

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 9th September, 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:-
Annual Report and Accounts of East African Portland Cement for the year ended 30th June, 2007 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister for Industrialisation)*

Annual Report and Financial Statements of Catering and Tourism Development Levy Trustees for the year ended 30th June, 2008 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister for Tourism)*

Annual Report and Financial Statements of Kenya Dairy Board for the year ended 30th June, 2008 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister for Livestock Development)*

Annual Report and Financial Statements of Coffee Development Fund for the year ended 30th June, 2008 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister for Agriculture)*

Annual Report and Accounts of Kenya Re-Insurance Corporation Limited for the year ended 30th June, 2007 and the certificate thereon by the Controller and Auditor-General.

(By the Assistant Minister for Information and Communications)

(Mr. Khaniri) on behalf of the Minister for Finance)

Annual Report and Financial Statements of Kenya Institute of Administration for the year ended 30th June, 2008 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister of State for Public Service)*

Annual Report and Financial Statements of Kenya Wines Agencies Limited and Yatta Vineyards Limited for the year ended 30th June, 2008 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister for Trade)*

Annual Report and Accounts of National Housing Corporation for the year ended 30th June, 2007 and the certificate thereon by the Controller and Auditor-General.

*(By the Minister for Information and Communication
(Mr. Khaniri) on behalf of the Minister for Housing)*

Report of the Controller and Auditor-General on the Financial Statements of Communications Commission of Kenya for the year ended 30th June, 2008.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister for Information and Communications)*

Report of the Controller and Auditor-General on the Abstracts of the Accounts of the County Council of Moyale for the years ended 30th June, 2004, 2005 and 2006.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Deputy Prime Minister and Minister
for Local Government)*

Report of the Controller and Auditor-General on the Financial Statements of Export Processing Zones Authority for the year ended 30th June, 2008.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister for Trade)*

Report of the Controller and Auditor-General on the Financial Statements of Kenya Utalii College for the year ended 30th June, 2008.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister for Tourism)*

Report of the Controller and Auditor-General on the Financial Statements of Kenya Maritime Authority for the year ended 30th June, 2008.

*(By Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister for Transport)*

Report of the Controller and Auditor-General on the Financial Statements of National Hospital Insurance Fund for the year ended 30th June, 2008.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister for Medical Services)*

Report of the Controller and Auditor-General on the Financial Statements of Industrial Training Levy Fund for the year ended 30th June, 2008.

*(By the Assistant Minister for Information and Communications
(Mr. Khaniri) on behalf of the Minister for Labour)*

Report of the Controller and Auditor-General on the Abstracts of Accounts of the Municipal Council of Nakuru for the year ended 30th June, 2007.

*(By the Assistant Minister for Information and Communications (Mr. Khaniri)
on behalf of the Deputy Prime Minister and Minister for Local Government)*

NOTICE OF MOTION

ADOPTION OF REPORT ON APPOINTMENT OF KACC DIRECTOR/ASSISTANT DIRECTORS

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

THAT, this House adopts the Report of the Joint Sittings of the Departmental Committee on Justice and Legal Affairs, and the Committee on Delegated Legislation, on the appointment of Director and two Assistant Directors of the Kenya Anti-Corruption Commission, tabled in the House on Tuesday, 8th September, 2009.

ORAL ANSWERS TO QUESTIONS

Mr. Speaker: Member of Parliament for Samburu East!

Question No.017

NON-PAYMENT OF DUES TO FORMER EMPLOYEES OF SAMBURU/LARSENS LODGES

Mr. Letimalo asked the Minister for Labour:-

(a) why the former employees of Block Hotels from Samburu and Larsens Lodges in Samburu East District have not been paid their terminal benefits after the company was placed under receivership between 2003 and 2004; and,

(b) whether he could state what measures he has instituted to ensure that the employees are paid all their dues, including at least three months' salary in lieu of notice, indicating how soon the payment will be made.

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

(a) The reason employees have not been paid is that immediately the company was put under receivership their union, the Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) filed a law suit Case No.147/2004 through their advocate at the High Court of Kenya, Nairobi against Block Hotels in order to recover terminal benefits. The matter is still pending in court.

(b) At the moment, I cannot do anything since the matter is still pending in court from 2004.

Mr. Letimalo: Mr. Speaker, Sir, while I do appreciate the answer given by the Assistant Minister, it is important to note that since 2004 when the matter went to court, nothing has happened. It has taken more than five years now.

Secondly, that hotel has already changed hands. It is now under new management meaning that it has been sold. Samburu Lodge and Larsens have been sold to Wilderness Lodges. Why can the Government not step in and assist these employees who were improperly terminated from employment without notice?

Mr. Ojaamong: Mr. Speaker, Sir, it is true that the employees were improperly terminated, but our hands are tied because the employees opted to go to court to recover their dues. So, the Ministry has very little to do.

Mr. Letimalo: Mr. Speaker, Sir, I do not think that answer is really satisfactory. I need the indulgence of this House. These employees have been paying statutory dues like co-operative dues. They have also had statutory deductions like the National Social Security Fund (NSSF) and NHIF. Why can these funds not be refunded to them, so that they can take care of their families?

Mr. Ojaamong: Mr. Speaker, Sir, before the new labour laws came into place these employees went home through the Companies Act whereby they were only entitled to Kshs2,000 when they were dismissed and fare back to their homes. There was very little we could do. Since the matter is in court, the only way we can assist them through the new labour laws is if they withdraw the case. While the case is still pending in court, there is very little we can do.

Mr. Bahari: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead the House that they were unable to pay the former employees just because the matter is in court when it took a long time, between the time the employees were declared redundant and the time they went to court? They only went to court as a last resort. Why is he misleading the House?

Mr. Ojaamong: Mr. Speaker, Sir, if the hon. Member has heard me very well, immediately the company was put under receivership, the employees through their union, rushed to court and never even reported the matter to the Ministry of Labour. As I said earlier on our hands are very much tied.

Question No.275

SHODDY TARMACKING OF KASARANI-MWIKI ROAD

Mr. Waititu asked the Minister for Roads:-

- (a) why Kasarani-Mwiki Road, which was tarmacked barely two years ago is dilapidated;
- (b) how much bitumen (tarmac) was put on the road during its construction;
- (c) what steps he is taking against the Ministry engineers who supervised the shoddy work on this road; and,
- (d) whether he could also indicate when he will construct bus stops on the Kasarani-Mwiki Road.

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

(a) My Ministry repaired the Strabag-Gitwamba section of the Kasarani-Mwiki Road in the Financial Year 2005/06. The work was carried out according to the specifications contained in the contract at that time. However, the road is deteriorating very fast because of the many heavy trucks using it to ferry building materials from the quarries in the area, a situation that was not envisaged at that time.

(b) About 124,000 litres of bitumen was used in repairing the road. The works involved a double seal surface dressing of a thickness of about 25 mm, comprising of 580 metres cubed of 14 to 20 mm size chippings and 450 mm cubed of six to 10 mm size chippings.

(c) The road repair was undertaken in accordance with the specifications contained in the project contract. There is therefore, no reason to take action against the Ministry engineers.

(d) My Ministry will construct bus stops this financial year as requested by the hon. Member.

Mr. Waititu: Mr. Speaker, Sir, it is true that the Ministry has started constructing the bus stops since I asked this Question. I just wonder whether the Assistant Minister could tell us how many years they expected the road to last when they were designing it and how much the road cost the Ministry.

Dr. Machage: Mr. Speaker, Sir, at that time, the road was designed to last for about five to ten years under the load that it was specifically designed for. That is low traffic. We used about Kshs40 million for construction of the road at that time.

Mr. Shakeel: Mr. Speaker, Sir, I think the Assistant Minister is not taking this matter seriously enough. If a road was expected to last for ten years, then what happened? This means this road was not done as per specifications. The contractor who did it was incompetent. In his answer, he is trying to exonerate his Ministry from this shoddy work that was done on this road. It is a pity that Kshs40 million went down the drain. Could he

give us a serious answer as to how they will rectify this problem? When we ask a Question about roads in this country, we are told---

Mr. Speaker: Order, Mr. Shakeel. It is Question Time.

Mr. Shakeel: Okay, sorry. Why is it that when we ask Questions here about the shoddy work done on our roads throughout the country, we get the same answers? Could we have a proper contractor and competent people doing our roads in this country?

Dr. Machage: Mr. Speaker, Sir, if the hon. Member heard me well, which I do request that he does, I did say the contractor built the road according to the designs done at that time. However, the weight of the traffic increased due to the growth of Nairobi. That area has been seen as a site for excavation of materials for building. This is something I would not have known. I am not an archeologist.

Mr. Waititu: Mr. Speaker, Sir, the Assistant Minister has just agreed with me that the road was supposed to last five to ten years. It is only two years since it was built and it has developed pot holes. Could he tell us who is supposed to be blamed? Is it the contractor or the engineers who supervised such shoddy work?

Dr. Machage: Mr. Speaker, Sir, I have clearly said that neither the contractor nor the engineers are to blame for the work that was done in 2006. The use of the road changed from what it was designed to heavy traffic. Therefore, they have no liability to carry for what happened to this road. However, the Ministry has noted that this road is of much economic importance to the area, hence the construction of the remaining part of about 1.4 kilometres is being done according to different specifications.

Question No.386

DELAYED WORKS ON MOSORIOT-KAPSABET/
KAPSABET-YALA ROADS

Mr. Lagat asked the Minister for Roads:-

- (a) why the construction of Mosoriot-Kapsabet Road has not commenced;
- (b) why construction work on Kapsabet-Sirwa-Yala Road has also not commenced and whether the tender has been awarded; and,
- (c) when the works on the above roads will commence.

The Assistant Minister for Roads (Dr. Machage): Mr. Speaker, Sir, I beg for the indulgence of the House that this Question is deferred to tomorrow because there is some important information that I need to collect to satisfactorily answer the Member.

Mr. Speaker: Mr. Langat, do you agree? Are you prepared to accommodate the Assistant Minister till tomorrow afternoon?

Mr. Langat: Mr. Speaker, Sir, this is a very important Question. If he is going to come with an acceptable answer tomorrow, then I accept.

Mr. Speaker: Fair enough! Question deferred to tomorrow afternoon!

(Question deferred)

Next Question!

Question No.306

EXPENDITURE ON NAIROBI RIVER
CLEAN-UP EXERCISE-2008/2009

Ms. Karua asked the Minister for Environment and Mineral Resources:-

(a) whether he could indicate how much money has been used in the clean-up of Nairobi River in 2008/2009 Financial Year, the activities being carried out as well as the number of youths in the slum areas that have been employed or have benefited from this exercise; and,

(b) what other measures he is taking to ensure that water bodies are free from pollutants, especially effluent from industries and sewerage in urban areas.

The Assistant Minister for Environment and Mineral Resources (Mr. Kajembe): Mr. Speaker, Sir, I beg to reply.

(a) The total amount of money that has been used in the clean-up of Nairobi River in the 2008/2009 Financial Year is Kshs354,898,154. The activities involved in the exercise included excavation, stoppage of illegal discharges, tree planting, garbage collection, hardcore lining along selected parts of the river and relocation of information business premises away from riparian areas of the river.

Mr. Speaker, Sir, a total of 8, 014 youths have been employed and or benefited from the clean-up exercise at the end of the last Financial Year, 2008/2009. The largest number of youths engaged came from Nairobi East District – 2,435, followed by Nairobi North District – 1,920. Others were Nairobi West District – 1,724, Westlands District – 1,307 and Kajiado North District – 578. They were paid a total of Kshs56, 144,400.

(b) Mr. Speaker, Sir, I wish to confirm that my Ministry is taking measures to ensure that water bodies are free from pollutants, especially effluent from industries and sewerage in urban areas.

They include:-

(i) The enforcement of Environment Management and Coordination (Water Quality) Regulations, 2006.

(ii) Regular inspection and monitoring to safeguard coordination of relevant lead agencies to ensure that they guard against further discharge of effluent/sewerage into the environment including water bodies.

(iii) Rehabilitation of sewer line network in Nairobi area under the on-going Nairobi River Basin Rehabilitation Programme.

Repairs in other parts of the country are being done by various lead agencies through facilitation of my Ministry which is working closely with the Ministry of Water and Irrigation to ensure that raw sewage does not flow into the country's water bodies and river systems.

Ms. Karua: Mr. Speaker, Sir, may I first congratulate the Ministry for a job well done. None of us really imagined that Nairobi River could end up as clean as it is.

However, the Assistant Minister has indicated that only Kshs56 million out of the Kshs354 million was used in paying the youth. Could he shed light on whether this work was given to contractors other than the work done by the youth? What plans have they put in place with other agencies to ensure that there are toilets, drainage and garbage

collection centres in all the informal settlements where this river passes? We should not end up contaminating the river once more.

Mr. Kajembe: Mr. Speaker, Sir, when I answered a similar Question; No.035, by the Member for Yatta, Mr. C. Kilonzo, I laid on the Table of this House a comprehensive report which showed how much money was spent on Nairobi River and other areas. Therefore, I have already laid a report on the Table of this House. Since we are very transparent in the Ministry, I do not mind producing another copy of the report to Ms. Karua. That, I will do because I have already laid one in the House.

Secondly, on the issue of bringing down the structures that have illegal discharges to the river, we have done that. We are protecting it. We have men and women workers, especially from *Kazi Kwa Vijana* Programme who are guarding it. We are going to do Phase II of this programme which is to find a suitable area where we can shift those who have established businesses along the river.

Mr. Kigen: Mr. Speaker, Sir, now that the Assistant Minister has done so well to clean Nairobi River and considering that there are so many other rivers in the countryside experiencing the same pollution and many people rely on these rivers, what is the Ministry doing to ensure that they are also protected from contamination?

Mr. Kajembe: Mr. Speaker, Sir, as I said in my answer, we are doing this work as a Ministry. We are also doing it with lead agencies. The lead agencies in this case are mostly local authorities. We are giving them awareness. We are telling them what to do. Most of the local authorities have started implementing the exercise of garbage collection and making sure that there is no pollution in our waters, whether in lakes or rivers.

Just for the information of this House, the Ministry has already written to several local authorities in the country, who appear to be lagging behind in this exercise. Where the Ministry notices that the local authorities are not working to the satisfaction of the respective areas, the Ministry will do it on its own.

Mr. Gunda: Mr. Speaker, Sir, what steps is the Ministry taking to protect the source of this river, lest we have a dry river bed in a few years time?

Mr. Kajembe: Mr. Speaker, Sir, my Ministry is at the forefront of protecting environmental concerns. One of them is the Mau Forest Complex. You can see how much we are doing to protect it. There are also other areas. For example, in every district, there is the District Environment Officer. We have instructed them to form district committees for purposes of protecting the environment and they are doing it.

I would like to ask hon. Members that where the Environment Officer is lax, let us know and we will take action.

Ms. Karua: Mr. Speaker, Sir, I asked a very specific question and it is true that Environment Officers are taking action, as the Assistant Minister has stated. However, the House would like to know from the Ministry how you are liaising with other Ministries. Drainage and sanitation fall under other Ministries, and if you do not have toilets, drainage and garbage collection centres in the slum areas, you cannot say that you have stopped illegal dumping. What collaboration mechanisms have you put in place and have your sister Ministries done an efficient job like your Ministry to ensure that we maintain this river as clean as it is today?

Mr. Kajembe: Thank you, Mr. Speaker, Sir. There is a Ministerial Committee that brings together officers from my Ministry, Ministry of Water and Irrigation, Ministry of Lands and Office of the Deputy Prime Minister and Ministry of Local Government.

This Committee is there to ensure that in slum areas, committees are formed to bring awareness to the people to maintain cleanness. I would like to let the House know that with regard to the Nairobi River, and other rivers which drain to this river, we are talking with the Ministry of Lands to find pieces of land to which we can shift these people, just to avoid contamination of the water.

Question No.367

NUMBER OF DAMS CONSTRUCTED IN ALEGO
USONGA SINCE INDEPENDENCE

Mr. Yinda asked the Minister for Water and Irrigation:-

- (a) to confirm the number of dams that the Government has constructed in Alego Usonga Constituency since Independence, providing their respective names and specific locations in the constituency; and,
- (b) what immediate action she will take to ensure that Obambo area in South West Alego and Randago area in South Alego are provided with clean drinking water, considering that underground water in the region is salty.

The Assistant Minister for Water and Irrigation (Mr. Kiunjuri): Mr. Speaker, Sir, I have looked at the answer that we had prepared for the hon. Member, and consulted him, noting that a Question is the property of this House and we were in concurrence that the answer is not satisfactory. I, therefore, seek the indulgence of this House to request that the Question be deferred until next week.

Mr. Speaker: Fair enough! It is ordered that the Question be deferred to Tuesday, next week at 2.30 p.m.

Question No.313

STOPPAGE OF PENSION DUES PAYMENT
TO MR. PAUL KIMOSBEI KOGO

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

- (a) why the Government stopped payment of pension to Mr. Paul Kimosbei Kogo, (ID No.4366234), a former employee of the NSSF, who retired in 1995 and was paid up to September, 2002; and,
- (b) When he would resume payment.

Mr. Speaker, Sir, I do not have a written answer.

The Assistant Minister, Office of the Deputy Prime Minister and Minister for Finance (Dr. Oburu): Mr. Speaker, Sir, the answer was given to Parliament for distribution more than a week ago.

Mr. Speaker, Sir, I beg to reply.

- (a) The monthly pension for Mr. Paul Kimosbei Kogo was stopped after it was returned by his bank, the Co-operative Bank of Kenya, Eldoret, as a result of closure of his bank account.

(b) The Pensions Department will resume the payment of the monthly pension as soon as the said pensioner submits his banking details.

Mr. Koech: Mr. Speaker, Sir, I thank the Assistant Minister for his answer. He said that the money was returned due to the closure of the bank account. Mr. Paul Kogo wrote to the Ministry on 19th October, 2008 giving the full details of his bank account. It is now exactly one year down the line, and he has not received a response. I can avail a copy of his letter to the Assistant Minister. If I do that, how long will it take for him to have his payments reinstated? It has taken too long.

Dr. Oburu: Mr. Speaker, Sir, Mr. Kogo submitted to us his bank account for the Post Bank. When we checked that bank account, we found it to be wrong and we, therefore, could not remit money through it. We wrote to him a letter dated 10th July, 2009 advising the pensioner to submit correct bank account details to enable payment of his pension benefits. His monthly pension will be paid as soon as we get a response from the pensioner.

Mr. Koech: Mr. Speaker, Sir, as I stand here, Mr. Kogo has not received that letter. Could I request that I get a copy of the same? How long will it take if I give him all the details by next week?

Dr. Oburu: Mr. Speaker, Sir, within a week of receipt of that letter, we will process and pay him all his dues from 1st October, 2002.

Mr. Speaker: That should rest that matter.

Question No.322

PROVISION OF SURGICAL THEATRE/ X-RAY MACHINE/
AMBULANCE TO BAHATI DISTRICT HOSPITAL

Mr. Gaichuhie asked the Minister for Medical Services what urgent steps he will take to provide an operational surgical theatre, an X-ray machine and an ambulance to Bahati District Hospital, considering the high population of the area and frequent road accidents along Nakuru-Nyahururu Highway.

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

The Ministry has no immediate plans to provide an x-ray machine and an ambulance to Bahati District Hospital. This is because of budgetary constraints aggravated by the large number of facilities, similar to Bahati District Hospital, whose infrastructure needs to be upgraded. However, the Ministry is aware of the ongoing construction of a theatre with funding from the CDF and intends to equip the facility and make it operational once it is completed.

To inform medium term interventions, the Ministry has just completed an infrastructure and staffing survey in all gazetted hospitals. The findings of this survey, currently being analyzed, will be used to mobilize resources with the aim of standardizing hospital infrastructure across the country.

Provision of missing facilities in Bahati District Hospital, which are more than those cited by the hon. Member for Subukia, will be given consideration within this nationwide framework. I would like to add that my continuing visits to various districts

hospitals reveal a huge gap in terms of equipment and infrastructure in district hospitals. This demonstrates that in the last 20 to 25 years, there has been very minimal Government investment in improving equipment and capital facilities in these hospitals to make them operate as they should. A district hospital requires many things such as an out-patient service provision unit, a mother-child health, which includes family planning, service provision unit, an in-patient service provision unit, a radiology unit, an administration unit, an ablution block, and further a generator house, an incinerator, staff housing, supply service unit such as kitchen laundry, composite pit, water storage and roof catchment, communication equipment which includes ICT, transport facilities and a mortuary.

In most cases, for example at Maragat Hospital, which I visited on Monday, and which is one of the oldest hospitals in its region, some of these units do not exist. That means that the Ministry requires a lot of money, something which I have estimated to be equivalent to the national Budget of this country, if we have to do an effective job and make our hospitals fully operational.

Mr. Gaichuhie: Thank you, Mr. Speaker, Sir. I want to thank the Minister for that elaborate answer. However, I want to inform him that the theatre is now complete and we would appreciate if he could equip it as we await other facilities.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, if, indeed, the theatre has been constructed, we will definitely proceed to make arrangements to make sure that it is equipped. I would like to, kindly, request the Member of Parliament to come to my Ministry, so that we can have a discussion with the Director of Medical Services to ensure that the commitment by the Ministry is speedily executed.

Mr. Njuguna: Mr. Speaker, Sir, as the Minister has ably responded to this Question, I would urge him to reconsider the ambulance issue because this district hospital is currently serving a population of about 4,000 people. The hospital is 20 years old, and therefore it is important for the Minister, on humanitarian grounds, to be sensitive on that aspect.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, a district hospital such as Bahati, indeed, covers a big catchment area and under it fall certain health centres and dispensaries for which it should give service. Therefore an ambulance is a necessary facility that such a district hospital should have. Our constraint is purely in terms of resources, given the budgetary allocation that we were allocated this financial year. If, indeed, we can get even a donor or somebody from the private sector who can help us supply this ambulance to the hospital, we shall be more than ready to collaborate with them. But at the moment, we are thoroughly constrained in terms of resources. I understand the hon. Member's concern, I share it. Just yesterday, when I was in Baringo, a hospital like Kabartonjo District Hospital does not have an ambulance. This is a big shame because they should!

Mr. Speaker, Sir, if you allow me, I will approach you very soon to have a *Kamukunji* with hon. Members so that I can avail to them this survey which we are analyzing, when it is completed, so that all of us can, indeed, share the tremendous gaps that exist in our hospitals, in terms of such services, like ambulatory services.

Mr. Speaker: Member for Subukia!

Mr. Gaichuhie: Mr. Speaker, Sir, since the Minister has given me a date to see him in the office, I hope many questions will be answered there.

Mr. Speaker: Next Question, Member for Wajir South!

Question No.361

POSTING OF PHYSICAL PLANNER TO
WAJIR SOUTH DISTRICT

Mr. Abdirahman asked the Minister for Lands:-

(a) when a physical planner will be posted to Wajir South District to facilitate planning and survey; and,

(b) what stop-gap measures he is taking to ensure good planning of the district.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Speaker, Sir, I beg to reply.

(a) A Physical Planning officer was posted to Wajir on 3rd December, 2007 and reported to the station on 10th January, 2008. The officer, Mr. Edward W. Mucheru, is charged with the responsibility of handling physical planning functions in Wajir East, South, West and North Districts.

The officer is currently based in Wajir South and can be reached at the following postal addresses: - District Physical Planning office, P.O. Box 365, Wajir Telephone 0721237695.

Due to the limited number of physical planners, my Ministry is not in a position to post officers to every newly established district, but I will consider doing so in the future when more resources are available to fund the recruitment of more officers.

(b) The following projects are being undertaken by my Ministry to ensure good planning of the district:-

(i) Preparation of a regional Physical Development Plan for North Eastern Province that covers Wajir South District and all other districts within North Eastern Province.

(ii) Revision of the Physical Development Plan for Habswein Township in Wajir South district.

Mr. Abdirahman: Thank you Mr. Speaker, Sir. I want to thank the Assistant Minister for the very good response. We would want to say that this is one of the very few Ministries that are able to give us very good responses. But I want to ask the Assistant Minister, in relation to item number “b (ii)” on revision of the Physical Development Plan for Habaswein, when will this be undertaken?

Mr. Bifwoli: Mr. Speaker, Sir, as I said, our Ministry is constrained with financial funding. Immediately we get enough resources, we shall do it.

Mr. Mwiru: Mr. Speaker, Sir, you have heard the Assistant Minister has said that he is not able to post Physical Planners to the newly created districts. But besides the newly created districts, there are these others that have not been having Physical Planners and they are old districts. Could he be able to give an undertaking to this House that Physical Planners will be posted to those old districts, so that they serve the newly created districts as well?

Mr. Bifwoli: Mr. Speaker, Sir, as I said earlier, there are so many districts being created and our Ministry is not being funded adequately. Any time we have---

Mr. Mwiru: On a point of order Mr. Speaker, Sir. I think the Assistant Minister did not get my question properly. He has said that he is unable to post Physical Planners to the newly created districts, but there are old districts that do not have Physical Planners, which were created long time ago. Is he able to make an undertaking that he can post Physical Planners to those old districts and not the newly created districts?

Mr. Bifwoli: Mr. Speaker, Sir, I want to agree that our Ministry does not have the money to hire new personnel, and the moment we shall be given money, we shall recruit new Physical Planners, and even post to them the districts that have no Physical Planners.

Mr. Abdirahman: Mr. Speaker, Sir, I had asked a similar Question last year and the response was that there were no funds, but looking at the response in part “ b” which says: “ My Ministry is undertaking this project”, it contradicts the last statement of the Assistant Minister which says that they have difficulties in funding. Could the Assistant Minister give a firm undertaking that they will go and revise the physical planning in Habaswein this financial year?

Mr. Bifwoli: Mr. Speaker, Sir, I wish I could take a firm undertaking and if Mr. Abdirahman can agree with me, our Ministry is the most underfunded so far. If this House can give us the money, definitely I will make a serious undertaking.

Mr. Speaker: Can you read your written answer to part “b”.

Mr. Bifwoli: Mr. Speaker, Sir, It is true we are undertaking ---

Mr. Speaker: Read! Just read the answer!

Mr. Bifwoli: Mr. Speaker, Sir, it reads:-

“Preparation for a regional Physical Development Plan for North Eastern Province that covers Wajir South District and other districts within the province---”

We are actually undertaking that, but he is insisting on when we are going to finish it.

Mr. Speaker: When you are undertaking, then you must undertake to complete the process. Can you please do that? We must hold you to your written answer; undertake to complete the process!

Mr. Bifwoli: Mr. Speaker, Sir, I will try my best within two months.

Mr. Speaker: Next Order!

PRIME MINISTER'S TIME

(Mr. Omingo stood up in his place)

Mr. Speaker: What is it, hon. Omingo? Order! Our *Modus Operandi* is that we take Statements first and then we take requests for further statements. So, we will begin with the Prime Minister who has a Statement and a special slot to begin now.

OPERATIONS OF EMU/INSPECTORATE OF STATE CORPORATIONS

The Prime Minister (Mr. Raila): Thank you, Mr. Speaker, Sir.

Mr. Speaker, Sir, on Thursday, 3rd September, this year hon. Linturi Mithika, Member of Parliament for Igembe South asked for a Statement on the role of the

Efficiency Monitoring Unit (EMU). I wish to take this opportunity to issue a Statement, not only on the role and mandate of the EMU, but also on the role and mandate of the Inspectorate of State Corporations. These two units are the watchdog institutions in my office.

Mr. Speaker, Sir, the EMU was established by the Government on 27th October, 1991 with the following mandates:-

1. To undertake systems audit and make recommendations for addressing organizational and system challenges that impede performance of public sector institutions;
2. To undertake value for money and performance audits;
3. Undertake routine efficiency audits to ensure effective, efficient and ethical results for Kenyans;
4. Study, monitor and analyze the implementation of the Government programmes and projects and advise on the problems being encountered as well as remedial measures;
5. Monitor the extent to which completed development projects are meeting their stated objectives
6. Assess their sustainability and make necessary recommendations, and finally,
7. Monitor, review current procedures and practices for collecting Government revenue and suggest more efficient ways of maximising revenue collection.

Mr. Speaker, Sir, I would like to inform this House that all the reports and recommendations made by the EMU are binding on the Government and they have been implemented to the letter. All reports are also submitted to the Kenya Anti Corruption Commission (KACC) for criminal investigations. While investigations are underway, officers are either interdicted or suspended depending on the nature of the malpractice.

Since the formation of the Grand Coalition Government, the EMU has carried investigations in 14 public institutions. During the year 2008/2009 Financial Year, the Unit undertook investigations in ten public institutions while in the current financial year it has undertaken investigations in four institutions. These were exemplary achievements given that among them were milestone cases of the Kenya Tourism Board, Kenya Tourism Development Corporation and Agricultural Finance Corporation which resulted in the prosecution of several senior civil servants, including a Permanent Secretary.

Mr. Speaker, Sir, the Director of the EMU just as any other civil servant, is competitively appointed by the Public Service Commission. Since its establishment, the Unit has had the following Directors: Mr. Johnston M. Mutenyo, Mr. Erastus B.I.N Rweria and Mr. Vincent Nyagilo.

Mr. Speaker, Sir, I would like to inform the hon. Members that the mandate of the EMU is complementary to that of the Inspectorate of State Corporations. The mandate of the Inspectorate of the State Corporations is clearly spelt out in Sections 18 to 25 of the State Corporations Act, Cap. 446 of the Laws of Kenya. The functions of the Inspectorate of the State Corporations are:-

1. Advising the Government on all matters affecting the effective running of the State corporations;
2. Responding periodically to the relevant arms of Government on management practices within any State corporations.

3. Continuously monitoring the management and performance of the State corporations.
4. Conducting special investigations of any State corporation on behalf of the State Corporation Advisory Committee and the Controller and Auditor General on utilization of monies appropriated by Parliament;
5. Undertaking surcharge action against any person who incurs or authorises irregular expenditure of State corporations funds or any person who through negligence or misconduct causes lose of funds to the State corporations.
6. Organizing and processing surcharge materials in terms of Section 19 of the State Corporations Act.
7. Pursuance of surcharge monies through courts and appearing as witness against surcharge appeals at the State Corporations Appeal Tribunal and at the High Court;
8. Undertaking annual performance evaluation of State corporations in collaboration with the performance contracting department and the ad hoc evaluation team from the private sector and lastly,
9. Facilitating the work of the Public Investments Committee of the National Assembly.

Mr. Speaker, Sir, since the current Government came in the Inspectorate of State Corporation has undertaken management audits and investigations in 27 State corporations. The Inspectorate collaborates with the following ten oversight Government agencies in sharing information to strengthen and improve effectiveness in fighting corruption under the auspices of the Inter-agency Forum. These comprise of:-

1. The Kenya Anti-Corruption Commission;
2. Kenya National Security Intelligence Service;
3. Kenya Revenue Authority;
4. Anti-banking Fraud Investigation Unit;
5. Kenya National Audit Office;
6. Department of Immigration;
7. Military Intelligence;
8. Public Procurement Oversight Authority;
9. Efficiency Monitoring Unit; and,
10. Criminal Investigations Department

Mr. Speaker, Sir, I wish to inform the House that I intend, not only to strengthen, but also to restructure both departments and to reassure the House that my office will deal firmly and promptly with issues of corruption by ascertaining the recommendations contained in the reports are implemented by the respective Ministries and departments.

Mr. Speaker, Sir, before closing, I wish to report to the House of the recent fire outbreak that burnt down 430 houses in Faza Island, Lamu East District. I visited the 2,300 victims on Monday, 7th September, 2009 and found the situation appalling. Following this, the Government has decided to establish Fire Disaster Fund. The Fund will be launched on Friday, 11th September, 2009, at the Kenyatta International Conference Centre (KICC) at 10.00 a.m. by His Excellency the President and myself. I do appeal to hon. Members and other well wishers to attend the launch and also to contribute towards this very worthy cause.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: We will take five hon. Members beginning with the originator of the request, Mr. Linturi.

Mr. Linturi: Mr. Speaker, Sir, I want to take this opportunity to thank the Prime Minister for the very exhaustive statement on the roles of the Efficiency Monitoring Unit (EMU) and the Inspectorate of State corporations. He has stated clearly that the EMU has conducted a number of investigations in a number of parastatals in this country. He has gone further to indicate about 14 of them. Could he kindly share the information with us by telling us the corporations and possibly, what could have been the findings of the EMU from these reports?

Mr. Chachu: Mr. Speaker, Sir, my question is with regard to the appointment of the Chief Executive Officers (CEOs) of State corporations. It is a good practice to undertake competitive recruitment when it comes to managers of such viable State corporations. I want the Prime Minister to tell this House and the Republic at large whether competitive recruitment was done when the Managing Director of the Postal Corporation of Kenya was appointed yesterday.

Ms. Karua: Mr. Speaker, Sir, the Prime Minister has said that one of the assignments of the Inspectorate of State corporations is to continuously monitor corporations. Could he tell the House how we continue, as a nation, to incur losses in State corporations and have big scandals, like the Triton scandal, when we have the Inspector of State corporations sitting on their boards? What action, if any, is taken against the officers of the Inspectorate of State corporations who sit in such parastatals when fraud and loss occurs? Perhaps, he should also touch on the maize scandal.

Mr. Bahari: Mr. Speaker, Sir, I want to thank the Prime Minister for that elaborate Statement. However, in view of the fact that one of the key functions of the EMU is systems audit and the one of the Inspectorate of State Corporations is management audit, why can the Prime Minister not consider merging the two functions for purposes of efficiency?

Mr. Ethuro: Mr. Speaker, Sir, I also wish to commend the Prime Minister and the EMU for the good job they are doing. The Prime Minister has stated that all the reports by the EMU are implemented by the Government. Could he clarify why the report by the EMU in the year 2003 on the performance of the Kerio Valley Development Authority is yet to be implemented? What is its status and what will the Government do about it?

Mr. Speaker: Hon. Prime Minister, you could now respond!

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, Mr. Linturi wanted to know which institutions had been investigated and what were the findings.

1. Last year, Maseno University was investigated and the nature of complaint was financial impropriety on the part of the Vice-Chancellor. The Vice-Chancellor and his deputies were to be surcharged to recover the public funds. That is the action taken.
2. There was alleged irregular procurement of goods and services at the Kenya Tourism Development Corporation. The Chief Executive Officer, Mr. Bondo Kajumbi, was sacked.
3. There were irregularities in procurement of airport expansion tender at the Kenya Airports Authority. The recommendations were forwarded to the Ministry of Transport for implementation.

4. There was irregularity in the procurement of advertisement tender in the Kenya Tourist Board. The Chief Executive Officer was sacked for abuse of office. The Chairman of the Board was also sacked as well as the Permanent Secretary. The matter is in court.
5. On Government Training Institute, Embu, there was refusal to comply with the Treasury directive to dispose assets. The Director was instructed to dispose of the contested motor vehicles.
6. There was alleged mismanagement at the Government agency by the departmental head. The Ministry of Finance constituted a task force to implement the recommendations.

Mr. Speaker, Sir, the list is long. I would like to table it for the benefit of the hon. Member.

Mr. Speaker: Please, do so.

(Mr. Raila laid the document on the Table)

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, Mr. Chachu wanted to know how the recruitment of Chief Executive Officers of State corporations is done. The Chief Executive Officers of various State corporations are recruited in accordance with the constituting Acts of Parliament. Those Acts of Parliament differ sometimes in details. However, in a number of cases, they require competitive recruitment. In other words, the board of directors is constituted by the Minister and recommends names to the President for appointment as chair of the corporation. Thereafter, the board advertises the jobs and then selects three names which are forwarded to the Minister for appointment. So, that is the procedure in a number of Acts of Parliament that I am aware of.

However, there are situations where, for example, the law allows for flexibility in recruitment. That in my view is the position that prevailed with respect to the Kenya Postal Corporation, where His Excellency the President exercised his jurisdiction and appointed a Chief Executive Officer yesterday.

Mr. Speaker, Sir, Ms. Karua wanted to know if the Inspectorate of State Corporations does its work, how come we incur losses in State corporations? A number of State corporations are commercial enterprises and are run on commercial basis. We know that even some private companies also incur losses in their trading. So, that is not something that is unusual in business, generally. However, the hon. Member was specific on the Triton case. This was a mere case of theft. You can call it theft-by-servant or whatever it is. There was an agreement between Triton and Tyson and his financiers for procurement of oil.

The guarantee was that once this oil was procured and brought into the custody of the Kenya Pipeline Corporation (KPC), it would be released in smaller quantities to Triton upon payment in advance to the bankers and it was upon the bank to issue a certificate to KPC. That was the condition under which they were supposed to release the oil. What happened was that it was flouted by the officers of the KPC. There was collusion between those officers and the staff of Triton. In other words, the officers released the oil to Triton before the certificate came from the bankers that they had actually been paid in advance. That was how the loss was incurred. So, it was outright fraud and the law is taking its course.

Mr. Speaker, Sir, with regard to the issue of maize, the Government appointed PriceWaterHouseCoopers to carry out an audit on what had transpired. As we speak now, that audit report is not yet out. We have demanded that the report be produced. Once it is produced, I will lay it on the Table of the House.

Mr. Bahari wanted to know why the Efficiency Monitoring Unit (EMU) deals with systems and Inspectorate of State Corporations deals with management and why we cannot merge them. The EMU is a unit that we use to investigate, not only pilferages, theft or improprieties but also efficiency in management of public affairs. So, we sent them to several institutions, including Government departments and Ministries as well as some parastatals. Whereas the Inspectorate of State Corporations deals with State corporations, it does not investigate Government departments. That is the reason why it is not possible to merge them.

Mr. Speaker, Sir, Mr. Ethuro asked about the implementation of the Report of the Inspectorate of State Corporations in 2003 on Kerio Valley Development Authority (KVDA). The Report that I gave was confined to the life of the Grand Coalition Government. The year 2003 falls in the region of the other Government and therefore, I have not had an opportunity to look at it. But I am dealing specifically with what has happened under my charge in the Grand Coalition Government.

Thank you.

Mr. Linturi: On a point of order, Mr. Deputy Speaker, Sir. There is an issue that I raised which the Prime Minister, unfortunately, has not responded to.

Mr. Speaker: Which one?

Mr. Linturi: Mr. Speaker, Sir, the issue was whether anybody that has been adversely mentioned or is subject to investigation is eligible for appointment in any public office.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, I said that anybody who is adversely mentioned in this Report, if he is a public servant, will be interdicted until the investigations are complete. I said that the reports of EMU and Inspectorate of State Corporations are referred to the Kenya Anti-Corruption Commission (KACC) for criminal investigations. The officer stands interdicted until the matter is disposed off.

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

Mr. Speaker: What is it Dr. Eseli? Is it on the same matter or a point of order?

Dr. Eseli: No, Mr. Speaker, Sir. It is just a further clarification on the answer that the Prime Minister gave.

Mr. Speaker: Order, Dr. Eseli! I am afraid, with clarifications, we have come to an end. This is our practice which we have now established and we must go by.

Dr. Eseli: It is a point of order, Mr. Speaker, Sir.

Mr. Speaker: Is there something out of order from the Statement that the Prime Minister issued?

Dr. Eseli: Mr. Speaker, Sir, is the Prime Minister in order to say that some parastatals or some Government bodies can appoint somebody without competitive recruitment without specifying the areas? At the moment, this House is seized of the matter of the appointment of Justice Ringera which we feel was irregular and he is saying that the appointment of Maj-Gen. Ali might not have been irregular, without going through competitive recruitment.

Mr. Speaker: The Rt. Hon. Prime Minister, it would appear that the concern there is that you have given an incomplete answer. If you have given an incomplete answer, then obviously, there is something out of order there. Could you rectify?

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, the answer that I gave is that the Acts are not uniform. There are some which allow for discretion. That is probably what His Excellency the President used in appointing Maj. Ali. I will need to look at the Act itself.

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. The Rt. Hon. Prime Minister said that he could not respond to my query on the Report of 2003 on (KVDA) that was given by the Inspectorate of State Corporations because he was not in that Government. All of us know, he was not the Prime Minister but he was a very important Minister for Roads. So, he knows. The EMU and Inspectorate of State Corporations was formed by an Act of Parliament and it has been working continuously. So, either he does not have the information now which I can concede to but he cannot purport not to respond to that Question just because this is a Coalition Government. Governments have been here since Independence.

Mr. Speaker: The Rt. Hon. Prime Minister, that is valid.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, what I said and the HANSARD will bear me witness was that I confined my investigations to the cases which have been handled while this Grand Coalition Government is in power. That is the reason that I gave as to why I was not able to respond to investigations or reports which were produced in 2003. If the hon. Member wants me to go and look at what that Report said and what action was taken, I oblige and I am willing do so.

Mr. Speaker: Order, hon. Members! The Rt. Hon. Prime Minister did not anticipate that kind of clarification. So, Mr. Ethuro, I would like you to take up that matter with the Rt. Hon. Prime Minister and if you are not satisfied, and therefore, the interest of the House will not have been satisfied, then you will be at liberty to prompt the Chair to revisit that matter.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. A while ago, an issue came to this House concerning the appointment of a Chief Executive Officer (CEO). In particular, that CEO has questionable character and the police had recommended that he be prosecuted. In the same Government that the Prime Minister is serving, that same person was appointed as CEO. I am very curious---

Mr. Speaker: Order, hon. C. Kilonzo! Who is the person that you are talking about?

Mr. C. Kilonzo: Mr. Speaker, Sir, it is the Chief Executive Officer of Tana and Athi Development Authority. That issue has been before this House previously. How does the Government appoint people who the same Government or the previous Governments have recommended to be prosecuted?

Mr. Speaker: Fair enough. Order! Hon. Members. The clarification sought by hon. C. Kilonzo and the question subsequently asked is new. It is different. It does not arise from the Statement delivered by the Right Honourable Prime Minister. So, I am afraid it will not be responded to. We will now move on to a different matter.

Ms. Karua: On a point of order, Mr. Speaker, Sir. This is to do with the answer given on the Postal Corporation of Kenya by the Prime Minister. I have with me, the State Corporations Act, Section 13, which clearly says:-

“The Board may appoint such officers or staff as are necessary for the proper discharge of the functions of the Corporation under this Act, or any other written law, upon such terms and conditions of service as the Board may determine.”

The Board, itself, is appointed by the Minister under Section 6. So, if under the Postal Corporation of Kenya Act, it is the Board that should appoint; is it in order for the Prime Minister to mislead the House that the appointment of Post Master-General yesterday was legal, when it is clear here that it is in contravention of the law? Could the Prime Minister withdraw and apologise to the House? I can give him this document.

Mr. Speaker: Order, hon. Members! If that citation from the law is correct, then Right Honourable Prime Minister, you have something to deal with because you have made a Statement which seems to be inconsistent with the law.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, I have nothing to apologise for. All that I said was that I had not looked at the respective Act of Parliament.

Mr. Speaker: Order, Right Honourable Prime Minister! I am not asking you to apologise. Hon. Karua is saying that you have misled the House by the Statement that you have made, which will appear to be inconsistent or contradicts the law as she has cited.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, I did not contradict the law as cited. I said that I had not read the respective Act of Parliament and, therefore, I cannot contradict the action that was taken by the President yesterday.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. C. Kilonzo! The Right Honourable Prime Minister, now that you are aware as to what the law says, what would be your position? Now you know what the law says.

Ms. Karua: He can read the Act!

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. C. Kilonzo! Let us hear the Prime Minister's response. The Prime Minister is responding to a point of order!

Mr. Mbugua: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Mbugua!

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, first, I am not the President. Secondly, Ms. Karua has read the Act. I do not know whether the President consulted the Board before he made the appointment. So, those are some of the issues that need to be investigated. I assume that probably, the President had consultations with the Board before he made that appointment.

Mr. Mbugua: On a point of order, Mr. Speaker, Sir. Was the Prime Minister consulted? This is a Coalition Government. Could he tell us if he was, indeed, consulted by the President when he was making that particular appointment?

Mr. Speaker: Mr. Mbugua, I think the Right Honourable Prime Minister has responded to that, that appointment was made by His Excellency the President. He wants to believe that His Excellency the President followed the law as is set out in the Act. He has said that he believes that the President consulted. He is entitled to that opinion - to believe. So, I am afraid he need not respond to that.

Mr. Mungatana: On a point of order, Mr. Speaker, Sir. The State Corporations Act has a section that deals with accountability. I could assist the Prime Minister by reading that Section. It reads:-

“(i) The Board of a parastatal is supposed to be responsible for the proper management of the affairs of a State Corporation and shall be accountable for all the monies, financial business and the management of a State Corporation.

(ii) The Chief Executive of a State Corporation may be summoned by the Public Investments Committee (PIC) to answer on behalf of the Board, any question arising from the report, including a special report---“

Would I be in order to suggest to the Prime Minister to ask that the newly appointed CEO to approach PIC, so that he can be questioned on whether he was properly appointed to that position? That way, he can relieve himself of this problem? The Prime Minister is not able to explain.

Mr. Speaker: Order! With respect to the point of order by hon. Mungatana, the Right Honourable Prime Minister has asserted that it is his opinion that His Excellency the President made the necessary consultations. Unless Members have evidence to the contrary that, in fact, the Board of the Postal Corporation of Kenya did not participate in that appointment, you cannot challenge that opinion.

Ms. Karua: On a point of order, Mr. Speaker, Sir. This is a very serious issue because we have a similar matter before the House. When the Right Honourable Prime Minister stands and says “may have consulted”, this House is entitled to be taken seriously. It should not to be taken for a ride. If, indeed, there was consultation and the Board actually discussed the issue of staff appointment - because we are aware that there was somebody acting - could we be in order so that the House is not misled twice, by asking the Prime Minister to table the minutes of the Board that decided to hire not competitively? I am urging you to protect this House. A Minister cannot stand and say “may have”. It must be a definitive answer. Is he in order to answer us in terms that are not definitive?

Mr. Speaker: The Right Honourable Prime Minister, do you want to respond to that point of order?

Mr. Farah: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Farah! Just wait! Hold your horse!

The Prime Minister (Mr. Raila): Yes, Mr. Speaker, Sir, I can answer that. I said that I had not read that Act. I should withdraw the word “may”. I want to be very categorical that yes, the President did consult the Minister and the Board.

Mr. Farah: On a point of order, Mr. Speaker, Sir. Indeed, since this is a law making body, sometimes, we have got to understand the law in its own context. When it says that the Board “may”, and the Attorney-General should help educate Parliament on that, it means may or may not. If it was, indeed, the Board that had to do it, then the law should have said “the Board shall”. There is no “shall” in this. There are other authorities that can appoint, including the President in this matter. So, this is the position of the law and the Attorney-General has a duty to inform the House.

Mr. Speaker: Fair enough! Hon. Farah, that is an opinion that you have volunteered and it may be useful to the House. The Right Honourable Prime Minister, you need not respond to that.

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

Mr. Speaker: Hon. Karua, you have had two bites of the cherry and you cannot have any more.

PERSONAL STATEMENT

THREAT TO HON. OMINGO MAGARA'S PERSONAL SECURITY

The Assistant Minister for Trade (Mr. Omingo): Mr. Speaker, Sir, I rise to make a Personal Statement under Standing Order No.76, touching on my personal security on Saturday night. I want to thank you, Mr. Speaker, Sir, for indulging me to make this Statement this afternoon. Since you have agreed, I will not go through the details, but I will offer this Statement to be captured by the HANSARD. I will highlight some issues that touch on my personal life, security and that of my family.

It is with great humility that I make this Personal Statement on a matter that touches on my personal security as a Member of this august House. My family and I were subject to a traumatizing experience on Saturday night and, as a family, we take this not kindly because it touches on the sanctity of life.

We cannot be all things to all men. I was not born to make anybody happy, but to make my contribution to socio-economic development of this country. If in the process, I have stepped on toes of individuals, I have no apologies to make.

Mr. Speaker, Sir, from the outset, I appreciate messages of goodwill and statement of concern from my constituents, family members, hon. Members of this august House and friends across the globe following the arson attack on my Ongata Rongai residence. My family and I, are entirely grateful. I have always worked for genuine change and for the wellbeing of this nation on a platform of change. This is why I have always been a team player with reform minded personalities. I am a founder member of the ODM party in the run-up to 2007 Elections on the basis of tolerance for divergent views where all enjoy democratic space. We may not have achieved much in this matter that was anticipated by the majority of Kenyans, but I am a firm believer that I will get there with great leaders of resolve, focus and reason.

We, as politicians, are in a struggle for the minds of the people of this Republic. We must also use ideas to attract and influence Kenyans. Force has no room in a democracy. For we know that force always attracts men of low morality. I want to skip a few paragraphs and emphasize here that Kenya is known for its reciprocal regard for each other of shared responsibility. The idea that everybody has a stake in the country is paramount and that it is together and everyone got a shot at opportunity if it pleases you that it is me and the dragon of intolerance is not checked, the same will maul you tomorrow.

Since I joined politics, I have been driven by the dream to participate first and foremost in legislation that promotes wealth and opportunity creation, including eliminating graft. For this, I have paid the price! It is, therefore, worth noting that if you have no cause to die for, then you have no reason to live. I am alive to the fact that a dream does not become reality through magic. It takes sweat, determination and hard work. I have suffered the arson attempts both in my Kisii home and Nairobi homes, but I have remained true to my principles. I hold it true that we must be judged by merit, not family connections and blind loyalty. It is only ideas that will transform this country.

By accommodating divergent views, we will have the best and the brightest leader in this country. It is then and only then, that democracy will grow. We must be less

curious about people and what they have, but more curious for who they are and what ideas they stand for. This is only---

Mr. Speaker: Mr. Omingo, you realize that you have done seven minutes already. Could you, please, move to conclude? A personal statement is supposed to be not longer than five minutes!

The Assistant Minister for Trade (Mr. Omingo): Mr. Speaker, Sir, I want to summarize by saying that I wish to urge the Kenya Police through the Ministry of State for Provincial Administration and Internal Security to spare no efforts in bringing the arsonists to book alongside their paymasters for we know that all dogs have masters; I have a strong urge to point fingers, but I must let the police do their work. I urge my colleague, the Minister of State for Provincial Administration and Internal Security to ensure that Kenyans lives and properties are safe at all times, irrespective of their station in life. He must be assisted by us politicians who spend hours on end plotting political motivated attacks.

Once more in the words of Winston Churchill, now this is not the end. It is not even the beginning of the end, but it is, perhaps, the end of the beginning. My resolve of a better Kenya has been stronger and in an unlikely event that the arsons succeed in executing their ungodly act, they must stand informed that Mr. Omingo is merely part of the generation that has got the eye firmly fixed on the ball. The idea can only grow bigger!

Thank you.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, if you do not mind, let me just urge the hon. Member that, indeed, it is true that as soon as the incident took place, the police moved on site. We are undertaking investigations as to whom may have been responsible for placing that jericin with petrol.

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! That is a Statement made under Standing Order No.76. So, it cannot be debated; it cannot be interrogated.

Prof. Saitoti, you have something else; that I thought you are going to be---

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, that is, indeed, true. I had just sought a clarification from him, but let me go to the other one.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, Mrs. Odhiambo-Mabona had requested me to come and table a Statement regarding the matter related to the sexual abuses and particularly about Father Kizito. I had promised this House that I would, indeed, deliver a Statement today. I have obtained some facts and I consider them inadequate for me to present them to this House. Therefore, I wish to seek the indulgence of the House for me to deliver the Statement tomorrow in the afternoon.

(Applause)

(Mr. M. Kilonzo and Prof Anyang'-Nyong'o)

stood up in their places)

Mr. Speaker: It is so ordered! What is it Minister for Justice, National Cohesion and Constitutional Affairs? Order, Prof. Anyang'-Nyong'o! The Minister for Justice, National Cohesion and Constitutional Affairs was faster to get to his feet!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I wish to thank you for catching your eye. Mr. Kioni requested for a Ministerial Statement and I want to make it because it is ready.

Mr. Speaker: Will you be so kind as to do it in five minutes?

MINISTERIAL STATEMENT

MANDATE OF KACC

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, Mr. Speaker, Sir. I will be very brief!

The questions and issues posed by the hon. Member are clear; therefore, I will not bother repeating them, except to say that under Section 7 of the Anti-Corruption and Economic Crimes Act, the Kenya Anti-Corruption Commission (KACC) is mandated to receive complaints from the public of acts of corruption, investigate the complaints, make recommendations to the Attorney-General where investigations reveal a crime has been committed, educate the public and advise heads of public bodies. As is law enforcement and examined practices and procedures of public bodies, the fact that most of the allegations in the public domain about the non-performance of this institution are very serious. Indeed, they arise from several issues, but today because I am going to table this, it is fair that I say to this House that as a result of the Commission's work, it has recommended the actual prosecution of eight Cabinet Ministers, four Members of Parliament, seven chairmen of boards of State corporations, 11 permanent secretaries, 65 directors and chief executives of public institutions. As a result, more than 498 criminal cases have been investigated with 382 being recommended for prosecution, 247 criminal cases are in court, 398 civil cases have been filed for the recovery of public assets and 16 of the recovery cases are against current and former Members of Parliament. Properties worth more than Kshs4.5 billion have been recovered including the Grand Regency and Karura Forest.

With regard to Anglo Leasing, it is important to point out that KACC has completed local aspects of investigations and has forwarded files to the Attorney-General recommending the prosecution of those involved. The Attorney-General, however, returned the files to KACC for the conclusion of the international aspect and this afternoon, I will table the correspondence between the Office of the Attorney-General, the British Government and the American Government showing that it is, in fact, those governments that have not assisted the work of KACC.

If you allow me, Mr. Speaker, Sir, Kenya Anti-Corruption Commission (KACC) has forwarded 382 cases to the Attorney-General for prosecution. I would like to table the list of all the 382 cases and their status. I can immediately surrender to the Speaker, concluded investigations involving current and former Ministers, hon. Members, Permanent Secretaries and others. I would also like to table a list of civil cases involving

current and former Ministers, hon. Members, heads of parastatals and other Government departments and influential personalities for the recovery of public and corruptly acquired or embezzled public funds. The document is here. It is a huge list of people.

(Mr. M. Kilonzo laid the list on the Table)

Mr. Speaker, Sir, I would like to table, with your permission, a list of Ministers, hon. Members, Permanent Secretaries and other senior officers currently under investigation by KACC. The list is here. All of them are very long lists.

(Mr. M. Kilonzo laid the list on the Table)

Mr. Speaker, Sir, I would also like to table in this honorable House, copies of correspondence on Anglo Leasing *vis-à-vis* the British and American governments showing the status of all those investigations.

(Mr. M. Kilonzo laid the list on the Table)

Mr. Speaker, Sir, I would also like, with your kind permission, to table a list of cases filed by KACC for recovery of public land illegally or corruptly acquired. There are 293 land cases.

(Mr. M. Kilonzo laid the list on the Table)

I would also like, with your permission, Mr. Speaker, Sir, to table another list of cases filed by KACC for recovery of embezzled funds. There are 76 cases.

(Mr. M. Kilonzo laid the list on the Table)

With me also, Mr. Speaker, Sir, is a list of some of the convictions that have been secured by KACC. The cases are shown and the status in each particular instance.

(Mr. M. Kilonzo laid the list on the Table)

Mr. Speaker, Sir, knowing parliamentary procedure and knowing the rights of Kenyan citizens, it is fair that I inform you, hon. Speaker, that I am well aware that hon. Justice Ringera has no voice in this House. He cannot speak for himself and I am his line Minister. I recognise and beg the indulgence of this House to say that, in view of the fact that he cannot speak for himself, it is my responsibility to do so and, therefore, I also wish to table a statement signed by the learned retired judge on some of the allegations that have been levelled against him.

(Mr. M. Kilonzo laid the statement on the Table)

I would urge hon. Members to examine the material that I have filed. I believe that I have satisfied the request, as tabled, and if there are any other clarifications, I am available to address them.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Members! We will allow three clarifications. But before we do that, hon. Members and Mr. Minister, please, note that some of the documents that you have tabled do not pass the test of admissibility of documents in the House.

(Applause)

Some of them are not authenticated. Some of them are mere schedules and we do not know the source of those schedules. They need to be certified and/or signed and dated. So, to that extent, we will admit these documents selectively, depending on which ones pass the test.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, in case you are holding a document that is not signed, return it to me and I will give you a signed one. That is because I do have all these schedules. In fact, what I have done, if you will note, because I believe you will be making a ruling as you did say, the documents are accompanied by a signed letter dated 9th September from hon. Justice Aaron Ringera and he has signed the letter. The letter is also clear as to what he is forwarding to me and---

Mr. Speaker: Order, Mr. Minister! Once you table documents, we take documents that you have tabled. We do not then allow you to table supplementary or subsequent documents so as to pass the test. So, we will apply the rule to the documents as you have originally tabled.

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

Mr. Speaker: You need not worry too much; some of them may not be admissible. A few or the majority could be admissible, but we will verify that and we will give you a considered direction on those documents.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I am greatly---

Mr. Speaker: I think that will be fair.

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

Mr. Speaker: Let us have clarifications, beginning with hon. Kioni!

Mr. Kioni: Thank you, Mr. Speaker, Sir. In the Statement, the Minister did indicate that some of those people who have been investigated and prosecuted included Cabinet Ministers. The Public Officer Ethics Act talks about the level of integrity that is required for one to serve as a public officer. How is it then that we have people who are under prosecution and are still serving as public officers at the level of even the Cabinet?

Dr. Nuh: Mr. Speaker, Sir, I would like to thank the Minister for a very uncharacteristic prompt answer. That is because Ministers have been seeking extensions of time when they are required to answer Questions, the latest being hon. Saitoti. So, this prompt answer to a Ministerial Statement that was sought yesterday is quite

commendable. I would like to urge the Front Bench to emulate this and answer all Ministerial Statements with such zeal.

(Applause)

Mr. Speaker, Sir, my question is: Time and again, the Attorney-General's Office has been complaining that there was no substance in cases that Justice Ringera recommended for prosecution. Justice Ringera does not prosecute. He only recommends. He has not tabled the evidence to prosecute those people. I want the Minister to state his position on that.

Mr. Speaker: Okay, Mr. Minister, you may respond.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you, Mr. Speaker, Sir. On the question posed by hon. Kioni, as the Minister for Justice, National Cohesion and Constitutional Affairs, justice cuts both ways; it affects those who are suspects, under investigation or under prosecution as well as the victims. Therefore, my question would be very guarded to say that I am limited to the information I get from KACC. I am limited to the status given in those recommendations. I am limited to the positions regarding the court cases. Beyond that, I believe, it would be unfair, as the Minister for Justice, National Cohesion and Constitutional Affairs, to appear to be passing judgment on any particular person as to whether they should continue holding office or otherwise. I would leave that for another day and I hope you accept.

Mr. Speaker, Sir, the other question by *Daktari*, answers itself. I think I have done a good job. I have supplied whatever may be required. I have much more, in fact, but I was limited to the issues that were posed by hon. Kioni. Dr. Nuh should not be surprised with my speed. I am always a very fast man and I do not seek extension of time.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: On a different matter?

Mr. Mbadi: Yes, Mr. Speaker, Sir.

Mr. Speaker: It has to arise from the Statement that the Minister has given. Is it something outside the rules?

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Could I know why the Minister has not declared interest in this matter? This is because in the Fifth, Sixth, Ninth, Tenth and Thirteenth Reports of Public Investments Committee (PIC), the same Minister was mentioned and was supposed to be a subject of investigation by the KACC. Could I know why the Minister is answering this question and yet he has not declared his interest? Further, is this question not arranged to pre-empt the Chair's ruling to be done tomorrow?

Mr. Speaker: Order, Mr. Mbadi. The first one is valid. The second one will not fall within the purview of a point of order.

Mr. Minister, would you like to respond to that point of order that you have not declared your interest in the matter. Is that so?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I absolutely have no interest to declare. Those are diversionary tactics employed by some hon. Members in this House who know that they are in the list that I have tabled. My name is not on that list and, therefore, I have no

interest to declare. If the hon. Member is referring to something that I need to respond to, I certainly have never been requested to make any statement to the KACC. If they do, I will. Therefore, I have no apologies to make.

Mr. Speaker: Fair enough.

POINT OF ORDER

EXTENSION OF TIME FOR DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES TO PREPARE REPORT ON NAIROBI CEMETERY

Mr. Shakeel: Mr. Speaker, Sir, I stand here as the Chairman of the Departmental Committee on Local Authorities. On 4th June, 2009, the Temporary Deputy Speaker made an order that the Departmental Committee on Local Authorities prepares and submits a report on the issue of the Nairobi Cemetery. I would like to bring to your attention the fact that we were not ready with that Report as at 4th September, 2009 as it should have been. One of the major reasons for the delay is that the Committee was not activated until the beginning of August, 2009. We are carrying out investigations and, indeed, we have done much. We request this august House to extend the date to the end of September this year. That is an extension of roughly three weeks.

Mr. Speaker: Hon. Members, the Committee is given an extension of one month from today. Please, expedite your Report.

Mr. Shakeel: Thank you, Mr. Speaker, Sir.

The Minister for Medical Services (Prof. Anyang' -Nyong'o): Mr. Speaker, Sir, I apologise for taking you back a little. When the Minister of State for Provincial Administration and Internal Security was responding to Mr. Omingo' Statement, he said that the police are doing investigations. Could I request the hon. Minister to bring the Report to the House once it is ready? Could he also state to the House when the Police will roughly finish their investigations? This is because this matter is extremely important to this House.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, indeed, the investigations are going on. They are not yet complete.

(Mr. Kioni stood up in his place)

Mr. Speaker: Order, Mr. Kioni! The Minister of State for Provincial Administration and Internal Security is responding to a point of order as to whether or not he can avail a report to the House. So, you cannot raise a point of order at that stage.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I just want to inform the hon. Member that the police arrived at the scene immediately the incident took place. I would like to confirm that investigations are on-going. Could I be allowed to bring the report to the House once investigations are complete? This is because what I can bring now is only an interim report.

Mr. Speaker: I think that should settle that matter!

Mr. Kioni: On a point of order, Mr. Speaker, Sir. When you made the ruling, you said that the Statement made by Mr. Magara was Personal and did not need any comments. Secondly, this is a Minister asking another Minister a question. The Minister is using the Floor of this House to promise an answer to the Minister. This is the issue of collective responsibility which has now become collective irresponsibility.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I am making this statement in a very sincere manner and I am simply requesting my colleague to put on the record of HANSARD that when the police finish their investigations, the report should come to this House. I do not see myself, by making that statement, breaching any collective responsibility. If anything, I am trying to help my colleague in doing something that the House is interested in. So, let us not carry this issue of collective responsibility to a ridiculous level. We are becoming a laughing stock!

Mr. Ethuro: Mr. Speaker, Sir, I think it is the duty of the Chair to ensure that this House transacts its business in an orderly and dignified manner. The gist of the matter is that the hon. Member rose on Standing Order No.76. Most hon. Members have taken advantage of this Standing Order to make a personal statement and nobody is entertained to interrogate the statement. This is especially if that person happens to be a Member of the Cabinet, and a senior Member I respect. I know the matter is serious, but this is not the place for that kind of altercation to take place.

Mr. Speaker, Sir, you owe it to this House and the nation that the way in which the House conducts its business must be in accordance to the Standing Orders. Nothing more, nothing less. Uphold the rule of law.

The Minister of State for Defence (Mr. Haji): On a point of order, Mr. Speaker, Sir. I want to seek clarification in view of the question that has been asked by the Minister for Medical Services. If an offence is discovered, will it be filed in court or brought before this House?

(Laughter)

Mr. Speaker: Order, hon. Members! The Statement made by Mr. Omingo was pursuant to Standing Order No.76. Indeed, he had approached the Chair earlier on and was granted the necessary permission to proceed and make the statement under under Standing Order No. 76. Hon. Members, bear with me as I read this Standing Order out. It says:-

“By indulgence of the House, a Member may explain matters of personal nature although there is no question before the House, but such matter may not be debated”.

Hon. Members, you will note that after Mr. Omingo made that Statement and the Minister of State for Provincial Administration and Internal Security stood to intervene, the Chair was not aware what he was going to address.

As soon as I became aware, I stopped the Minister. I did tell him: “You cannot debate this matter; neither can you question it” but before I stopped him, he had said that the matter is being investigated. Unfortunately, that went on record but I did not allow him to go further. So, I did not allow him to debate. Indeed, he did not.

Prof. Anyang'-Nyong'o then stood up on yet another point of order, whose substance the Chair is not prophetic to be aware of. I do not have those powers of Jesus. So, I did not know. So, Prof. Anyang'-Nyong'o, to the extent that he attempted to debate

this matter, was out of order. Prof. Anyang'-Nyong'o may want to re-visit this matter by approaching his colleague in the Cabinet. When his report is ready, the Minister may, of his own Motion, table that report in the House, but that would not be the business of this House here and now on this matter.

The Assistant Minister for Trade (Mr. Oming'o): On a point of order, Mr. Speaker, Sir. I am not challenging your ruling but, from the outset, let me also state here that I appreciate the concerns shown by Members of Parliament regarding my personal security. I believe that this is genuine concern, and I do not think that there is anybody in this House who is trying to kind of input any motive as regards what I have stated.

Remember that, if you have not had the experience I had, it is traumatising to the extent that you can never imagine it in terms of shock. Indeed, last night, I had to take my mother, who was in shock out of the incident, to hospital. I want to believe that if you see your fellow slave being buried in a shallow grave, the same fate awaits you. I expect collective support in terms of the seriousness of the matter.

I believe that the concerns being expressed in here, including those by Prof. Anyang'-Nyong'o, who is my party's Secretary-General, are extremely genuine. Let us not play to the gallery. The matter is as serious as stated.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Hon. Members, what Mr. Oming'o Magara has said does not change the position. It does not add anything more to the directions that I have given. So, those directions will stand. Bear in mind the provisions of Standing Order No.76 when you make a personal statement.

CONSIDERED RULING

DEBATE ON MOTION FOR ADOPTION OF REPORT ON CONSERVATION OF MAU FOREST TO PROCEED

Mr. Speaker: Hon. Members, you will recall that on Thursday, 3rd September, 2009, I delivered a Communication from the Chair concerning an issue raised by Mr. Isack Ruto, requesting that this House does not proceed to deliberate on a Motion for the adoption of the Report of the Government Taskforce on the Conservation of the Mau Forest Complex.

You will recall that in that ruling, I made it clear that no evidence had been adduced to show that High Court Miscellaneous Civil Case No.313 of 2005 was active within the meaning of Standing Order No.80(3) so as to make the matter *sub judice*. Following that ruling, the Hon. Isack Ruto claimed that he had in his possession, evidence showing that the case was active and undertook to furnish the Chair with such evidence. Hon. Ruto thereafter, presented further documents to the Chair.

Hon. Members, the documents presented to the Chair relate to High Court Civil Case No.664 of 2005, an altogether different case from the original judicial review application previously presented to the Chair, and which was the subject of Hon. Ruto's claim that the Mau Forest Complex matter was *sub judice*.

This is a civil case in which some seven individuals sued the County Council of Narok, seeking, among other orders, a declaration that they are entitled to the exclusive and unimpeded right of possession and occupation of certain properties, and further

seeking orders restraining the County Council of Narok by itself or by its agents from entering, remaining on or continuing in occupation, demolishing and burning the plaintiffs' property or in any manner whatsoever, interfering with the plaintiffs' quiet and peaceful enjoyment of their property. In this new case, orders were obtained, restraining the County Council of Narok as aforesaid.

Hon. Members, it is important to observe that in the new documents presented to the Chair, none of the parties in the judicial review application are parties to that suit, nor is the subject matter the same. More importantly, as I explained above, the suit is a private matter between the seven plaintiffs and the County Council of Narok. The orders obtained are orders binding only upon the parties to the suit and their agents and or servants.

The task that Hon. Isack Ruto undertook to discharge was to present evidence to the Chair that High Court Miscellaneous Civil Case No.313 of 2005 was active. This task cannot be said to have been discharged by presenting papers relating to a completely different and unrelated suit between different parties and orders not binding on parties other than those in that suit.

Hon. Members, in the light of the foregoing, I rule that no evidence, or further evidence, has been provided that debate on the Motion for Adoption of the Report of the Government Taskforce on the Conservation of the Mau Forest Complex is *sub judice*. The ruling I previously made on the matter, therefore, stands.

Thank you.

Next Order!

MOTION

ADOPTION OF REPORT ON CONSERVATION OF MAU FOREST COMPLEX

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, with your permission, I would like to move this Motion on behalf of the Prime Minister, who has asked me to do so.

Mr. Speaker: Has he ceded his power to move this Motion to you?

The Minister for Forestry and Wildlife (Dr. Wekesa): Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well! You may proceed.

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, I beg to move:-

THAT, this House adopts the Report of the Government's Task Force on the Conservation of the Mau Forests Complex laid on the Table of the House on Wednesday, 12th August, 2009.

Mr. Speaker, Sir, Kenya's closed canopy forest cover stands at 1.7 per cent which falls below the recommended international level of 10 per cent. The Mau Forest Complex forms the largest closed canopy forest ecosystem of Kenya. It comprises of 22 forest blocks covering approximately 400,000 hectares which is 40 per cent of the total gazetted forest in our country.

It spans over 11 districts in Rift Valley Province. Its forests form the upper catchment of 12 main rivers and provides water to six major lakes, that is Lake Baringo,

Lake Naivasha, Lake Nakuru, Lake Narok, Lake Turkana and Lake Victoria. Three of these lakes are international water bodies. These are: Lake Narok which covers Kenya and Tanzania; Lake Turkana which covers Kenya and Ethiopia and Lake Victoria which covers Kenya, Tanzania and Uganda. This makes the Mau Forest Complex strategically important internationally.

Mr. Speaker, Sir, it also provides water and supports the livelihoods of millions of people in both urban and rural centres. As a critical water catchment area, the Mau Forest Complex supports key economic sectors, including energy, tourism, agriculture and industry.

The agricultural, industrial and tourist businesses which are dependent on the Mau Forest Complex have the capacity to generate in excess of Kshs20 billion a year, if the water catchment is managed properly. Its potential hydro power generation in the Mau Forest Complex catchment is approximately 535 megawatts representing 41 per cent of the total installed electricity generation capacity in our country.

Mr. Speaker, Sir, the Mau Forest Complex provides vital environmental services which are essential for sustainable development and achievement of Vision 2030. That includes water storage, recharge of ground water, conservation of bio-diversity, micro-climate regulation and carbon storage.

Over the last three decades, the Mau Forest Complex has lost 60,000 hectares to either excisions by the Government or by illegal settlements. That is a loss of 25 per cent of the total forest cover in that area.

In a spate of three years alone, we lost 61,586 hectares of the Mau Forest Complex having been converted into settlement schemes. Subsequently, approximately 41,000 hectares were encroached. The Mau Forest Complex has been and continues to be seriously degraded through irregular and ill planned settlements, forcing serious threats to the sustainability of the eco-system.

The loss of forest land in the Mau has led to conflict over dwindling forest and water resources; potential security risk and conflict within the Nile Riparian States.

Mr. Speaker, Sir, due to the loss of our forest cover in the Mau Forest Complex and also in other water catchment areas, it was necessary in 2005 for this House to pass an Act to update the old Act that was not serving Kenyans in as far as management of forests is concerned. The Act was passed in 2005, but was only domesticated two years later in 2007.

The import of that Act was to create a Kenya Forest Service (KFS) as a parastatal so that it could be empowered to deal with the degradation and destruction of forests over the three decades. It was obvious that Kenya Forest Department as it was then, was unable to deal with the conservation of our environment. So, Members of Parliament, many of them who are here, passed that Act.

That Act tried to empower the KFS. It had a provision to provide finances to the KFS so that it would transfer all the staff from the defunct Forest Department to the parastatal so that it would stand on its own. It would also have the capacity to deal with illegal logging and afforestation but to date, the funds have not been forthcoming. This has contributed to the present status.

Last year, the Government, in its wisdom, created a task force to address the issue of Mau Forest Complex. This task force was formed in May and the purpose of the task

force was to ensure that an effective management structure was created to stop any further degradation of our forests.

Further, it would provide a long-term solution for the people to be relocated from the forest. The restoration of old graded forests and critical water catchment areas would be corrected. The task force would be empowered to mobilise resources to implement the recommendations and secure the sustainability of the entire eco-system.

There is a Gazette Notice to confirm this fact on 1st August this year. The Task Force has comprehensively assessed the on-going destruction and degradation and controlled forest and illegal forest extraction and encroachment. It has also commissioned scientific studies to identify the critical water catchment and biodiversity hotspots in the Mau. The Report was laid, as I said, in this House.

Mr. Speaker, Sir, the overall conclusion is that the Mau Forest Complex is a critical water catchment area and needs to be reclaimed and restored as a natural asset of national importance. It is a national disaster in waiting and if left unchecked, the country will suffer irreparable damage.

Therefore, the Task Force that has been formed is being led by a very experienced civil servant in the name of Hassan Noor. We have no doubt that Mr. Hassan Noor and the team which comprise officers from the relevant Ministries will be able to deal with the issues at hand.

Mr. Speaker, Sir, in that Report, the Task Force observed that 18,516 title deeds were issued in 2001 and 80 per cent of those title deeds were found to be regular. The Task Force further observed that forest legal boundaries have not been fully surveyed or demarcated on the ground. The Task Force observed that unless fundamental reforms are made in the way our natural resources are managed for sustainable development, the country is likely to continue to suffer.

The proposal of the Task Force is that, the Mau Task Force knows that the Kenyan forest cover is below the expected international stands as I have said and the Mau Forest Complex is the single-most critical water catchment in Rift Valley and western part of the country. The Task Force has observed that the entire bio-diversity is under threat and that millions of people dependent on the ecological services derived from the Mau are likely to suffer, unless something is done. What is important is to note that the implementation of the recommendation of this Task Force is vital and other fundamental factors need to be taken into account.

Mr. Speaker, Sir, it is important for us to ensure that the implementation of this report should be guided by the spirit of nationalism, patriotism and love for the country. It should be noted that national interests should be the overriding goal and not short-term scores at the expense of long-term national good. Implementation should be geared towards sustainable use of Mau Complex and natural resources. Conservation and rehabilitation of the Mau has raised concern of the public and the development partners who support an integrated approach in the entire Mau eco-system.

The Task Force in carrying out its duties will bear in mind that those people who are in Mau are Kenyans and that any steps taken to relocate the Kenyans that are within the Mau will take cognizance of the fact that the process must be humane. Civic education is important and all the political leaders in the region should be consulted and be brought on board so that the exercise is done smoothly.

Mr. Speaker, Sir, there has been a perception that political leaders in this area do not want the people to move out. While we have continued to interact with them, I have found that they are willing to cooperate with the Government in the process of relocating the people from Mau.

It should be noted that the Government initially did invite people to Mau but over a period, we had another group of people who were like third party victims who came and bought land from the original allottees and settled in Mau. There is another group that without caring about the destruction of our environment, moved into Mau with the purpose of doing illegal logging, making charcoal, yet they had no documents. So, while the Task Force was on the ground, this fact was obvious and now it remains for the Government to deal with this matter.

Mr. Speaker, Sir, it is important that the fact is recognised that those Kenyans who were given land by the Government must be compensated. These are many. As to exactly how many they are, the co-ordinating committee that was formed recently, will go on the ground and ensure the exact number with valid documents. However, at the end of the KANU regime, I am not very sure, even as recent as five years ago; some of the so called Title Deeds that were being issued in this country were not genuine.

So, it is possible that in Mau, many people will come with title deeds. However, it is our responsibility, as a Government, to do an audit of the title deeds and ensure that fraudulent title deeds are not taken on board.

There has been a perception that everybody who is in Mau will be compensated. I want to share some information with the House. As soon as we started talking about relocating some of the people from the Mau, we have had opportunists who have moved there with the hope that, should the Government be compensating the residents of Mau, they will also be considered. We are quite aware of that and we will make sure that the people to be compensated will be properly audited by the Ministry of Lands, whose docket decides whether or not a title deed is valid.

There are several recommendations of this report. I do not seek to enumerate all of them, but I want to mention a few. We do realize that boundaries on the ground need to be looked at again and demarcation of the 22 forest blocks must be done. We will set up a conflict and resolution mechanism to address conflict arising from use of natural resources.

We will fast-track the reforms in the forest sector. We will develop integrated restoration and management plans. In fact, there is a draft management plan in place and we are hoping that the secretariat will use some of the documents that are in our Ministry. We will work very closely with the secretariat to ensure that we make their task easier by giving them every historical document that they may need. We will develop an investment document and convene a conference on mobilisation of timely and adequate resources.

We intend to reclaim back approximately 4,000 hectares that were excised in 2001, but have not been settled on; we will revert the land to Government Forest Reserve. The Ministry of Lands will revoke all title deeds issued in the Likia extension, currently occupied and reclaim the area as a Government forest reserve. We will revoke all the title deeds that were issued either irregularly or illegally in the settlement schemes in the Maasai Mau Forest.

As I conclude, there is need to look for funds and Office of the Deputy Prime Minister and Minister for Finance are aware of this fact. However, we will also plead with stakeholders, business people, major international companies and friends of Kenya, who are represented here by the Ambassadors and High Commissioners. We are looking forward to making a case to all the stakeholders, who love the environment, knowing very well that what happens in Kenya will affect other countries as well. The destruction of our water towers has caused lower levels of water in our rivers. Some of our rivers have dried up. In Lake Victoria, the levels have gone down. Lake Naivasha is almost drying. We are told by our experts that in eight years time, we will not have Lake Nakuru because there is no river today that is flowing into Lake Nakuru. All the other lakes like Lake Elementaita are about to dry. The water from Lake Victoria serves other African countries.

I am emphasizing that what happens in this country has devastating effects in other countries. So, we are using these facts to plead with the international community that they should come to our aid. We have both long-term and short-term requirements. If you allow me, I will read the short-term ones.

For short-term interventions, adequate financial resources for the protection and the conservation of the Mau Forest Complex should be provided by the Government. Priority areas to be fully supported include boundary survey and marking, resettlement, including purchase of land, livelihood development, law enforcement and management. Just to mention a few long-term recommendations, whereas financial support can be secured from development partners, private sector and civil society organizations, the Government should take the lead as an investor in the conservation of the Mau Forest Complex.

(a) Budgetary allocations should be made for forest management to match the contribution of the forests which are often undervalued. To the national economy, the valuation of the environmental services should be carried out to guide the budgetary allocations.

(b) The conservation and sound management of Mau Forest Complex is not a forest, environmental or water conservation issue alone. Consequently, managing this resource should be considered a responsibility of many Ministries, in particular the Office of the Prime Minister, Ministry of Environment and Mineral Resources, Ministry of Forestry and Wildlife, Ministry of Water and Irrigation, Ministry of Lands, Ministry of Agriculture, Ministry of Industrialization, Ministry of Regional Development Authorities, Ministry of Energy, Ministry of Tourism, Ministry of Local Government, Ministry of Gender, Children and Social Development, Ministry of State for Special Programmes, Ministry of State for Provincial Administration and Internal Security and Ministry of Youth Affairs and Sports.

You can see that conservation of our water towers will involve all these Ministries, and we will be going to all sorts of people to come to our aid.

So, sustainable financial resource for the long term conservation of Mau Forest Complex should also be generated based on payment for service. We will bring in legislation for people who are consuming to contribute to conservation efforts. To complement Government funding, a Mau Conservation Trust Fund should be established to support mobilisation of resources.

Mr. Speaker, Sir, as I conclude, I want to plead with the House that this is a major catastrophe that has happened. It has not happened over five years. It has happened over the last 30 years. Yes, I know I am the Minister for Forestry and Wildlife, I should be doing a good job. But I have not been given the tools. As we talk about drought and we have had drought for two years, the subject of lack of water in our rivers, lack of pasture and human-wildlife conflict is there as we see today.

I must also commend the media for doing a wonderful job. The media has highlighted our problems to the extent that the international community is looking towards Kenya and saying: If Kenyans are willing to do something about the Mau Complex, we are coming to assist. So, I want to plead with hon. Members of Parliament to support this Motion. This is an issue affecting all of us. We are here and we do not want the future generation to blame us. We must do something. We must come out together. This is not a political party or tribal issue. I want to tell Members of Parliament, what I found when I visited Mau, Cherangany and Embobut. I was invited to the constituency of hon. Boaz Kaino. I was invited by the local leaders. This is what they told me. The Marakwets that live in Embobut Forest told me: "We are very worried about the settlement of people in the forest. We have decided on our own that unless the Government does something, we are prepared to go to the hills and remove those people." These are Kenyans themselves. So, the perception that Kenyans who are living in our forest are not aware of the damage, is misplaced. All Kenyans are prepared to move out provided we do that in a humane way. Therefore, I want to request my colleagues to support this Government arrangement so that we can see River Nzoia full again. Not that it will cost Mheshimiwa of Budalangi any problem. We are going to ensure that Budalangi people do not suffer because we have restored our forest. This is an effort that all of us should link up together.

With those few remarks, I beg to move.

The Assistant Minister, Office of the Prime Minister (Mr. Khangati): Mr. Speaker, Sir, I beg to second the Motion on the adoption of the Report of the Government Task Force on the conservation of the Mau Forest Complex. I am not going to take a lot of time because I know this is a matter that a lot of my colleagues would like to make some contribution.

I want to start by recounting two recent episodes. Today, I was attending a conference organized by UNIDO, in collaboration with the Ministry of Industrialization, at Panafric Hotel. This conference was attended by people responsible for industrialization in this country and the donor community that is expected to support that process, so that all of us can achieve Vision 2030 and provide employment for our youth. A very important question was raised: Yes, we want to industrialize our country, but can you give us energy? In fact, the main question is not whether we have people who are ready to move this country to the next level. The main question that we are all facing is the question of energy. As you all know, our energy is hydro based. It comes from the rivers and Mau Complex is one of the main water catchment regions. Therefore, all of us talk about energy and preserving the water towers. It is important that we start with Mau, so that we can move forward to other outstanding water towers.

The next episode I want to bring to the attention of the House is that I had an opportunity to overfly the Mau Forest and Lake Nakuru. It was quite evident that the Lake Nakuru is drying up. The hon. Minister has said it and I saw it with my own eyes.

So, does that mean anything to this country? It means that when Lake Nakuru dries up, the tourism industry that depends on it, will also die. The flamingoes will go away. The park that is supported will also disappear. So, it is very important that as we discuss the adoption of this Report, we take those two important cases into our minds. Therefore, the adoption of Mau Forest Complex Report has far reaching implications. We will have made significant progress in our conservation efforts by tackling the Mau issue. I think it will be the beginning of tackling the issue of conserving all water towers in the country.

Secondly, we have residents in the Mau Forest. Many of us here say, we should not disturb them. Others say: Yes, they should be moved away. I would like to pose this question to hon. Members: What do you think will happen? What goes on in the minds of the residents of the Mau Forest? To me, it means that these people are obviously a disturbed lot. They do not know what to do with their lives. They cannot, for example, plan to build schools that will support the education of their children. They cannot plan to improve their farms. They cannot undertake any meaningful economic activity because they live in fear. They know that at any time, an order can be given and they will be evacuated. It is, therefore, important that as we discuss these issues, we bring them to conclusion so that these people can be given a chance to start new life wherever they will be relocated. But if we argue and we know that soon, not even later, they will be removed, and then it makes it very unfair to them.

Mr. Speaker, Sir, I promised that I will not take long. I would like to say a few words. The Mau Forest Complex is a resource of both national and international significance.

It is part of an ecosystem of biodiversity networks that link trans-boundary lakes and rivers. The governance system in respect to the Mau Forest Complex must, therefore, reflect the international imperatives.

Substantial resources are required for the restoration of the Mau Forest Complex. Government budgetary allocations, donations by the private sector, who are by the way, waiting for us to make a decision before they can make commitments as on how much they can support the Mau efforts--- We also have the environmental management people who are ready to come on board and support us in this challenge. The cost of restoring and conserving the Mau Forest Complex far outweighs the cost of no action and its continued degradation. Our choices as a nation in this matter are fairly limited and straightforward. I would like to urge all the hon. Members to seize this opportunity and provide leadership in redressing the damage to the Mau Forest Complex and other water towers of our nation.

Mr. Speaker, Sir, I want to quote the concluding remarks in the Report, which has been made available to all Members. It reads:

“It is necessary to ensure that the ecosystem that the Mau Forest Complex provides and the economic benefits arising from these services can continue to be enjoyed by Kenyans in perpetuity. Failure to do so will lead to untold suffering by the people of Kenya and the neighbouring countries for which history will judge the present generation harshly.”

Mr. Speaker, Sir, with those few remarks, I beg to second.

(Question proposed)

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Speaker, Sir, I rise to support this Motion. This is a very important Motion and the decision by this House on it has far-reaching implications in this country.

Mr. Speaker, Sir, the Mau Task Force Report is very clear. If you look at Chapter I, you will find that the Task Force made certain recommendations. Likewise, if you look at Chapter II and III of the Report, you will find that there are specific recommendations. It is important that we do not delay this Report or the decision on the Mau Complex any longer. This House needs to make a decision now, so that those people who are affected can be re-settled humanely and the amount of money that the Government is seeking from the donors can be obtained and the forest rehabilitated.

Extensive damage has been done to the Mau Forest in the last 15 years. There has been a lot of encroachment and illegal settlement. There are several fundamental questions that we need to ask. Who was responsible for the degradation of the forests in this country for the last 15 years? One of those forests is Mau. The Government has tasked a Task Force to produce a report whose recommendations have been laid on the Table of this House. This august House must decide so that we do not push aside this problem and keep the people who live in the forest in suspense. So, it is important that we debate and adopt this Report. I just want to say that the guilty are afraid. Anybody who will oppose this Report should be guilty of a certain issue. Who was the Minister for Environment for the Republic of Kenya between 2001 and 2002?

The Assistant Minister for Energy (Mr. Keter): On a point of order, Mr. Speaker, Sir. My colleague, Maj-Gen. Nkaisserry, whom I respect has said that those who will oppose this Report are guilty. I thought we are here to debate the report, give the pros and cons and adopt it. Why is he intimidating hon. Members? Is he in order to do that?

Mr. Speaker: Order, Mr. Keter! The word “shall be guilty of something suspect” is not unparliamentary. He is not imputing any improper motive, as I see it. It is a perfect English word properly used in this context.

Proceed Maj-Gen. Nkaisserry!

The Assistant Minister, Ministry of Defence (Maj-Gen. Nkaisserry): Thank you, Mr. Speaker, Sir. You will, definitely, notice that some people will be jittery but we cannot be pushed. This country cannot be pushed to keep on delaying making decisions because some people are afraid of the truth. The people who live in the Mau are Kenyan citizens and they will not be chased. They will be handled humanely. The donors and other stakeholders are gearing to go. I am sure that this House is also for the rehabilitation of the Mau and other water towers of this country. I am also sure that this House is for the resettlement of the people who live in the Mau Forest.

Mr. Speaker, Sir, if you look at the recommendations in Chapter II, paragraph 38, on page 45, you will find that they are very explicit and we should not push them back but implement them. If you look at paragraph 42 on page 47, you will find that the recommendations are explicit. We do not need to push them back, unless somebody is afraid that he will be caught in-between. I am not anticipating debate but I have heard people lobby that we commit this Report to the Departmental Committee on Lands and Natural Resources. I have seen---

Mr. Speaker: Order, Maj-Gen. Nkaisserry! There is a Motion in respect of which proper notice has been given and we are not yet on it. So, remain relevant!

The Assistant Minister, Ministry of Defence (Maj-Gen. Nkaisserry): Mr. Speaker, Sir, somebody approached me and as a General, I had to speak the truth.

Mr. Speaker, Sir, if you look at paragraph 42 on page 47, you will find that it is very explicit. Likewise, if you look at paragraph 49 on page 50, you will also find that it is very explicit. These are recommendations of the Task Force and we cannot defer them to another day. The donor community has agreed to help our people to be re-settled.

Mr. Speaker, Sir, people will be resettled humanely. We are Kenyans and the people who live in the Mau Forest will be moved humanely though others are afraid of that. As far as I am concerned, we do not need another body which is likely to dilute the recommendations of the Task Force. As the august House of the Republic of Kenya, we should not politicize this Report. It is important that we move as per the recommendations of the Task Force and adopt it.

With those few remarks, I support.

Mr. ole Lankas: Mr. Speaker, Sir, I stand to support the adoption of the Report of the Task Force and I wish to say that the Report has come to his House at a very good time when we are experiencing many challenges. Climate change is a problem and it is an issue that we are addressing. Drought is biting very hard out there. There is a lot of community tension out there as a result of the problems in the Mau Forest Complex. That is why I am saying that time has come for us to adopt it and implement it.

This is a national issue and if you recall, it was with us in 2005 when the then Government attempted to remove people from the Mau Forest Complex or the Maasai Mau Forest, to be specific. But for some reason, it did not succeed and the issue was suspended. Now looking at the issue before us, the process started one year ago. As it went on, under the guidance and the leadership of the Prime Minister, a Task Force was formed to look into ways and means of conserving this natural resource which is causing a lot of concern all over, not only in Kenya but also beyond Kenya. The Task Force came up with recommendations which we are looking at today and I am saying that all the recommendations that are in the Task Force Report should be adopted. The Report is very clear on all the issues that are relevant to this matter. If it is the issue of compensation, which is causing a lot of anxiety, it is adequately addressed in the Report. If it is the issue of the eviction of the people, which is equally serious, we have said that they have to be moved in a humane manner.

Mr. Speaker, Sir, I want to say one thing: Right now in the Mau Forest, there is a group of people who are there and they are burning charcoal and logging. There are also squatters and land speculators. Leave alone the people who have laid claim and who we are talking about here. I have been saying that the four groups of people; the loggers, the charcoal burners, the speculators and the squatters should have left like yesterday. As I stand here, Mau Forest is burning. People are burning trees every passing minute. So, we cannot wait any more for the Government to take action and implement this Report. It is on the basis of this Report that people should be moved our immediately. So, what we are saying here is that, instead of making it look like a political issue, as it is already visible here--- This is not a community or tribal issue but a national issue. It is now time to act and save the Mau Forest Complex.

As has already been mentioned, these political utterances that we are hearing, is like blackmailing the Government to act in the direction of certain people. We have been patient for one year now waiting for this day to come, so that we can debate this Report

and come up with recommendations that are favourable to everybody. What we are witnessing is a situation where people want to make it look like if you do not have the numbers then nothing is going to happen. I want to make it very clear that there is tension out there now because of the Mau Forest Complex issue. People made it political. There have been political utterances that touch on the incitement of communities out there and it is on record. So, if we continue blocking this debate every time it comes to this House-- - You have just ruled on the issue of *Sub judice* that was before this House. The other day there was a petition in this House. So, for how long shall we keep on shifting the goal post; buying time?

Mr. Speaker, Sir, the Report of the Task Force was presented to the Prime Minister four months ago. The blocks that are in the Mau Forest Complex are 22. Out of the 22, only one is under the Trusteeship of the Narok County Council; the Maasai Mau Forest. As the Report says, this forest was encroached on illegally. So, we should not delay the process of saving the only forest with the little forest cover left, since most of it has been cleared. This is the only forest with a little remaining forest cover. As I have said, every minute a tree is being cut. So, for how long are we going to wait again?

Regarding the eviction of people, as we have said, there are those who are in the forest without claim. So, the compensation element is the responsibility of the Government. The Government knows who deserves or does not deserve compensation and it is in the Report. So, let people move out of the forest and let us save it. Those who deserve compensation can even be compensated outside the forest. The Government has a mechanism on how to sort them while outside the forest.

Mr. Speaker, Sir, what I am saying is that time is over on our side and we must act now. Any more delays will not help us at all. We should stop political posturing on this issue and take the necessary steps to save the forest if we seriously want to conserve it.

With those remarks, I support the adoption of the Report.

Mr. Namwamba: Mr. Speaker, Sir, I wish to propose an amendment to the Motion as moved and seconded.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, I beg to move that the Motion be amended as follows:-

By deleting the words “adopts” appearing in the first line and replacing thereof with the words “orders that” and secondly, by adding the following words after the numerals 2009, “be referred to the Departmental Committee on Lands and Natural Resources to consider the Report and any additional submissions thereon and report back to the House within seven days”.

Mr. Temporary Deputy Speaker, Sir, that the Mau Forests Complex and, indeed, the other six water towers must be conserved is a matter that cannot be belaboured. It is a matter of national and, indeed, international importance. But as we debate this matter, we need to be truthful and dispassionate. For instance, it is important for us to admit here that

the Ministry does not require a report to clear loggers, speculators and charcoal burners from the Mau Complex. That is an ordinary task that the Ministry should ordinarily be undertaking. So, for us to come to this House and attempt to argue that unless we have a report immediately, we cannot stop charcoal burners, loggers and speculators from destroying the Mau is not being honest and truthful.

However, that is not my point. There is an African saying that if you want to go fast, you walk alone, but if you want to go far, you walk with others. We have attempted to walk fast in this country previously on many national issues and we know where it has led us. This is one of those national matters that we cannot afford to run fast and alone. We must walk together on this issue, whether we like each other or not. How do we walk together in this matter? We will walk together by giving this august House, through its Committee on Lands and Natural Resources, which is properly constituted under Standing Order No.198(2), the opportunity to have an intimate appreciation and understanding of the Mau Forest Complex Report, so that we can debate these issues with utmost reason, especially since it is so obvious that we run a very high risk of falling victim to passions and emotions.

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

[Mr. Speaker resumed the Chair]

Mr. Speaker, Sir, there is a reason why this House, in its wisdom, saw it fit to have a Committee on matters that touch on land and natural resources. If we can have a Committee of this nature and stand here to argue that the Committee cannot become seized of this matter and shed more light on this matter to this House, I do not understand what matter that would be so significant as to be referred to this Committee, if not this particular matter. We can also walk together by carrying on board through this crucial journey, the broadest possible spectrum of views, genuine concerns and interests in this matter, because they are many. We must also walk together by calming genuine fears and apprehensions and responding to fundamental issues that continue to fester on the ground, especially in that area.

We also need to clean up the letter and spirit of this report. We need to make this report absolutely solid, so that we can seal any possible loopholes. I have looked at this report and on the face of it, I have already noticed certain glaring gaps and omissions that would make it an incomplete report, if adopted by this House in the hurried manner that we are attempting. I want to refer the House to Page 10 of this report, which makes reference to the methodology used in the compilation of this report. At points 17 and 18 on that page, the report makes reference to some crucial annexes, namely, Annexes 1 to 4 on page 18 and Annexes 6 to 8 on the same page. But when you look at the Report, from the first page to the last, you do not see the annexes. Do you want this House to adopt a report that is incomplete? Do you want this House to adopt a report that does not include critical information that the report apparently or supposedly has relied upon? This Report needs to be cleaned up. It needs to be completed. It needs to be solid, unless we are not serious and honest in the manner in which we want to deal with this matter.

Mr. Speaker, Sir, we must save the Mau Forests Complex. We must also save all the water towers in this country. But we must only do so within the bounds of the rule of law, with reasonable caution and with broad consultations. We must only do so with humane considerations. The imperative of environmental conservation must be balanced delicately with considerations of human rights and the sanctity of property rights that is guaranteed by no less than Section 75 of the Constitution. For instance, Page 45 of the Report, 38(b), arbitrarily recommends:-

“All title deeds given to companies should be revoked without compensation.”

The issuance of title deeds in this country is governed by the law. Property in this country is protected by Section 75 of the Constitution and not this House, nor the Minister for Lands, nor the Minister for Forestry and Wildlife. Neither the Prime Minister nor the President has the authority and power to revoke a title deed. This House cannot act in vain. This House must be guided by the law, its own rules and the Constitution.

Finally, I do not see any prudence in creating a new emergency in an attempt to solve another emergency. If we move with the haste that we are moving in, and the kind of emotions that are guiding this process, we are going to achieve exactly that. In an attempt to solve one emergency, we will create an even more diabolical emergency. So, I want to persuade this House that we refer this Report to a Committee of this House that has no vested political interest in this matter, that can consider this Report dispassionately with honesty and truth and guide this House to engage in reasonable debate on this Report and take a decision that ultimately, will be in the best interest of this country, today and unto posterity.

Mr. Speaker, Sir, I beg to move the amendment and ask hon. C. Kilonzo, the Member of Parliament for Yatta, to second.

Mr. C. Kilonzo: Thank you, Mr. Speaker, Sir. I have had opportunities to fly over the Mau Forests on several occasions and nobody, in his normal senses, will be against people being evicted, compensated and removed from the Mau Forests Complex. But when this issue came before the House, I objected and said that, indeed, the Government does not need a Taskforce Report to act. In the first place, there are adequate provisions of the law.

The problem in this country is that we are over-legislating. We are also appointing too many commissions and taskforces when we have enough laws and by-laws.

Mr. Speaker, Sir, allow me to show that there is no emergency that we must have this taskforce's report before the Government acts. Therefore, the relevant Committee should given ample time to go through the report. Enough law is there! We have the Forests Act which covers all aspects of the forests. There are other laws like the Chiefs Act which empowers the provincial administration to issue orders in relation to areas covered by forests. We have another law, the Wildlife Conservation and Management Act, dealing with forests and wetlands. We have the Antiques and Monuments Act which deals with protected areas, including forests. We have the Water Act and the Agricultural lands Act, but most important the law is very clear on what we should do if you want to acquire land.

The problem is the issue of compensation. There are people who are arguing that a particular category of people should not be compensated and others should be compensated. They are applying selective compensation. They are saying that if you have a company which owns a tea farm within Mau Forest, it should not be compensated. I

want to remind them that most of the skyscrapers here in Nairobi stand on former Government land that was allocated to companies. Are they saying that when it comes to compensation then we shall be saying we flaunt the law which is already there? We have a specific law, Land Acquisition Act, dealing with all aspects of acquisition of land. From day one, if the Government had come out very clearly and said: "We are going to acquire all land with title deeds and it will be compensated" There could have been no debate.

I have a particular interest in the issue of Mau Forest because how we do it in Mau Forest will determine how it will be done elsewhere in this country. If you go to Mbooni, it should be another Mau Forest. We should not be having people living in Mbooni Hills. So, what we do today in Mau Forest will determine whether it will be possible in future to remove people living in areas which are supposed to be forests. I do not agree with the good friend here that the Government cannot act because they were waiting for this taskforce's report. It is wrong! The Government should continue using existing laws which are very clear. Page 45, item, 38(d) says that all title deeds given to companies should be revoked without compensation. What law are we applying? A simple case is what happened in the Southern by-pass. The Government moved very fast, demolished properties which had title deeds. So, what did the people do? The owners went to court and the Government is now being forced to negotiate out of court because there is no way they can win the case in court. Some of these companies are multinationals. They came here believing that a title deed means a lot in this country. Banks have claims on these properties believing that title deeds mean something and then we in Parliament, as a legislature and the institution that is supposed to be upholding law, are the first to totally disregard the law.

Mr. Speaker, Sir, I would request that this document be referred to the relevant Committee. Let us not act in a hurry. The Government does not need this taskforce's report. It is only that it has refused to use existing laws because it has brought politics into this matter. I need to remind these people that for Mau Forest, the first person to be allocated land was the Queen herself. The next person to allocate Mau Forest was the Kenyatta regime and the third person to allocate Mau Forest was the Moi regime. So, we need to know what cutline we are going to set. Should we not go up to the Queen's time and change the boundaries? If we are going to do so, it is very simple; let us compensate people.

The Assistant Minister for Industrialization (Mr. Muriithi): On a point of order, Mr. Speaker, Sir. Just yesterday the Chair ruled that any Committee of this House is at liberty to investigate and inquire into any matter that it deems to be under its jurisdiction. Is the hon. Member, therefore, in order to be suggesting that this departmental Committee requires this House to direct them to do so?

Mr. C. Kilonzo: Obviously, Mr. Speaker, Sir---

Mr. Speaker: Order, Mr. C. Kilonzo! We will deal with that very quickly.

Hon. Members, there is before the House a Motion asking, among other things, that the House adopts the report of the taskforce. What is proposed in this Motion of amendment is an amendment to that original Motion. So, an amendment is valid and it passes the case for debate.

Mr. C. Kilonzo, please move to conclude!

(Applause)

The Assistant Minister of State for Defence (Maj-Gen. Nkaissery): On a point of order, Mr. Speaker, Sir. Is it in order for Mr. Namwamba, a very good lawyer, to suggest an amendment yet this report has been on the table of the House since 12th August, 2009 and he just required a week? What had stopped him from---

Mr. Speaker: Order, Maj-Gen. Nkaissery! Mr. Namwamba made his contribution and completed it in your presence in this House. You are certainly out of order!

Mr. C. Kilonzo, please move to conclude!

Mr. C. Kilonzo: Mr. Speaker, Sir, as I said earlier, there is enough law. We do not need a taskforce report for the Government to operate, especially when the taskforce report tabled in the House is not complete.

So, with those few remarks, I second that the report be referred to the relevant Committee.

*(Question of the first part of the amendment, that the words
to be left out be left out, proposed)*

*(Mr. ole Ntimama tried to stand
up in his place)*

The Assistant Minister for East African Community (Mr. Munya): Thank you, Mr. Speaker, Sir, I stand to oppose.

Mr. Speaker: Order, Mr. ole Ntimama! I did not realize that you were also in the process of standing! But Mr. Munya was ahead of you!

Hon. Members, those of you contributing, can you restrict yourself to five minutes, so that we give as much opportunity to many hon. Members.

The Assistant Minister for East African Community (Mr. Munya): Mr. Speaker, Sir, I stand to oppose the amendment for two key reasons. This House should never act in vain. What the Mover of the Motion is asking is for us to refer a report prepared by a technical taskforce that had the opportunity to go to the ground to investigate facts and make a report. The Committee will not have time because we are being asked for seven days, to verify the facts that are already investigated by this taskforce. So, the House will, therefore, be wasting time if it refers this matter to a Committee because it is not necessary to refer it to the Committee. The issues raised in the report are clear; we refer matters that are not clear to Committees. There is nothing unclear on this report.

The recommendations of this report are enumerated here very specifically; no hon. Member is raising any issue against the recommendations. So, I do not see any purpose for referring this report to the Committee other than wasting the time of the House and also wasting the time of the Government to implement this extremely important report for this nation.

For those reasons, I strongly oppose the reference of this matter to the Committee.

Mr. Speaker: Order, hon. Members! Please, note that under our Standing Orders, the restriction which I have enforced exercising the discretion of the Chair is limited only

to the amendment Motion. Otherwise, after the amendment is disposed of, you will be at liberty to contribute for up to 20 minutes!

Yes, Mr. ole Ntimama!

The Minister of State for National Heritage (Mr. ole Ntimama): Mr. Speaker, Sir, I rise to oppose this amendment. The password here is delay, but the bottom line is “evict”! These are delaying tactics. As the delay goes on, in a very short time, there will be no tree standing in the Mau. It does not matter. It might take a short time like a month or something. Even the question of waiting for two years for the issues to be dealt with is not acceptable. Mau would be finished by then! What those people are doing now is gnawing the Mau. They want to finish it by gnawing it to the bones, so that there will be no trees standing. This, in itself, is hypocrisy! This is selfishness by people who are continuing to be there.

Mr. Speaker, Sir, I am telling you that we have information. Already, as it has been said by other hon. Members, those people have already sounded war drums. Nobody has apologized for sounding war drums. What those war drums are doing is to target some of the communities around that forest. The longer this thing delays – and I want to say so very clearly - anything could erupt. Unless that thing is withdrawn and the Taskforce is allowed to do their work peacefully---

Mr. Speaker, Sir, we have been criticized in this House. The polls have been showing that even we, who are in this House, whenever anything comes--- We have discussed several scandals here, including that of maize and many others. But we saw the trend! The media and opinion polls show that some of us are thinking with our stomachs and not our heads.

(Applause)

Mr. Speaker, Sir, on the question of Mau today, I can see the same trend. There are people who are thinking, working and lobbying for their stomachs, and not for the safety of the people who are living downstream. Those people and their livestock are dying!

(Applause)

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to say that there are hon. Members who are thinking through their stomachs and yet, the hon. Member who raised this amendment rose on a valid point? Is he in order?

Mr. Speaker: Order! Hon. ole Ntimama did not use those words. So, if you are quoting him, you are not accurate and you are out of order! Mr. ole Ntimama, you need not respond to that point of order.

The Minister of State for National Heritage (Mr. ole Ntimama): Thank you, Mr. Speaker, Sir. If anybody is touchy, you can continue being touchy. But we are watching the trend. We are watching the people. We know who were in some of the corrupt scandals that were discussed last time and, probably, the same trend is here on the Mau issue! It is unfair for people to come here and pretend they are conservators, while they are not. People and livestock are dying.

Mr. Speaker, Sir, let me say very, very clearly here that, indeed, we--- This nation must be very careful! The environment is a very, very important issue. The G8 countries, in their consecutive meetings in Rome, London and somewhere else, their first agenda was global warming. They talked about global warming. They talked about gases being released into the atmosphere. They talked about forest cover. What are we going to do as a nation? When the British came to this country, the forest cover was 12 per cent. Now, we have only 1.7 per cent of forest cover in this country and some people are still telling us to wait; to wait for what? Even if this Report was not adopted or there were some mistakes, the bottom line is that the people must leave the forest. That should be accepted morally and legally because it is destroying the lives of other people!

Mr. Speaker, Sir, this nation must be careful because it could be pushed and be regarded as a pariah State, if we do not look after the environment. That is because by looking after the environment, you will be looking after the livelihood of your own people. You will be looking after the economy of your own people in a much broader way. Unless this country does that, we might actually end up being a failed State. That is what we are looking for! The kind of play we are doing here now of delays, waiting and developing certain arguments that look completely hopeless, shows very clearly that we are going to be a failed State in a short time.

Mr. Speaker, Sir, look at what is happening now. The Report says that we should remove those people humanely. Let me ask one question. Was the aggression, invasion and occupation of the Mau humane? It was not humane. It was rough, unfair and illegal!

(Applause)

Mr. Speaker, Sir, the other most important thing is: What happened?

Mr. Speaker: Order, hon. ole Ntimama. Your time is up! Proceed, Mr. Langat!

Mr. Langat: Thank you, Mr. Speaker, Sir. I want to support the amendment. All of us agree that we need to conserve the Mau “by yesterday” and we must follow the process.

Mr. Speaker, Sir, looking at this Report, even if we adopted it today--- I am looking at some of the recommendations in the Report where it says on page 25:- “All title deeds will be revoked.”

Even if we adopt the Report the way it is now, the question is who will revoke the titles and how many titles will be revoked?

Mr. Speaker, Sir, we have a clear separation of powers and somebody has said that this House cannot act in vain. I want to repeat that some of the recommendations that we have here, at the end of the day, if we adopt the Report the way it is, this House will be acting in vain. I do not want to act in vain and, therefore, we need to give this Report to a Committee. It will look at it more critically and ensure that the Report is complete. When you look at this Report, it is incomplete. Some of the annexes are not in the Report. How can the House make a decision without some of the annexes in the Report?

Therefore, Mr. Speaker, Sir, let us support the recommendation that this Report should go to the Committee, so that some of the issues that we have raised could be addressed. Then, we can see whether to adopt the Report in future.

With those few remarks, I beg to support.

The Assistant Minister for Water and Irrigation (Mr. Kiunjuri): Mr. Speaker, Sir, I stand here to oppose this amendment. You do not need to have gone to even nursery school or Standard One to know the danger that is being posed by the settlers in the Mau Forest. Either this Report is complete or incomplete. We do not even require this Report in order to take action. It is common sense to know the dangers that are posed to this country. There is no amount of argument that can justify continuous occupation of Mau Forest unless you want to tell us that you live in another world and you do not understand anything about the environment. Already the dangers of occupying the Forest can be seen and felt. Any minute of postponing the eviction of people from Mau Forest humanely is tantamount to postponing death for the people of this country. This is a national issue. It is not about a province or a certain group of people. It is about us our children and the future of this country. It will also affect the whole world. You can run, but there is no where you can hide. On the issue of Mau Forest, you can try to run, but you will not hide. Time has come for us leaders who have the interests of this nation at heart to say it is now or never. It is over. We cannot be allowed to use a village approach to tackle national issues. We shall be judged. Anybody who contributes to this Motion had better know that we can forget as Kenyans, but the country will never forget your contribution today. The way you try to delay this, we might forget, but the country will never forget or forgive you for what you are trying to do. It is not about settling political scores.

Mr. Speaker, Sir, continued stay of people in the Mau Forest should be classified as a crime against humanity. It is a crime because it has led to the deaths of Kenyans and people in other African countries. It is equal to genocide. We cannot come here and pretend that we do not understand this issue and yet all of us have gone to school and have degrees. None of us requires to be lectured on the dangers of occupying the Mau Forest. It is, therefore, upon us to rise to the occasion and stand firm. We do not care what you say about us, but the truth will stand on our side. That is why we support the Prime Minister in every move that he makes. Let these people be allocated land elsewhere and let the Government move a Motion here tomorrow so that we get land to settle the people from Mau Forest. Anything short of that is unacceptable. We have people who were evicted from those forests. For example, I was evicted from the forest, but I have not been compensated until today. We have the IDPs still in the camps and yet nobody has compensated them. However, we agree that the people living in Mau Forest should be allocated alternative land because they are Kenyans.

I challenge the hon. Members who are opposed to bring a Motion here tomorrow requesting money from the Government to settle these people. They could even question the Government, through a Question by Private Notice, why it has not got alternative land for these people. However, arguing here that people will remain in the forest until this matter is addressed at a later date which is not specified means nothing. At the end of the day, there are either errors in this Report or not. It is either complete or incomplete. We have said that people must move out of Mau Forest. We want nothing short of that.

Mr. Speaker, Sir, I request hon. Members of goodwill and nationalists as opposed to those who pretend – during the day they advocate for national issues while at night they are tribalists number one pointing fingers at others – that we do not refer this matter to that level.

With those few remarks, I do not support this amendment.

Mr. Mbadi: Thank you, Mr. Speaker, Sir, for giving me this opportunity to also support the amendment. I think we are losing the substance of the Motion before us. The Motion before us is not whether we should get people out of Mau Forest or not. We are simply saying that this matter is emotive and is serious. The matter should be referred to the relevant Departmental Committee so that it can look at it. Who knows whether the Committee will even come up with harsher recommendations than what has been spelt out in the Report by the Task Force? This Report needs to be handed over to the Committee so that it can look at it paragraph by paragraph, determine whether there are anomalies and then bring it back to the House for us to pass it. If we pass such a voluminous Report which is likely to have very serious implications, I do not think we will do justice to this country.

Mr. Speaker, Sir, a lot has been said about the urgency of the matter and nobody should deny that. However, we have just asked for seven days. I think my colleague who moved the amendment to the Motion requested for; that the Committee should be given seven days to look at this Report and then report to the House. Thereafter, we can adopt the Report. I urge that we go that route.

With regard to arresting loggers and those who burn charcoal in the forest, I do not think we have to wait for the adoption of this Report to enforce that. We could have an Executive decree like the one that was issued for the repossession of the Kenyatta International Conference Centre (KICC). We should hear the Executive authority declaring that the Government should move with speed to arrest any logger or charcoal burners in this forest. We do not need to wait for this Report to do that.

I support that we refer this matter to the Committee which will subject it to scrutiny.

The Minister for Regional Development Authorities (Mr. Gumo): Thank you very much, Mr. Speaker, Sir. I stand to oppose the amendment to this Motion. The Mau Forest issue is one that every one of us should support. I am sure that nearly every hon. Member who lives that side has flown over Mau Forest and has seen how the forest has been cleared. Majority of Kenyans have seen the drying up of rivers around the Mau Forest. You have even seen on television how hippopotamus find it difficult to take cover in the Mara River because of lack of enough water. Even crocodiles are dying because the forest has been cleared.

The majority of people in the Mau Forest do not even have title deeds. They should have left the forest long time ago.

Mr. Lang'at: On a point of order, Mr. Speaker, Sir. I think the Motion we are discussing is whether we should refer the Report to the Departmental Committee or not. The hon. Member is engaging the House in irrelevancies.

Mr. Speaker: Mr. Gumo, keep on speaking on the question, which I think you have been doing so far.

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Speaker, Sir, we do not need any more time. In fact, the Government should have acted long time ago. Nobody should be talking about this. Majority of these people, even if they were allocated land by the Government should know that it was wrong! Who told them to go to the forest? Who asked them to go there? Where did they buy this land from? Whom did they pay? In fact, if we joke around, it is like we are trying to ask the rest of the people who are not in the forest to move to the nearest forest.

That is what we are trying to say! We will be protecting the ones who are there, and they are a small number of people. Why should the people of Kenya die because of a very small number of people? Therefore, I oppose the amendment and ask the people who are in the Mau Forest Complex to, in fact, move out voluntarily and then ask for compensation, if they have to be compensated at all.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Members! We have heard contributions from both sides of the House. We have heard the pros and cons of the amendment. Therefore, it is now time to dispose of the amendment.

(Question of the first part of the amendment, that the words be left out be left out, put and negatived)

Hon Members: *Division! Division!*

(Several hon. Members stood up in their places)

Mr. Speaker: Fair enough! You have the numbers! Can you, please, ring the Division Bell?

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! Take your seats.

DIVISION

(Question put and the House divided)

Mr. Speaker: Mr. Speaker: Order hon. Members! Take your seats. Will the Tellers now approach the Chair?

(Question negatived by 34 votes to 30)

AYES: Messrs. Chachu, Cheptumo, Cheruiyot, Duale, Gabbow, Kaino, Prof. Kamar, Messrs. Kambi, Kapondi, Keter, Kigen, C. Kilonzo, Kiptanui, Koech, Mrs. Kones, Dr. Kones, Dr. Laboso, Messrs. Langat, Lessonet, Magerer, Mwaita, Mbadi, Mwiru, Namwamba, Mrs. Noor, Messrs. Ogindo, Otieno, Ruto, Dr. Shaban and Mr. Wamalwa.

Tellers of the Ayes: Messrs Wamalwa and Kambi

NOES: Messrs. Baiya, Gaichuhie, Dr. Gesami, Messrs Godhana, Gumo, Gunda, Kabando wa Kabando, Prof. Kaloki, Ms. Karua, Dr. Khalwale, Messrs. Khang'ati, Kioni, Kiuna, Kiunjuri, Kizito, Konchela, ole Lankas, ole Metito, Munya, Muriithi, Muthama, Mwathi, Nanok, Maj-Gen. Nkaiserry, Messrs. Ntimama, Nyamweya, Obure,

Dr. Oburu, Mr. Ogari, Prof. Olweny, Prof. Ongeru, Mr. Ruteere, Mrs. Shabesh and Dr. Wekesa.

Tellers of the Noes: Messrs Baiya and Kigen

ABSTENTION: Mr. Musyimi

ADJOURNMENT

Mr. Speaker: Hon. Members, it is now time to interrupt the business of the House. The House is, therefore, adjourned until tomorrow, Thursday, 10th September, 2009 at 2.30 p.m.

The House rose at 7.00 p.m.