ground, is faulty and that she is, indeed, going to find out whether this issue is pertinent or has been politicized?

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, if I heard the Minister correctly, she said that on 14<sup>th</sup> November, 2009, her officers had already dispatched food. She even cited the number of lorries that were used. The information that we are getting from the public is that there is no food. In fact, there were pictures of women and children suffering by the roadside. Could the Minister clarify what happened between the date that her Ministry is supposed to have delivered the food to about the date this Ministerial Statement was raised?

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, the Minister said that she will be touring the area as a result of a fresh mandate. Could she tell us what the terms of the fresh mandate are? Could she also tell us why it was necessary to issue fresh mandate when we are in the process of evicting the people who are living in the Mau Forest?

**The Minister of State for Special Programmes (Dr. Shaban):** Our Ministry, together with other Members of Parliament, has been doing *Harambees*. We did one for the IDPs sometime in May, 2008. We did another one in February, 2009, for the Sachangwan fire victims. We conducted a third *Harambee* for the people of Faza Island in September, 2009. So, this was just one *Harambee* amongst many and there is no reason for it to be a political issue because we have done *Harambees* for other Kenyans.

As these people were leaving the Mau Complex, the officers of the Forestry Service did a profiling exercise. However, it is only normal for us to go and countercheck and verify. This is because when we were dealing with the people camping at the roadside, we found out the numbers were bigger than the numbers we were given by the people who had conducted the exercise in the forest. It is, therefore, important for us to harmonize and get to know where the other people are coming from. Whereas the Forestry Service was telling us that they were dealing with 1,693 families, the list which is out there now is beyond 5,000 families. We needed to harmonize the lists so that we know the genuine people who came from the Mau Forest.

Once these people left the forest, they were no longer being assisted by the officers of the Forestry Service. Once they are out there, it is for our Ministry to take over. That is why we were given instructions from the Prime Minister's Office to go and ensure that the lists are harmonized. After that, we will deal with the matter. That way,

we will know who went there recently and, maybe, they have a home somewhere. Some of them are actually genuine squatters. We shall assist the genuine squatters who were in the forest.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. I did not hear the Minister clarifying my point. As at the date she has given us, she has told us that her Ministry had delivered food to women and children worth Kshs7 million. There was absolutely no food on the ground. Was there somebody hoarding that food for whatever reason?

**The Minister of State for Special Programmes (Dr. Shaban):** Mr. Deputy Speaker, Sir, we usually distribute food to the people through the DCs. I said earlier on that the food was distributed to three different districts. The information from the ground is that some of these people belong to Bureti and that some of them are going to relocate to Bomet. The final list was for people who will be going to Kuresoi. So, because of that and the distribution that we had done, there was a lot of confusion. The numbers were too huge and the Provincial Administration was taking their time to reprofile again. That is what they were trying to do so that they could establish that they were taking care of people who had come from the forest only.

**Mr. Deputy Speaker:** The Assistant Minister of State for Provincial Administration and Internal Security! Can you give your Ministerial Statement?

#### INSECURITY IN MIGORI MUNICIPALITY

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima):** Mr. Deputy Speaker, Sir, on 24<sup>th</sup> November, 2009, hon. John Pesa, Member of Parliament for Migori rose on a point of order to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on insecurity in Migori Municipality and surrounding areas, particularly towards the last weeks of the month.

Mr. Deputy Speaker, Sir, I am aware of the five incidents of attacks which have been reported to the police as follows:

On 6<sup>th</sup> November, 2009, Mr. Gordon Odhiambo, a motorcycle operator was attacked together with his passenger. On the same day, a pedal cyclist, John Njuguna, was also attacked. On 14<sup>th</sup> November, 2009, Mr. Gerald Okinyi Omondi was shot dead by unknown persons. On 22<sup>nd</sup> November, 2009, Mr. Maxwell Onyango Opiyo and his wife were attacked and injured. On the 23<sup>rd</sup> November, unknown number of persons attacked and injured Mr. Amweya Mayonga. His son and wife were also injured in the incident. Nothing was stolen from the victims of the mentioned attacks.

Mr. Deputy Speaker, Sir, preliminary investigations indicate that in some of the incidences, there may be business rivalry motivating the attacks. Police have arrested three prime suspects who are assisting with investigations. To curb the insecurity incidences, the following measures have been taken:

- (i) A special crime prevention unit personnel has been dispatched to Migori where three people have been arrested and an AK47 Rifle with 24 rounds of ammunition recovered;
- (ii) police in Migori are working in liaison with their counterparts in Kuria to seal the escape routes used by the attackers;

- (iii) joint patrols by regular and Administration Police from Kuria and Migori Districts have been scaled up;
- (iv) enhanced community policing activities, which have led to the arrest of the three prime suspects; and,
- (v) crack down on illegal brew dens, which act as hideouts for suspected criminals.

Finally, I want to assure the hon. Member, the people of Migori and, indeed, the entire House, that all necessary measures have been put in place to minimise incidents of insecurity.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Pesa:** Mr. Speaker, Sir, the Assistant Minister has tried his best to, at least, answer this Question. However, I still need some clarifications in the following areas:-

I would like him to clarify as to how security personnel without vehicles will manage places that are prone to thugery in Migori Municipality, especially Ragana Ward, where most of the cases have taken place. If you watched *KTN* news on Sunday and Monday, you should have noticed that the brutality with which women and children were attacked in Migori was really appalling. Could he also clarify on the composition of the three senior-most security personnel in Migori who are charged with the management of security in that area?

Finally, could he visit Migori as soon as possible to assess the situation for himself, especially when the victims are still in hospital, and see the kind of brutality that the people of Migori are being subjected to by thugs. I believe he will appreciate for himself that measures have to be taken immediately to bring back security and faith to Migori residents in the police force and the Government of Kenya. People will now be forced to take the law into their own hands, which happened last week, where two people were killed. The third person was killed on Monday. The way the Government is taking the issue of insecurity in Migori leaves a lot to be desired.

Thank you, Mr. Deputy Speaker, Sir.

**Dr. Otuoma:** Mr. Deputy Speaker, Sir, I would like the Assistant Minister to clarify to this House why Kenyans have always to be killed, in various parts of the country, when we have security agents. What has happened to the process of getting information in advance, which they used to have, so that they can forestall the occurrence of such an act before it takes place?

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, the way these murders were carried out in Migori is a bit suspicious. If the cause is business rivalry, one would have expected that it would involve only mature or senior people in the society. Where children and women are attacked, there must be a different motive or objective behind these murders. Could the Assistant Minister confirm to us that they are still carrying out a thorough investigation to unearth the main motive behind these killings?

**Mr. Deputy Speaker:** Could you now respond, Mr. Assistant Minister?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima):** Mr. Deputy Speaker, Sir, starting with the issues raised by Mr. Mbadi, I would agree that he may be right in saying that the circumstances of the murders are suspicious. Indeed, one of the views is that this could possibly be due to the question of business rivalry, but as I said, investigations are still being carried out. Indeed, the hon. Member is supporting that point of view. So, we will continue to

investigate this matter thoroughly. The investigations that we have carried out so far are not final.

There is the clarification sought by the hon. Member as to why the intelligence gathering system is not providing information in advance. We will try to improve on that one. However, I mentioned in my Ministerial Statement that, indeed, the arrest of the three prime suspects was basically as a result of co-operation by the community in the area. I urge that we get more co-operation from the community.

On the issue raised by the Member of Parliament for Migori Constituency, I would like to confirm that we have challenges of infrastructure and vehicles. However, I would like to assure him that, with the new arrangement in place, where Officers Commanding Police Divisions (OCPDs) are required to work with Police Divisions in their neighbourhood, security agents and get support from the headquarters, we should be able to tackle these problems effectively.

Mr. Deputy Speaker, Sir, I am very sorry for the people of Migori. My sympathy is with them. I will be too willing to visit the area as soon as possible to assess the situation.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Pesa:** On a point of order, Mr. Deputy Speaker, Sir. There is one important question that the Assistant Minister has not answered, which is what is actually bringing a lot of rumours in Migori. I wanted to know the three top persons managing security in Migori. Who are they? Why must they stay there any longer?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Lesrima): Mr. Deputy Speaker, Sir, I do not have the details of those three personnel right now, but if the hon. Member has any information as to their deficiencies, I am willing to investigate and discuss their suitability. As of now, I do not have those details since that was not amongst the issues raised when this Ministerial Statement was sought.

**Mr. Deputy Speaker:** Minister for Education!

**An hon. Member:** He is not yet in!

**Mr. Deputy Speaker:** Hon. Mwatela, are you not the Assistant Minister for Education?

**The Assistant Minister for Education** (Mr. Mwatela): Mr. Deputy Speaker, Sir, I beg for your indulgence.

**Mr. Deputy Speaker:** Proceed, if you have the Ministerial Statement.

#### CHANGE OF SECONDARY EDUCATION SYLLABUS

**The Assistant Minister for Education** (Mr. Mwatela): Mr. Deputy Speaker, Sir, I beg for the indulgence of the House. The matter on which the Member of Parliament for Githunguri Constituency sought a Ministerial Statement is, indeed, serious and of urgent nature. However, I would like to beg for more time, so that I can give a comprehensive and thorough Ministerial Statement. May I request that we be given up to Thursday, 10<sup>th</sup> December, 2009?

**Mr. Deputy Speaker:** What is your reaction, Mr. Baiya?

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for acknowledging that the issue is urgent and important. I have no problem in indulging him

with regard to the time. The only problem I have is that the whole of next week, I will be out of the country on official duty.

**Mr. Deputy Speaker:** Mr. Assistant Minister, you said that you recognise the urgency of the matter and then you want to give yourself another eight days from today! Where is your recognition of urgency in this case? Can you bring the Ministerial Statement on Thursday afternoon? Mr. Baiya will not be around the whole of next week. If my memory serves me right, the issue is about how students are going to prepare themselves for examinations. It is a very urgent matter.

**The Assistant Minister for Education (Mr. Mwatela):** Mr. Deputy Speaker, Sir, that is why I said it is very grave. It is of urgent nature. It actually involves the entire planning aspect of education. The matter revolves around the Kenya National Examinations Council (KNEC). It also touches on the Kenya Institute of Education (KIE). The Minister is out of the country. So, I would like to give an undertaking that we will have the Ministerial Statement by 10<sup>th</sup> November, 2009. If that date is not convenient to the hon. Member, we can issue the Ministerial Statement in the following week, on Tuesday. Issuing it earlier than that will be a bit difficult.

**Mr. Deputy Speaker:** Hon. Questioner, are you away for the rest of next week?

**Mr. Baiya:** Yes, Mr. Deputy Speaker, Sir. I can possibly consult the Chairman of the Committee to ensure that the matter is dealt with.

**Mr. Deputy Speaker:** The Chair directs that this Ministerial Statement be made available on Wednesday next week in the afternoon and not on Thursday. The Chair has a reason as to why it is so determined!

Fair enough! It is directed that you have the Ministerial Statement available on Wednesday afternoon.

**The Assistant Minister for Education (Mr. Mwatela):** Mr. Deputy Speaker, Sir, I appreciate your direction.

**Mr. Baiya:** On a point of order, Mr. Deputy Speaker, Sir. The Chairman of the Departmental Committee on Education, Research and Technology is telling me that he is also not available next week. I think we can only do that the week after next week. It could be done this Thursday or the week after next week.

**Mr. Deputy Speaker:** You realize it is a very serious matter and in the event that this House adjourns sometimes in December, we will not be back again until March. How much are you going to disadvantage students in Kenya in the process? I mean, the Chair is also a parent!

**The Assistant Minister for Education (Mr. Mwatela):** Mr. Deputy Speaker, Sir, it is my view that the Ministry needs to take drastic measures to correct the anomaly because I think there is an anomaly. That is why we would like to have ample time.

**Mr. Deputy Speaker:** Fair enough! The Chair directs that you have the Ministerial Statement on Thursday.

Hon. Questioner and Chairman of the Committee will have to consult other Members of Parliament so that they can prosecute the matter. The matter is not exclusive to you! All Members of Parliament have an interest in this and I am satisfied that they will be able to prosecute it very well.

So, it will be brought on Thursday, next week.

Next Order!

**Mr. Koech:** On a point of order, Mr. Deputy Speaker, Sir. I requested for a Ministerial Statement from the Ministry of Roads and you have not given direction. Could you help me?

**Mr. Deputy Speaker:** Oh yes! The Minister for Roads was supposed to issue a Ministerial Statement today. In view of the fact that he is not around, could another Minister make an undertaking? Much as the Chair takes note that the Government side is not serious at all in executing its mandate and responsibility to Parliament, could another Minister make an undertaking.

**The Minister for Lands (Mr. Orengo):** Mr. Deputy Speaker, Sir, could I give an undertaking for Thursday next week?

**Mr. Deputy Speaker:** Fair enough!

**Mr. Koech:** Mr. Deputy Speaker, Sir, when I rose on a point of order last week, the Minister was in the House and he promised that the Ministerial Statement was ready. Given the fact that I may not be in next week, I would request that the same be made tomorrow afternoon.

**Mr. Deputy Speaker:** Under the circumstances, the Member's memory serves him very well. This undertaking was done by the Minister for Roads himself. The Chair directs that the Minister makes the Statement available on Thursday this week.

Next Order!

## MOTION

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

**The Minister for Lands (Mr. Orengo):** Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

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.

Mr. Deputy Speaker, Sir, before I get into the substance of the policy itself, allow me as a prequalification to say that the issue of land has been with us for more than a century. Indeed, the controversies and conflicts surrounding land started in the late 19<sup>th</sup> Century, as we understand them today. After the First World War, there were various land commissions which were established to look into the various land issues from the perspective of the colonial Government at that time and later on with the view of looking at the interest of the indigenous people who were referred to as the natives.

In the year 2002, when various political actors were campaigning for elections from all sides of the political divide, there was generally an undertaking which can be seen from the various manifestos published by the political parties at that time. All of them did undertake to review and look at the question of land as a whole and formulation of the land policy. As a matter of record, if any Member of Parliament is interested to look at the various manifestos at the time, they can confirm what I am saying. The issue of land was given prominence and therefore, it was not a surprise that when the NARC Government came to power in the 2003, very quickly and within six months, there was established the Ndung'u Commission. This was to look into grabbed land or land that had

been irregularly or illegally allocated. That Commission was appointed by the President on the 20<sup>th</sup> June, 2003. So you can see that at the time, it was not lost to the Government in place that within six months they would form such a commission with a broad mandate to look at an area that affected land. This Commission subsequently made its Report which is with us. The country has been clamoring for the implementation of that Report.

Mr. Deputy Speaker, Sir, thereafter, the Land Policy regulation started in earnest in the year 2004. The first Draft of the National Land Policy was ready by the year 2005 and in September 2006 the draft was released for debate and analysis by the public. The point I am making here is that the draft that I am presenting today has, in many ways, been in the public domain. There have been various interventions at various occasions on the content of the Land Policy and its formulation. Over the four or so years, it has undergone review and redraft until we came with this subsequent copy that was laid on the table and which was approved by the Cabinet.

I must say that as a Minister, my role was at the tail end of the exercise to try and finalize the exercise for presentation to the Cabinet and thereafter publish the document and table it in the House for debate. So it is a mistake to say that this Land Policy has been driven by non-State actors. This is one of the policy formulations which were initiated by the Government of Kenya and the Government has been in control through its various initiatives and has convened various workshops. I am glad that the relevant Departmental Committee under the able leadership of Mr. Musyimi has on occasions looked at this draft policy and made their comments.

Mr. Deputy Speaker, Sir, the policy is a blueprint. It is a broad statement which spells out the philosophy around land policy. It also proposes the way forward. It is for that reason that you will notice that this, like many other blueprints--- This is the third Sessional Paper that is being placed before this House. It should not be lost to Parliament that the principal function of a Sessional Paper is to provide a framework for policy formulation or the establishment of that policy. If it is a matter that requires legislation, then the legislative process will follow or flow from that blueprint. This Parliament has debated various Sessional Papers over the years. The most famous Sessional Paper was the 1965 Sessional Paper No.10 on African Socialism and its application to Kenya. That Sessional Paper was not law. It was purely a vision or a way of looking at the problems of development at the time and giving a way forward for legislation and action.

Paragraph 10 on page 3 of this Draft National Land Policy which is not legislation says:-

“The National Land policy is a living document which comprises an overall framework and set of principles to guide sectoral, legislative and institutional reforms in land administration and management. There will be need to review this Land Policy every ten years to take into account current and future needs in view of social and economic dynamics in the land sector.”

I would like to say that unless we have a proper land policy and land use policy, development and growth will be stifled and unplanned. The consequences of this will be most of the time, we will not be planning to grow or to develop but we will be planning to cope with the mess that we have caused.

The land policy comes from the background that we do not have a clearly defined national land policy in Kenya since Independence. I think it is since Kenya existed from the turn of the 19<sup>th</sup> Century. We have never had a codified, uniform and defined national

land policy. To keep up with the times, we should debate this policy together and make our views, which if these policies are approved, will inform either the action plan or the legislative process.

We have had many land laws in Kenya because of the lack of that codified, single and well defined national land policy. Some of these laws are incompatible and have resulted in a complex land management and administration system. The land issue has manifested itself in many ways such as fragmentation, breakdown in land administration and disparity in land ownership and poverty. It has been identified over the years that land has been a source of conflict and that is why under Agenda 4 in the dialogue process, land reforms were identified as areas that need special attention.

Mr. Deputy Speaker, Sir, paragraphs three, four and five spell out what is the vision, policy, mission and objectives of the policy. The objectives, mission and the vision of the policy state as follows:—

“A National Land Policy that will guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity.”

The mission of the policy is “To promote positive land reforms for the improvement of the livelihoods of Kenyans through the establishment of accountable and transparent laws, institutions and systems that deal with land.” More importantly, I would like to cite paragraph 5 which I would like to deal with as one of the major constitutional issues that arises from this land policy. It is important to address those constitutional issues because the “overall objective of the National Land Policy is to secure rights over land---” This is important because there has been information out there that the policy is trying to undermine interest or rights over land. This is a major point for controversy in the sense of what has been spelt out in the public without looking clearly at the major objective of the National Land Policy. Unlike what many people are saying, the land policy objective is not to undermine land rights as they exist today or in the past. I would like to emphasise the issue of securing land rights in the next page for the hon. Members who have a copy of this document.

Paragraph 7(d) reads: “The formulation of the policy was guided by the following principles: (d) secure land rights.” The policy addresses several issues which I would like to deal with one by one. The first is the constitutional issue. Why are we dealing with constitutional issues now? Why do we not wait for the Constitution to be enacted and proclaimed before dealing with constitutional questions? This is because this document is a subsidiary or an inferior document in the eyes or minds of many. After that, we will deal with land tenure issues where several issues need to be pointed out. There is the land use or management issues, the land administration issues and the land issues that require special intervention. There is also the institutional framework to implement the land policy and the implementation framework.

Mr. Deputy Speaker, Sir, constitutional issues are important because the Constitution of Kenya as it exists today lumps land together with all other properties. Land is not addressed in the Bill of Rights in a fashion that would give somebody the comfort that rights over land are sufficiently protected by the Constitution. In fact, the only aspect of land that is dealt with to some extent is trustland and even on this one, not enough protection is given to community interest in the Constitution. The practice as it exists today, the intervention of the Central Government particularly, the Office of the President and the Commissioner of Lands can arbitrarily determine the use or the setting

apart of trustland although it must be for public purposes. However there is no mechanism that ensures that, that process would protect community interest. Under that Chapter in the Constitution, there are no sufficient mechanisms to make sure that trustland are not used by local authorities under which they are vested, for objectives which clearly are against the interest of the communities.

So, I invite you to look at the provisions in relation to trust land which are found in Chapter 9 of the Constitution. It is through Section 115, that trust land is vested in the county council. As I sit in the office at the Ministry together with the officials in the Ministry of Lands, one of the areas where we have a lot of problems is the use of trust land by local authorities for purposes which clearly are not for the benefit of the local communities. But because land is vested under local authorities, many times, we do not have any powers or mechanisms for intervention, for purposes of protecting the rights of local communities.

Now, if one looks at Section 75 of the Constitution as it exists today, you will find that the issue of land is not dealt with as a unique resource. All that it says is that no property of any description shall be compulsorily taken possession of. So, "any property" means a car or anything. The Constitution protects all those categories of property in the same vein as land and, yet, land is so critical that you need to have sufficient protection in the Constitution that those who have an interest in the land would be able to use it without fearing either compulsory acquisition or interventions, which if you read the Constitution, again, the state can interfere for reasons of public health, defence and law and order. There are various situations in which the state can interfere. If it is in relation to land, we want sufficient protection for those who have interest or right to land.

Mr. Deputy Speaker, Sir, I wanted to demonstrate, just by looking through this land policy--- If you look at the Constitution, you will find that the right to ownership or right to interest in land--- The way it is addressed in the Constitution--- If you look at the land policy itself from the Executive Summary in (ix) to paragraphs, 5, 7, 39 and 83, the focus is on protection of rights and interests over land. It is far above what you would find in the current Constitution. So, we combined this document in the sense that for those who own land or have interest in land, you are going to be able to enjoy rights over that land in a more secure basis than in the current Constitution. What is very new in this proposal is the question of radical title; that land belongs collectively to the people of Kenya as communities and individuals. So, communities and individuals are recognized. That creates the notion of imminent domain which exists in many jurisdictions. But in the Draft Constitution and this policy, you will see that issue being addressed, formulated or textualized on the basis that what is being provided for is radical title.

Now, why is that necessary? We have a situation where many people are allocated public land in this country and are tenants or leaseholders of the State. The State, Government or the people of Kenya are the ones who own that land. When there are breaches or violations of the conditions which are set out in those leases by the State, you will find that the way the Constitution is worded currently, the public is put in a very weak position. How does the public get back public land that has been given to an individual, company or corporate body and that particular individual or corporate body has not used that land for that purpose? If you go to some areas in Lamu or in the Coast Province, you will find some individuals who have been given land for as long as 999 years or 1,000 years, and they have practically done nothing on it. In fact, they are in

constant breach of the terms and conditions of the lease and yet, the State does not have sufficient mechanism to repossess such pieces of land. So, public land is not sufficiently protected in the law to enable the State recover the land for use for purposes of development. As I speak today, within Nairobi, it is not easy to find space for development. That is because public land is in the hands of individuals who are not putting it into good use. If you take a walk or drive in Nairobi, you will find that a lot of land which belongs to the public is being held for purposes of speculation. In every grant or lease, you will find that there are special conditions given to the leasee or tenant of that land. The violations are a myriad that even if you were to file cases in court, it would take a very long time in the absence of sufficient protection within the Constitution, to determine what is public land. So, it is important that some of these issues are constitutionalized so that there is a balance between public and private interest and community interest and private interest. If you read the South African Constitution as it exists today, there is efficient equilibrium between those various interests which are in conflict sometimes. Yet, in our situation, there is no mechanism at all on how to proceed when public/community/private interests conflict over the right to or interest in land.

Mr. Deputy Speaker, Sir, why is this document before the Constitution? This document was formulated to inform the Constitution-making process. Indeed, if you look at the Harmonized Draft Constitution by the Committee of Experts and compare it with the Wako or Bomas Draft, we are happy to report that the former, which you will have a basis of discussing--- You may agree with it or not but, at least, we are happy that this National Land Policy has informed sufficiently and to a large extent, what is now contained in the Harmonized Draft Constitution. That is why we felt that in the Constitution-making process, it was important that this document be available. The Cabinet, in its wisdom, even before this Government came into place, had already released this document as a public document. It was, therefore, possible to use it as a point of reference.

Mr. Deputy Speaker, Sir, it is not only in the constitution-making process, they are going to be consequential legislation, after the new Constitution has been put in place. So, as we pass consequential legislation or implementing or enabling legislation, after proclamation of a new Constitution, this document is going to inform us on what type of land laws we should have. It is good always not to look at any legal regime in isolation, including the Constitution. You must look at the whole picture. When it comes to a land law regime, you do not look at the Constitution itself; you look at the whole land law regime in the country to know what kind of land law exists in that country. That has been part of the problems that we have today that, if you look at the Constitution and the various legal statutes, there is tremendous conflict and disharmony in many areas, including the philosophy behind a lot of legislations. So, I would wish and I persuade you that, it was necessary to have this document in place before the Constitution is proclaimed. Even in terms of the Harmonized Draft Constitution, I am grateful that the Minister for Justice, National Cohesion and Constitutional Affairs has stated very clearly that, even that document is not cast in stone. So, by looking at this document in its entirety, not just the constitutional question; we, as a Parliament or the public as a whole, may be able to have a more informed debate on the issue of land and the constitution-making process. That document is still with us for some time, at least, two months - if

you look at the time lines. So, I recommend that we read this document as a basis of informing the constitution-making process.

There is the issue of compulsory acquisition. Again, that is not addressed as relates to land but generally, as relates to the issue of property. To some extent, the Land Acquisition Act was actually in existence before the Constitution. So, it in many ways informed the constitution-making process. But it was made before we had the Bill of Rights. So, to that extent, having been a statute that came in before the Constitution, it has got its own shortfalls. If you look at issues that relate to compulsory acquisition that are found in Section 75 of the Constitution, again, they do not deal with land as a unique resource, but it is lumped together with all the other properties. The Land Policy is telling us, in order to agree with the power of the State, to take over land compulsorily for public purposes, we need not only to look at the Constitution again, but in the implementing legislation, we must give protection and have a balance between public interest and private rights.

Mr. Deputy Speaker, Sir, one of the things that we are proposing in the land policy that is radical is that in relation to private land that is compulsorily acquired, if the Government takes land from you through compulsory acquisition, that will be the end of the matter. But, normally, the Government acquires land under a compulsory acquisition for a purpose; and this land policy says that if the purpose for which your land was acquired compulsorily by the Government is extinguished or is not realised, then the original owner of the land or his successors have the pre-emptive right over that land so that, that land then is not made available for allocation again to private individuals. So that you know that the land that you gave away or was taken away from you, you will always have a residual interest on it.

Mr. Deputy Speaker, Sir, there are issues to do with development control and other regulatory matters which, for the purposes of now, I would urge hon. Members to read through but they are not saying anything new other than emphasizing the need that development control is important, both in urban and rural areas on land, or any environment based or otherwise.

Mr. Deputy Speaker, Sir, there are issues of land tenure from Page 15 of this Sessional Paper. Under this policy, we are going to categorize land in three categories. At the moment, we have what is called Government land, trust land and private land. Under this policy, we are going to have three categories, but the name of one will change and that is in relation to what we now call trust land. Trust land will now be called "community land". We are saying that community land should be land that is managed and used by a particular community. If you look at the glossary of this land policy, the community is not necessarily an ethnic group. So, those who are expressing fear that by referring to "community", that we mean, necessarily the ethnic community which is dominant in a particular area; the term "community" means those who were ordinarily the residents in that area. We think that, in managing community land, the people of that community should have some say. It should not be a matter that is left to the Central Government and for that matter, the various organs in the Central Government.

The policy requires a repeal of the Trust Land Act and replacing it with the Land Act. Under that Land Act, as stated in Page 17 of the policy, the ownership will be vested in that particular community. A legal framework has to be worked out to make sure that, that particular policy objective is met. That is to ensure that we do not disregard the rights

of those particular communities on the issues of land within the areas where those particular communities live.

Mr. Deputy Speaker, Sir, we have another category of private land. Private land is not just land that is held absolutely, but it refers to land which is owned in terms of a lease which is derived currently under the Government Lands Act, the Registration of Titles Act, the Land Titles Act, the Registered Land Act, the Trust Land Act and the Sectional Properties Act. What we want to do is to harmonize these systems of land ownership, so that instead of having these many systems of land ownership or land tenure, we have one system. This is for a very good reason, because right now - because our records are not computerized, they are manual and because of lack of efficiency - you will find that the same piece of land may be registered under various statutes. Of course, that has led to the problems that you know quite a lot about, the same piece of land may have more than one title deed.

Mr. Deputy Speaker, Sir, the most important area that I would want to deal with now is the systems of tenure which are characterized as freehold and leasehold granted on public land. The Government is the land owner and we have various categories of tenure. It is important that this system of tenure is rationalized. For example, we have people who came to this country - I am saying this not with the intention of not protecting those particular interests - but those who have read our history know that, when Kenya became what it is today, when it became a protectorate and the railway line was built, there was an attempt to attract settlers to come to this country. At that time, people like Lord Delamere found that not so many people were enticed from England to come to Kenya. They preferred going to the Americas, Australia, although in an earlier term, some had gone to Australia as convicts and they preferred going to South Africa.

Therefore, Lord Delamere and others suggested to the then colonial government that in order to attract white settlers to come to this country, we had to give them freehold titles or long leases; some which were as good as giving out the land in perpetuity - for 999 years or 9,999 years, which was as good as 10,000 years. That means that we may have a Kenyan like Ms. Odhiambo there who may own some land. However, her ownership to it is very limited. But you may have a foreigner who owns part of Kenya for 10,000 years or 1,000 years and there is nothing you can do about it. Whether they farm on it or use it as a play ground, there is nothing you can do about it. You have to understand the circumstances under which they were given those long leases during the colonial times.

Indeed, in most of the meetings that I have attended, the latest was in Porto, where the subject was not about land as such but on land use, many people were shocked that in Kenya, public land can be given out for more than 99 years. That is a unique thing in Kenya in modern times. On private land, or land that Mutava Musyimi may be owning on the basis of what he got from his ancestors, we will not interfere with it. He can own it in perpetuity. Your grand children and your grand children's children can still own it. However, when it is public land, the tenure must be 99 years or less, but with a right of renewal. If you can demonstrate that you are doing something useful with that land, then there will be a Clause to renew the lease. It should not be understood that we are trying to expropriate individuals. All we are saying is that, in relation to public land, which we do not have in abundance, those leases should be for a limited period so that if there is any person who is occupying Government land, we can access it so that the public can use it.

In many areas in the Coast Province, you will be shocked! I came across a title that was given to somebody in 1912. That person has not stepped in Kenya. That grant has been transferred by way of instrument to successive land owners who basically use that land as collateral, but have done nothing on the land for the last 100 years. When you go to the Coast, you will begin to understand the land problems there. You will understand why we have the highest number of indigenous squatters. You will begin to know that the long leases or the freehold titles were purposely meant to deny Kenyans access to land.

I am talking about access to land as referred to on pages 20 and 21, where you will see that the policy is not as such emphasizing ownership or distribution, but access. Public land should be accessible to Kenyans either for infrastructure or building public institutions and the like. If you rationalize those land tenure systems, then the public will have the benefits of the fruits of the land as opposed to a situation where someone has a freehold title on Government land.

The ludicrous dimension of this is that you may find someone in Korogocho paying more in terms of land rent than somebody who has 1,000 acres in Rift Valley who is paying a paper con rent. So, what the Government gets out of 1,000 acres is less than what somebody who has a plot in Korogocho is paying as land rent, if it is property which is registered. So, on the issue of land tenure, I would want to persuade you. You should not listen to those people who are trying to say that once you got a piece of Kenyan territory, which is public---

Originally, the crown lands were not really crown lands. They were lands belonging to communities. However, they were taken by the status of crown lands and given out for free on paper con rents to individuals. They continued to occupy those pieces of land on freehold basis for many years - 1,000 years and even more. If we can rationalize that, then we will be making some wonderful progress.

From page 25, which I think is the critical part of this document; there are the land use management issues. We are not paying sufficient attention to how we use our land. Land in Kenya is finite because only 20 per cent of the land area is arable. The balance of this country is characterized as either arid or semi arid. Our ecosystems, woodlands, national reserves and forests have reduced over the years. Our water surface is one of the smallest in the region; at only 2.2 per cent of the size of this country. What we do with every inch of this country is very critical. Not just the part that is arable, but all the land. We have seen countries where land is not available in the first place. However, what is available is put to good use. The land use legislation is--- First of all, I will deal with this again when we come to land administration. Land use legislation is found in many statutes, particularly when you are dealing with urban land. There is a Survey Act. The National Environment Management Authority (NEMA), as an Authority, is now focusing on environmental issues. There is the Water Act, the Government Lands Act and the Registered Land Act.

First of all, we need to harmonize the legislation that has to do with land use so that we can deal, in a coherent way, on how to put some land into good use. For example, today, if you want to put up a structure anywhere in Nairobi or in the rural areas, you will have to go through very many authorities. You will need to go to the local authorities--- I did not even mention the Local Government Act which has something to do with land use. There are various other legislations which create offices and authorities that you

must visit before you are given permission to develop any structure. We are saying that, as a starting point, we must harmonize those legislations so that, when you want to use land--- For instance, if I went to Singapore today and I wanted to build a hotel or a house, I would not have to knock the doors of many offices.

Hon. M. Kilonzo and I were in Singapore. We found out that you only need to go to one station and once you are there, they will tell you: "If you want to build a hotel, this is the advice we can give you.

Mr. Deputy Speaker, Sir, you would find that in Nairobi, for example, a physical plan could be done under the Physical Planning Act. You know, the Physical Planning Act also entails environmental considerations and so does the Local Government Act. Ultimately, you would find that before you carry out a piece of development in many parts of the City, you have to satisfy so many authorities or public offices; a lot of people do not want to do that. They would rather go to one place where they can deal with the question of regulations once and for all. Once they get the permission, they then proceed to develop their land.

Mr. Deputy Speaker, Sir, on the question of land use, which covers more than fifteen pages, and as I said at the beginning, it takes quite a bit of this policy, we are talking about land sizes. It is not that we are reinventing the wheel. Even today, on the question of land sizes, under the Local Control Act, if you want to transfer any agricultural land, there are provisions there which make it impossible for you to subdivide land further. It prohibits having uneconomic land units, but the law is abused more than it is complied with in places like Kisii. So, you have over-fragmentation of land. Everybody is looking for that quarter of an acre to build a house on and a graveyard and a barn must be in that compound. Some people keep some animals on that land. So, ultimately, the land is overused and cannot be used in a sustainable manner. What happens is that under the Land Control Act, because the legal provisions are not sufficient, you can actually "buy" the members of the Land Control Board and get the land subdivided as you wish.

Mr. Deputy Speaker, Sir, in fact, under the Land Control Act, non-citizens are not allowed to own agricultural land in Kenya, yet you will find that in places like at the Coast where there have been adjudication processes, some non-citizens have been able to get land there, including on islands which are important for our security and other interests. So, we are proposing that we have a legislation which will make sense and will be applicable in a way that we can have sustainable use of land in our country.

Mr. Deputy Speaker, Sir, under the Agriculture Act, the Minister for Agriculture has powers to take your land and manage it, or make some management orders. In the days when the Agriculture Act was being used sufficiently, you could not have land in, say, Trans Nzoia that was lying fallow. I want to show, as an example, when the late Bruce Mackenzie was the Minister for Agriculture. In one single day, he issued gazette notices, and this was on the 10<sup>th</sup> day of February 1965. He gave more than 30 notices. If I may just read to you one of the management orders, which was in respect of land belonging to a Mr. A.P. Dejaja, it says:

"Whereas I am satisfied, and do hereby certify, that Farm LR No.10394 of 790 acres owned by A.P. Dejaja Esquire, and situated in the Burnt Forest/Lessos area of the Uasin Gishu District is being managed or supervised so inadequately that it is necessary for preventing or delaying, the deterioration of the holding to make and serve this order.

Now, therefore, in exercise of powers conferred by Section 187 of the Agricultural Act, and after consultations with the District Agriculture Committee, I hereby order and direct that as from 10<sup>th</sup> February 1965, the holding shall be subject to the provisions of Sections 187 of the Act and be occupied and managed by the Minister for Agriculture.”

Now, in those days, it was impossible to have land really lying idle in those prime areas. It was impossible because even in the sugar zone in Nyanza, I have come across many of these management orders, some of which were contested in the courts. However, after 1970, there was a frenzy of giving this land as reward to people who were not using the pieces of land for the purpose for which they were meant to be used because they were leases. If you read those leases, they are for agricultural purposes because they are Government land. Because the leasees were not using the land, squatters then settled there. The same pieces of land were never interfered with by squatters in the early days of Independence, because every farm was put into proper use and was cultivated.

Mr. Deputy Speaker, Sir, so what we are saying is that what was the law at that time and what exists in terms of the Agriculture Act for a modern economy today is insufficient, and we must have a regulatory framework to ensure that land is put to proper use. There is a question which has brought a lot of controversy on taxation. You will find in this land policy, we are not fixing any land ceiling. We are not saying that you are not allowed to own 10,000 or 100,000 acres but if it is public land - land that you are given by the Government to farm and you are not using it - then you will be taxed. I can tell you that if you go to Lamu, Kilifi and hon. Rai's constituency, there are large tracts of land that are just lying idle and they are in the names of individuals or companies, but they are not using it for anything. We are saying that according to this policy, we are not going to expropriate that land. What we are going to tell you is that you put it to good use; but if you cannot do that, then we are going to tax you because it is public land. If you do not want that land to be taken and given to somebody else, then we are going to tax you. I think that makes a lot of sense for those who fear expropriation of some sort or the other.

Mr. Deputy Speaker, Sir, so in effect, what we are saying is that land should be put into productive use. We should have productive targets and principles. The land sizes also in some areas should be looked into. Then there should be restoration and conservation of land quality in areas where we need land reclamation, environmental issues and considerations and ecosystems that need protection like along the Tana Delta. It is important that we have a policy and legal framework that would enable us put land to proper use.

Mr. Deputy Speaker, Sir, the third category of issues that the land policy is dealing with is land administration. This is where we are having a lot of problems. One, we need to modernize the statutes that we have today. For example, the title deeds that we have are statutory documents.

Mr. Deputy Speaker, Sir, even on that account alone, we need to change the law in order to modernise and automate our systems because we cannot do it without changing the law. More importantly, we need to harmonise all these legislations so that we can have a Land Act which deals with issues of ownership and another statute that deals with administration and land information systems. We want modern information systems and dispute resolution mechanisms that are easier to deal with on land administration. To avoid the situation in which we are today, where it is very easy to

forge title deeds and where it is very difficult to get information on any piece of land because it takes quite a while because the system is manual, we need a modern information system. Since my time has run out, let me say that there are areas that need special intervention. These are pastoral areas and I invite hon. Members to look at them and see what the draft says. There are areas where communities, because of the resources such as water that are shared, require separate title deeds. So, you need a different land ownership system.

We have a big problem of squatters in Coast Province. There is also the problem of the 10 mile strip where when the white man came in, indigenous communities were completely neglected. These areas need special intervention. There are special interventions which should deal with issues of women and children, the youth and the disadvantaged in the society. There are also issues to deal with historical injustices which are not new. Our resettlement programme is part of a mechanism to address the historical injustices. However, one aspect which is common where land is registered under the Registered Land Act is that some women are being dispossessed or their interests in land depend on the survival of their spouses. You will find a situation where a brother-in-law registers family land in his name and then sells it. Under the Registered Land Act, the first registration cannot be challenged, is indefeasible and many families find it very difficult to have their interests catered for especially, women and children. That is also addressed in the Land Policy.

There is a section that deals with institutional framework. I have talked to some hon. Members---

**Mr. Musyimi:** On a point of order, Mr. Deputy Speaker, Sir. Given the importance of this matter, would I be in order to request the Chair to allow the Minister to be given sufficient time to explain the Land Policy to the House?

**Mr. Deputy Speaker:** Mr. Minister, the Chair is conscious of the importance of the Motion that you are moving. How many more minutes do you need in addition to your time?

**The Minister for Lands (Mr. Orengo):** Mr. Deputy Speaker, Sir, when my time comes to an end, could I have seven more minutes?

**Mr. Deputy Speaker:** You can have 10 minutes!

**The Minister for Lands (Mr. Orengo):** Thank you very much, Mr. Deputy Speaker, Sir. I have dealt with issues that require special intervention. I have tried to use the example of Lamu. You will find that the whole of Lamu is Government land. It is very easy for you and me, who do not come from Coast Province to get a title deed for land in Lamu, and yet up to now, the people who live in Lamu, including the Bajunis do not have title deeds. So, how do we address that injustice in a situation where our process of individualization of title deeds emanates from areas where there is trust land? You can declare a trust land as a land adjudication area and through the adjudication process, you can issue the ordinary people who live in those areas individual title deeds. That is what happens in other parts of the country. Many people have acquired title deeds now that we are trying to modernise the Port of Lamu. To address the problem where the local people do not have individual title deeds and do not appreciate them--- In fact, they want to live in villages and have a common title deed, we need a special intervention to ensure that communities that live along the coast get their fair share. That does not mean that we have closed that area to other Kenyans who want to live there.

Even in Central Province where the land question was critical, you will still find people who live in colonial villages today. I think the gracious lady from Nyeri and the Chairman, Mr. Musyimi, know that people live in colonial villages. People live in colonial villages, even in some parts of Limuru. How do we intervene? What legislative framework do we come up with to ensure that those whose situation has nothing to do with their desires, but because of a system in the Government that expropriated land from them--- We need a special intervention.

*[Mr. Deputy Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, how do we make special interventions to ensure that communities are taken care of in pastoral areas, where rivers and water sources are important? One of the things that we want to do in order to address these historical injustices--- The colonial power was not all the time unreasonable. Settlement schemes were established nearly in all the provinces, namely Central, Nyanza and Coast. Many people who were allocated those pieces of land were not the ones who deserved them. Again, we need to address those categories of Kenyans who were dispossessed and still live either in colonial villages or do not have access to land.

One of the ways of intervention is land banking. The Government should get land either through purchase or from people who surrender land to it for purposes of addressing the quest for land amongst the poor and landless. I would also like to correct the notion that re-distribution or restitution does not mean that people must be given land. I invite you to read those Chapters carefully. Re-distribution or restitution may involve compensation or other mechanism of ensuring that those who are poor and landless get land. I have been asked many times about those who left the areas which were affected by post- election violence. I have been told that the Government should take over that land from those people. Nothing is further from the truth. Each case will be looked at on its own merit to ensure that we do not create any conflict amongst our people. The other issue that we have dealt with which I have been asked many questions on is the right of non-citizens to own land. They can own land but not for more than 99 years. In cases where they can show that they are putting land to good use, those leases can be renewed or extended.

Mr. Temporary Deputy Speaker, Sir, the institutional framework for managing this land policy with the requisite legislation will be a National Land Commission (NLC). We have proposed the NLC and note that it is provided in the Harmonized Draft Constitution. It would be a Constitutional body. The powers that are presently enjoyed by local authorities, President or Commissioner of Lands to allocate land would be vested on the NLC. This will be a body on its appointment that will be vetted by Parliament and appointed either by the President or whatever Executive authority that the country will decide when a new Constitution is put in place. The legislation which regards the National Land Policy (NLP) will provide for the manner in which it will manage public land on behalf of the State. The NLC would not be a body which will be managing private land. It would merely be managing public land on behalf of the State. It should

also be noted that the NLC will not hold and manage community land. Community land as we shall see on page 60 will be managed by the Community Land Boards (CLBs). So, we are trying to establish a system that is more representative and accountable to the people which will avoid what happens today where allocations are done by either the President, Commissioner of Lands or for that matter, even the Minister and the Permanent Secretary in the Ministry of Lands. I think this is a good way of ensuring that there is public accountability on issues relating to land from the grassroots level up to the national level.

*(The Temporary Deputy Speaker  
(Mr. Chanzu) left the Chair)*

*[Mr. Deputy Speaker took the Chair]*

Mr. Deputy Speaker, Sir, in conclusion, I want to say that this Blue Print is not legislation. The hard part for this Parliament will now be to look at the consequential legislation. There are areas that will not necessarily require parliamentary intervention for us to begin drafting the desired legislation. We can still bring that legislation in the House. But in terms of this policy as a whole, the hard part for this National Assembly will be to look at the implementing legislation where some of the fears that are being expressed by Members of Parliament would be addressed in the various statutes that we consider to be necessary for the implementation of this NLP. It is important that we have this NLP because we do not want to be left behind. Tanzania has already moved further. They have basically two land statutes that make land management and land ownership simpler and easy to administer. In Uganda, there was controversy, but they have also gone in the same direction. Even a country like Ethiopia has done so. A lot of investors are moving from Kenya to look for greener pastures in Ethiopia. So, it would be important in this time and age that we pass this NLP and now begin the exercise of coming up with implementing legislation.

On the issue of Ndung'u Report, the desire on our part has been there to have the recommendations implemented. Already, a team within my Ministry is carrying out a lot of work in bringing about legislation that will enable us implement the Ndung'u Report. As you know, this Report was made public in June, 2004, but up to now, it has not been implemented. But you would find that even implementing these recommendations of this policy, unless it is broad philosophy and legislative framework on how we manage and use our land; even piecemeal resolutions that have emanated from the report of this Commission, will not help. We need a broad framework that would make it possible for us to implement this Report which is overdue.

With those few remarks, I beg to move and ask my learned friend, hon. M. Kilonzo to second the Motion.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, as I rise to second this very important Motion, I want to pay tribute to my learned friend, hon. Orengo, Minister for Lands for a very elaborate and deep analysis of a very serious issue facing our country.

Mr. Deputy Speaker, Sir, with your permission, I would like to begin by quoting a famous gentleman called Mill who in 1865, wrote a book called *Considerations on*

*Representative Government*. In the Third Edition of that book on page 4, appears the following quotation which I would like to share with this hon. House and the country at large.

“Political institutions, however, the proportions may at times be ignored are the work of men. They owe their origin and their whole existence to human will. Men did not wake up on a summer morning and find institutions having strung out, neither do they resemble trees which once planted are growing while men are sleeping. In every stage of their existence, institutions are made what they are by human voluntary agency”.

Mr. Deputy Speaker, Sir, that quotation has been repeated time and again. In fact, it featured later on in 1908 in a book written by the famous Professor Daisy called *Introduction to the Study of the Law of Constitutions*.

The main fundamental reason I rise to support this Motion is that as the hon. Minister has said, as a country, we lack a land policy. I think time has come for us to set up this very important institution by embracing this Sessional Paper No.3 of 2009.

Mr. Deputy Speaker, Sir, hon. James Orenge has taken us through the elaborate mechanisms proposed in this very important Paper. But for my purposes this afternoon, I want to remind the honourable House of a number of things. First, for the first time in our history, we have Internally Displaced Persons (IDPs). As recently as this week and last week, some of them are finding their way into the headlines following a *Harambee* to raise money for squatters who have voluntarily left our water tower, Mau Complex. But even as I speak we have IDPs. The hon. Member for Gatundu North, only this afternoon was raising issues touching on Kenyan citizens who, for all practical purposes, are internally displaced and are living in forest.

For the first time, Mr. Deputy Speaker, Sir, if this House adopts this Paper and hon. Members look at Paragraph 3.6.8.2, you will notice that for the first time, the Government has proposed, through the Cabinet and my learned friend, a policy on displaced persons. Hon. Members will find that on page 50 of the Report – Internally Displaced Persons (IDPs). It is a shame and an embarrassment to have IDPs 46 years after Independence. It is a shame that even when they are displaced, we forget that we punish the child and the woman together with the husband who, initially, led the wife and the child into the area where the displacement has occurred. Therefore, for that reason alone, I would recommend that the House adopts this Policy, even subject to polishing and subject to the law that we are to come up with. Never again should a Prime Minister of this Country be threatened with a vote of no confidence merely because he is supporting the environment.

*(Applause)*

On the other hand, never again should Ministers who are supporting humane treatment of persons who are being removed from a water catchment area be threatened with dismissal from the Cabinet. We ought to formulate the institutions and the policies to make sure that we create the balance between the Prime Minister’s interest in the environment and the Ministers’ interest in securing humane treatment of our people. Even when a squatter or trespasser is being removed from land, they ought to be treated by due process of law.

Mr. Deputy Speaker, Sir, the second one is slums. I want to encourage hon. Members to look at Paragraph 3.6.9 starting from 3.6.5. We have the amazing reputation of being a country hosting the largest slum in Sub-Saharan Africa. We have the famous reputation of that slum being situated in the constituency of the Rt. Hon. Prime Minister. That is a reputation that, I think, at some point and as a country, we need to address. If you look at that paragraph, starting from 3.6.5, which is at page 47 – The Land Rights of Vulnerable Groups - I am staring at my pastor, hon. Mutava, and I know because of his preaching, I am heading for heaven. I do not want to be challenged there by my Lord, Jesus Christ, that, “Hon. Mutula, I was a member of a vulnerable group and you did not pass the Land Policy that would have secured my protection”.

Mr. Deputy Speaker, Sir, time has come for us to mix politics with morality. As I speak, if you look at Paragraph 3.6.6 at page 48 – Land Rights of Minority Communities – and, again, these are human beings who require to be addressed. As far as I am concerned, if you look at page 49, you will find Paragraph 3.6.7 – Disaster Management. Again, this country has been challenged by this situation. When I was the Minister for Nairobi Metropolitan Development, one of the biggest challenges we had was how to deal with the slum areas, not only in the Nairobi Metropolitan Region, but in the other six metropolitan regions that are under Vision 2030.

The time for this country to accept the responsibility for those people living in what the booklet is politely calling “informal settlements”. Let us face it! Kenyans are living in slums where people are using “flying” toilets, where people have no claim to the land they occupy and the landowners there are using a cash cow because the income coming from this hoarding is not taxable; it is not known anywhere. The consequence of this situation is that even as hon. Mutava sits here as a pastor, it is embarrassing for a country, 46 years after Independence to have categories of citizenship whereby some people are going home to street-lit streets and yet a huge segment of this country in urban centres are going home to darkness. That darkness is created by lack of policies, like the hon. Minister is suggesting.

Mr. Deputy Speaker, Sir, I want to say with conviction that if you look at those two things that I have just mentioned and several others like IDPs and slums, you will begin to realize that the challenge facing this country is that this document ought to be adopted before the 30 days for debating the new Constitution by the public ends so that Parliament can send a clear message that this policy ought to be entrenched and embraced in the proposed Harmonized Draft Constitution.

The third one, Mr. Deputy Speaker, Sir, is the youth. You will find this under Paragraph 3.6.10 at page 51 – Cross Cutting Issues Requiring Special Intervention. You will find the youth and people with HIV/AIDS. You will find Paragraph 213(b) – Mainstream Youth and Gender Concerns and Poverty Program. Again, this is an issue that we have ignored since Independence and we have continued with decay in politics. We also continue to worry about gangs developing, insecurity and youth without employment because they do not believe that they have the roots.

Mr. Deputy Speaker, Sir, on page 52 at the very top, is the issue to mainstream anti-corruption measures and facilitate public education and awareness creation programmes for all stakeholders. I dare say again that for purposes of this policy, read together with the Draft Constitution that every Kenyan is so interested in; it has become more popular than sliced bread. I hope we will give enough copies to everybody. For the

first time, the principle of anti-corruption is finding itself in our land policy and in the statement of public and national issues in the Draft Constitution; elimination of corruption. So, therefore, if you look again at Paragraph 3.6.10.3 which is at page 53 - Gender and Equity Principles – they are also covered.

I want your permission, Mr. Deputy Speaker, Sir, to read Paragraph 220 – Culture and traditions continue to support male inheritance of family land where there is lack of gender-sensitive family laws. There is a conflict between the constitutional provisions and international treaties on gender equality *vis-à-vis* customary malpractices that discriminate against women in relation to land ownership and inheritance. I believe that on that ground alone, again, it is a ground for us to support this.

Mr. Deputy Speaker, Sir, Paragraph 3.6.10.4 which follows at page 54 is Matrimonial Property. Again, this is an issue that has engaged this country ever since the late President Kenyatta appointed a Commission of Inquiry on Marriage Law way back in 1975, if I remember correctly. As we speak, we have not modernized our laws; we are using Matrimonial Property Law that we inherited from the British. Even the British have changed this law beyond recognition.

Therefore, again, this is an area for us to look at. You will find the issue of corruption repeated in Paragraph 3.6.10.5 on page 64. This is a clear statement on land policy that corruption should---

I want to encourage hon. Members, as they debate this very important subject, to look at the Land Bank in Paragraph 3.6.1.9. We have run out of public land. Right now, there is a storm brewing and I have noticed that hon. Kaluki and other politicians in Ukambani are fighting over money arising from the sale of some land. The primary issue is that the Government no longer has public land upon which it can use to develop public institutions to cater for things like ICT. Right now, following---

**Mr. K. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. Did I hear the hon. Minister say that Members of Parliament from Ukambani are fighting over money arising from the sale of a piece of land? Could he substantiate his remarks and name those Members of Parliament from Ukambani who are fighting over a piece of land or else withdraw and apologize?

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Mr. Deputy Speaker, Sir, as a matter of fact, I will be happier withdrawing and apologizing because I do not want to become party to small regional debates. Allow me to continue because they do not interest me at all.

*(Laughter)*

Mr. Deputy Speaker, Sir, I was talking about land bank. This country must have a land bank so that we can be able to say to an investor or a public institution that land is available for development of whatever.

Finally, I would like to talk about spatial planning. In this country, the wealthy go to Kitengela or Athi River and buy a plot of land and build, say, a mansion. However, when a neighbor comes by, he builds next to them thereby blocking the road so that even a tractor cannot go there to grade the road. Even a car cannot do a three-point turn if one found thieves waylaying him at the gate. We have no spatial planning. You build a school, and the person next door comes and builds a brothel, whatever that word means.

He could also build a *pombe* club. Therefore, this document, for the first time, under the principle of land administration reforms and land use management, will encourage legislation that will produce spatial planning so that you know that as you move onto land you can only do low cost housing, high cost housing, low density housing or high density housing.

Mr. Deputy Speaker, Sir, the time for this honorable House to develop the necessary institutional framework starting with land is now. I hope that the House will debate this policy with the seriousness that it deserves and support the Cabinet. I also hope that we shall be able to revive Section 187 of the Agriculture Act that was in force at Independence whereby, as the Minister for Lands pointed out, the Minister for Agriculture could actually take over your land and manage it if you were not doing so yourself.

I beg to second.

*(Question proposed)*

**Mr. Musyimi:** Thank you, Mr. Deputy Speaker, Sir. I stand on behalf of the Departmental Committee on Lands and Natural Resources and on my own behalf, to thank the Minister for Lands for the very lucid explanation of Sessional Paper No.3. I also take this opportunity to thank all those that have put in a lot of their time in this policy as we have been doing since the General Election of 2002.

I would like to thank the Minister for Justice, National Cohesion and Constitutional Affairs. I listened to both of them and I just hope they can donate some of their gifts to preaching in the course of their career in law and politics because I think they have talked rather convincingly.

Mr. Deputy Speaker, Sir, in 1848, before Karl Marx authored his famous *Das Kapital*; gave to the world a rather famous manuscript. It was called “economic and philosophic” manuscript. It is in that document that he initially identified the issue of land, labour, capital and alienation as crucial issues for Europe in the 19<sup>th</sup> Century. Years later, somebody would say that Karl Marx may not have come up with the proper prescription of the problem that he identified, but at least, one thing could be said of Karl Marx: He understood the question of his time. In this regard, I think Hon. Orenge and his predecessor have understood one critical question of our time. That is the issue of land.

It is ironical that the very energies that have messed up the land issue – politics – have also to be used to resolve this problem. I find that rather paradoxical because problems of land have been caused by politics. It is bad politics that brought us where we are. It now must also come back to politics to resolve this problem.

Mr. Deputy Speaker, Sir, one of the challenges I cannot wait to see how it will be addressed is the whole issue of implementation. This country does not have a problem with laws. The problem we have in our country is our capacity and willingness to implement the laws that we make. Even as we discuss this policy, from which we shall come up with legislation, I still do not know the level of commitment of our people to the whole culture of implementation of the laws that we pass.

Somebody said: “If you want to know a country, do not just read its laws.” Today we are talking about the Harmonised Draft Constitution. Do not just read it, if you want to know Kenya, listen to its songs. Do not just read this policy document if you want to

know Kenya, but listen to its songs. Do not just read the laws, but also listen to the songs that the people sing. They will tell you about Kenya. The songs that people sing will tell you about the values that we have and those values we do not have. We can have good policies, but there are other problems that this country has. Good policies and a good Constitution will not deal with that side of the Kenyan character, which is in dire need of reflection.

Mr. Deputy Speaker, Sir, let me now come to the substance of the policy. First of all, as I said, I thank the Minister and all those who have put in so much effort. The policy is long overdue. We know that we need a sound policy because if we come up with a bad policy, it can be extremely harmful. Probably, it will create conflicts and violence. Its ability to reverse the gains that we have will, indeed, be very high. We know how easy it is to mobilise our people for political reasons and selfish reasons. We have seen it every single day for so long.

I would like to correct the Minister for Justice, National Cohesion and Constitutional Affairs that Internally Displaced Persons (IDPs) did not just come up this time. When Miteitei Farm was attacked in October, 1991, that was the first time we began to see IDPs in Kenya resulting from land issues. We have had IDPs since October, 1991 to this day.

Mr. Deputy Speaker, Sir, I appreciate the commitment exhibited in this matter. I notice that every time the Minister speaks, he talks about securing land rights for our people. That is a very significant concept. The idea of equitable access to land, encompassing gender; intra-and-inter-generational equity, sustainable land use reforms to balance the needs for subsistence, commercial productivity and settlement; effective regulation of land development for optimal value, redressing historical injustices, access to land information to facilitate vibrant land market as well as efficient, transparent and democratic administration of land are among points that have been canvassed very strongly.

Having said that, I wish to raise a number of points, starting with the fact that the Committee is not quite clear whether this policy has stressed and expressed in very clear terms that an investor or Kenyan can own, acquire and occupy land legitimately and legally, anywhere in this Republic. That categorical statement seems to be lacking. I think it is one we all know is at the heart of some of the problems we are dealing with today.

Mr. Deputy Speaker, Sir, paragraphs 119 and 120 of this Land Policy talk about the Government ensuring that all land is put into productive use on a sustainable basis by facilitating implementation of key land policy principles on conservation of land quality, environmental audit and assessment, productivity targets and guidelines, land sizes and land using plans. That idea of productivity targets, it is difficult to see what this provision is trying to achieve. It can actually end up scaring investors. I am asking whether a policy should actually create productivity targets. Do we have a way of monitoring this? What are the repercussions of not meeting them? It is our view that the Government should create an enabling environment and leave firms and private sector within the various environments to respond freely to market conditions. This clause ought to be deleted or amended. It is ever so directing. I think what we are looking for is something that is more inspirational and not a directive idea.

Thirdly, I know the Minister has really sought to talk about land tenure. I think we need further clarity. There is the emphasis that this issue has been handled but one cannot

help thinking of a company that is jointly owned by foreigners and Kenyans who participate in this company as shareholders. We do not know under the land tenure that is being proposed, how that is going to be handled. It might be helpful to shed a little more light to that.

The whole issue under paragraph 61(e); “to secure tenure to public land, the Government shall establish mechanisms”. We are glad that this has been revised in the Sessional Paper. It is not exactly the phraseology that was in the earlier policy. I am glad to see it has been sanitized in this Paper. It seeks to establish mechanisms for the repossession of any public land acquired illegally or irregularly. This could be a minefield. This section proposes that all public land that has been illegally or irregularly allocated should be repossessed. That may be laudable and might even be encouraged. However, this House needs more guidance on how this repossession is to be done. If it is done wrongly or badly, it is fraught with difficulties and challenges. I think that, in a sense, is what we are witnessing right now in Mau Forest. This is a legal, social, political and practical minefield. Innocent buyers of such land and of land we are talking about, many times relied on valid title deeds issued by the Government of this Republic. How are they to be handled? How are they to be compensated? Many of the estates that we know and some industrial zones, were originally grabbed land, especially from the Kenya Railways. We find some of this in the Ndung’u Report.

Most of that land has subsequently been sub-divided, houses developed and sold to other people not related to the grabbers. How should such situations be handled? This is a grave matter. While seeking to do right, we want to make sure that we do not open up difficult situations. It might be desirable to further outline the conditions and criteria for repossessing such land, and guide the National Land Commission to prevent it from being hampered from endless, legal and political situations such as we assume.

Mr. Deputy Speaker, Sir, fifthly, there is the small matter of taxation mentioned in Sections 166, 167 and 168. That is on pages 41 and 42. I think the fear here is the Government introducing new barriers. Is the Government trying to increase land taxes? I think those are some of the questions that are coming from these provisions with regard to the whole issue of improved site value, taxation, development levy on undeveloped land, application of development and capital gains taxes, estates and probate tax and what-have-you. Those are questions that, perhaps, need a little bit of attention.

Mr. Deputy Speaker, Sir, there is the matter of squatters in Section 211F. The policy talks of dealing with the difficulties experienced and caused by squatters and informal settlement. It states: “The Government shall facilitate negotiations between private owners and squatters in cases of squatters settlements on private land.”

Now, the Minister himself is a lawyer and so is the gentleman who seconded this Motion, my good friend, the hon. Mutula Kilonzo. Are we suggesting here that the policy will lead to statutory rights being given to squatters to negotiate with property owners? We all know the challenge of squatting. People can easily dispossess the rightful owners, disrupt economic activity and even generate very serious disputes. Might the current squatters not take undue advantage over property owners? Should we encourage new squatters to invade private property through this policy? We know that many of our members have suffered over the years as the Provincial Administration and police have been reluctant to evict squatters, even after eviction orders were granted by our courts.

Now, this policy appears to be giving powers of negotiation to squatters. However caring or moral we may be, and I do not think I have misunderstood this particular provision--- I, for one, have dealt with squatters, and I know a little bit about them since in one case I had to use my own money to buy them land, but I am not sure that in a Government policy, you want a situation where you are exposing people who own land.

Mr. Deputy Speaker, Sir, to give squatters the leeway to negotiate with property owners might put the owners of property in a very disadvantaged position. We propose, as a committee, that this matter be looked at again. We should, perhaps, rebuild it fairly drastically. You talk of radical action. Maybe, this is one of those areas that will require radical action.

Mr. Deputy Speaker, Sir, I am very glad, as I come to my seventh point, to see the commitment of the policy to deal with matters relating to how the National Land Commission is going to be created and managed, and how important it is for this policy to be anchored in the Constitution. Let me quote from part on the constitutional issue; section 30 says: "Fundamental issues in the policy should be anchored in the constitution". For this reason, land should be treated as a constitutional issue. It goes on to say: "The Constitution should embrace the constitutional principles outlined above and establish a firm foundation".

#### ADJOURNMENT

**Mr. Deputy Speaker:** Order! Hon. Members, it is now time to interrupt the business of the House. The House, will stand adjourned until tomorrow, the 2<sup>nd</sup> of December, 2009 at 9.00 a.m. Hon. Musyimi, you will have 15 more minutes.

The House rose at 6.30 p.m.