

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 29th January, 2009

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

## ORAL ANSWERS TO QUESTIONS

*Question No.384*

RAID ON KTN PREMISES

**Mr. Were** asked the Minister for Provincial Administration and Internal Security:-

(a) whether he could give the names of the persons who raided the premises of the Kenya Television Network (KTN) in March, 2006, and explain the motive of the raid;

(b) how many people have so far been arrested and prosecuted in connection with the raid; and,

(c) whether he could explain why the Standard Group and the owners of KTN have not been compensated to-date and indicate when this will be done.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I would request that we wait for the Minister of State for Provincial Administration and Internal Security. He was supposed to be here by now, but I think he has been held up in the traffic jam. I wish to make that request.

**Mr. Speaker:** Well, we will be back to the Question a little later on.

*Question No.473*

CDF ALLOCATIONS AS  
STIPULATED IN THE ACT

**Mr. Speaker:** Mr. Nyamai! He is not here. In light of the treatment we have given to the Minister with regard to Question No.384, we will similarly come back to this Question a little later on.

*Question No.519*

EXPENDITURE ON  
AGRICULTURAL DEVELOPMENT  
PROJECTS IN MIGORI

**Mr. Speaker:** With regard to this Question, the Chair has information that Mr. John Pesa is away on parliamentary business elsewhere. So, the Question is deferred to Wednesday, next week.

*(Question deferred)*

*Question No.580*

DETAILS OF DEBTS OWED BY  
SUGAR-CANE FARMERS/COMPANIES

**Mr. Ochieng** asked the Minister for Agriculture:-

(a) whether he could

table details of debts owed by sugarcane farmers and sugarcane companies to the Government; and,

(b) when the Government will write off these debts.

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

(a) I hereby table details of debts owed by sugar-cane farmers and sugarcane companies to the Government of Kenya to the tune of Kshs41 billion.

(b) Consultations are going on among the various stakeholders within the Government with a view to determining how the debts will be dealt with.

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

**Mr. Ochieng:** Mr. Speaker, Sir, there was a taskforce that was put in place by the then Minister for Agriculture in 2003. The taskforce and the President while opening the ASK show in Kisumu in 2005, directed that these debts be written off. What has happened about that?

**Mr. Mbiuki:** Mr. Speaker, Sir, the Ministry has prepared a Cabinet Memorandum and is seeking the Cabinet's approval for the write off of the entire debt of Kshs41 billion.

**Mr. Lagat:** The Assistant Minister says consultations are going on to write off the debts. Could he tell the House how far the consultations are? Who are consulting?

**Mr. Mbiuki:** Mr. Speaker, Sir, we have the Ministry of Agriculture, the various stakeholders in the sugarcane industry, the Sugar Development Fund and the Kenya Sugar Board, among others. These institutions are consulting to ensure that these loans are written off. We have come up with a Cabinet Memo where we have requested the Cabinet to approve the write-off of the loans. Subsequently, we will table the same in the House for Parliament's approval.

**Mr. Imanyara:** Mr. Speaker, Sir, similarly, the President assured the coffee farmers, particularly in the Mount Kenya Region, more than five years ago, that the debts owed by the coffee farmers would also be written off. So far, they have not been written off. Could the Assistant Minister assure us that while these consultations are going on, no farmers will suffer the sale of their lands as a result of loans owed to banks due to the Government's failure to consult in time?

**Mr. Mbiuki:** Mr. Speaker, Sir, I would like to assure the Member that the loans owed by the coffee farmers to the tune of Kshs3.2 billion have, indeed, been written off. The money has been paid to the Co-operative Bank of Kenya, which had advanced the money to the farmers. Some of the loans have been written off. The coffee farmers do not owe any money to the Government as of now.

**Mr. Ochieng:** Mr. Speaker, Sir, I would like the Assistant Minister to be very specific as to when they will bring the Cabinet Paper to the House and when will the debts be written off?

**Mr. Mbiuki:** Mr. Speaker, Sir, we have made arrangements. I believe that in the course of the next two months, the Cabinet will approve the Paper. The debts will be written off by March next year when we will have completed the privatisation process of all the State-owned sugar mills.

*Question No.404*VALUE OF PROPERTY DESTROYED  
DURING POST-ELECTION  
VIOLENCE IN KISUMU

**Mr. Olago** asked the Minister for Trade:-

(a) what the total value of business premises

**[Mr. Olago]**

and merchandise destroyed in Kisumu Town during the 2007 Post-Election Violence is; and,

(b) whether the Government could consider assisting the traders in restocking and restoring their premises, and further encourage their respective insurers to make ex-gratia payments to assist them.

**Mr. Speaker:** The Chair has indication that the Ministry of Trade is not in a position to answer this Question today for a number of reasons, including that direction has not been given by the Chair on matters pertaining to the substantive Minister. We will, therefore, defer this matter to Wednesday, next week.

*(Question deferred)*

*Question No.115*MOTOR VEHICLE FOR KIIRUA  
POLICE STATION

**Mr. Speaker:** Mr. Ruteere! He is not here! Order hon. Members! We set a dangerous precedence this afternoon. So, we will have to come back to that Question a little later.

*Question No.327*KENYA'S CRIME STATISTICS  
FOR LAST FIVE YEARS

**Mr. Speaker:** With regard to Question No.327, the Chair has information that the Member concerned is away on parliamentary business in the northern part of this country, arising from a certain insecurity situation. So, we will defer the Question to Thursday next week.

*(Question deferred)*

*Question No.162*ADJUDICATION/REGISTRATION  
OF LAND BORDERING YALA SWAMP

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

(a) whether he is aware that all owners of land bordering or around Yala Swamp do not hold titles to their pieces of land;

(b) when the Government will undertake the adjudication and registration of all parcels of land in the affected areas; and,

(c) what plans the Government has to exploit the potential of the swamp for the economic gain and livelihood of the local communities, especially through agriculture and wildlife related tourism.

**The Assistant Minister for Lands** (Mr. Bifwoli): Mr. Speaker, Sir, the Minister is held up in the traffic jam. He is coming.

**Mr. Speaker:** Very well! We will revisit the Question a little later.

*(Laughter)*

Please, let the matter rest for the time being!

*Question No.294*

ELECTRIFICATION OF LOCATIONS  
IN MUTITO CONSTITUENCY

**Mr. Speaker:** Mr. K. Kilonzo! He is not here. We will come back to the Question later.

*Question No.306*

TARMACKING OF SIGALAGALA-  
BUTERE-SIDINDI ROAD

**Dr. Khalwale** asked the Minister for Roads:-

(a) whether he is aware that, in the process of raising Sigalagala-Butere-Sidindi Road (D260) to bitumen standard, both survey works and road design have already been completed; and,

(b) when the actual tarmacking works will commence.

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

(a) Yes, I am aware that both survey works and design for the road are complete.

(b) The estimated cost of the construction is about Kshs1.8 billion. The construction works will be taken to tender immediately this cost can be accommodated within the development ceilings issued by the Treasury.

**Dr. Khalwale:** Mr. Speaker, Sir, the Sigalagala-Butere-Sidindi Road is the busiest Class D Road in Kenya. It serves five constituencies, namely, Shinyalu, Ikolomani, Lurambi, Butere and Ugenya. I saw the Permanent Secretary, Treasury, in the company of interested Members. He assured us that in this financial year, they are setting aside Kshs100 million to kick off the process before the Government of Iran, which has committed itself to construct this road commences work. Could the Assistant Minister tell me when the Kshs100 million will be released, so that the initial works can commence? When will the Government of Iran come on site and start constructing this road?

**Dr. Machage:** Mr. Speaker, Sir, indeed, I did not participate in the discussion between the hon. Member and his group and the Permanent Secretary. So, I am not party to whatever they discussed. I have given my commitment that immediately the Treasury gives me about Kshs1.8 billion, I will endeavour to do my work. I hope the discussion they had will bear fruits to this end.

**Mr. Abdirahman:** Mr. Speaker, Sir, trunk roads in this country are so much dependent on good will from the Government or even from the Treasury. We are not sure whether these roads will

even be done because we are not clear on what plans this Ministry or any other Ministry has. What major trunk roads does the Ministry intend to fund in this current financial year?

**Dr. Machage:** Mr. Speaker, Sir, yes, in about two months, the list of the roads that have been prioritized for construction will be out, so that every hon. Member may see for himself what our priorities are.

**Mr. Abdirahman:** On a point of order, Mr. Speaker, Sir. Two months from now will not make much difference. If the Ministry does not know what its priorities are, do you think it will know them tomorrow? Is the Assistant Minister in order not to tell us what exact plans they have in terms of priorities today and not tomorrow?

**Dr. Machage:** Mr. Speaker, Sir, I am very much in order because I am also doing my research on the same.

**Mr. Namwamba:** Mr. Speaker, Sir, one of the reasons the infrastructure sector in this country is lagging behind, irrespective of the fact that it is key to the realization of Vision 2030, is the very restrictive budgetary ceiling placed on it by the Government. I want to find out from the Assistant Minister whether there are any plans or intentions to make adjustments on the budgetary ceiling for the infrastructure sector, especially in the forthcoming Budget. Unless we make massive investments in infrastructure development, we have absolutely no way to race towards our Vision 2030. I want to know from him whether there are any plans to adjust the budgetary ceiling for the infrastructure sector.

**Dr. Machage:** Mr. Speaker, Sir, indeed, that is also my wish. Since this House will have power to dictate the budgetary allocation, I pray that whoever will be in that Committee will look at the Ministry of Roads as one of the most important in this Government.

**Dr. Nuh:** Mr. Speaker, Sir, just as the Assistant Minister has said, that he is doing research on the priorities they are to tackle, is he also researching on what he will tackle in the 2008/2009 Financial Year or the 2009/2010 Financial Year?

**Dr. Machage:** Mr. Speaker, Sir, of course, the allocations for this financial year are done. It is from next financial year.

**Mr. Okemo:** Mr. Speaker, Sir, could the Assistant Minister shed some light on what he said about the introduction of the Infrastructure Bond that was launched by the Minister for Finance? What effect will it have on his plans for the road sector?

**Dr. Machage:** Mr. Speaker, Sir, the information we have from the Ministry of Finance is that it will have a positive effect on the development of the infrastructure in this country. We are also studying the same, but I think they were right.

**Dr. Khalwale:** Mr. Speaker, Sir, the meeting we had with the Permanent Secretary, Ministry of Finance, was not a joke. Since we believe that the Coalition Government is well co-ordinated under the Prime Minister, could the Assistant Minister undertake before this House, that he will take up with the PS Ministry of Finance, to confirm the position of funding with the Government of Iran, so that the people of these five constituencies can benefit from the Government? By the way, they pay taxes!

**Dr. Machage:** Mr. Speaker, Sir, I have been very explicit and I do not intend to call the hon. Member a joker, he has never been one. I believe that the meeting he had with the Permanent Secretary, Ministry of Finance was serious. I wish he could avail the minutes of the same, so that I can look at them and communicate with the Permanent Secretary at an advantaged position. However, thank you for having done a good job. I will follow it up.

*Question No.603*

HELB LOANS FOR EAST  
AFRICAN STUDENTS

**Mr. Wamalwa** asked the Minister for Higher Education, Science and Technology:-

- (a) considering that the Higher Education Loans Board (HELB) now disburses loans to students in private universities and those taking parallel degree programmes in public universities, why the Government has not extended the service to students in universities in the region such as Makerere and Dar es Salaam; and,
- (b) what plans the Government has to consider them.

**The Minister for Higher Education, Science and Technology** (Dr. Kosgei): Thank you, Mr. Speaker, Sir, I beg to reply. The Question by the hon. Member for Saboti could not have come at a better time. The reason we have not extended loans to the students in the university of Dar es Salaam, Makerere and others in the region has purely to do with historical reasons. However, at the moment, it is purely to do with availability of funds. We used the finances we got at the beginning of this financial year to extend the loans to the Kenyan students here at home, who were either pursuing parallel programmes or those who were enrolled in other universities. We have so far done an audit to find out how many students we are talking about in the region. Therefore, as soon as we get that information, we will put it in our budget, so as to seek finances from the Treasury to take care of these students. You can believe that those of us who went to regional universities would not have been happy to be discriminated against. Therefore, the policy now, and what we are doing, is to seek for more funding from the Ministry of Higher Education, Science and Technology for this particular sector, so that all those students who are qualified can benefit.

**Mr. Wamalwa:** Mr. Speaker, Sir, I am grateful to the Minister for a very encouraging answer. Very prominent Kenyans, including the Minister herself, and the President of this Republic, were students at Makerere and Dar es Salaam universities. I am very pleased that there is a plan to have them covered under this scheme. She has indicated that there will be some assessments being done to establish the number. How soon can this be completed because as you are aware, Madam Minister---

**Mr. Speaker:** Order, Mr. Wamalwa! You have already asked a question. Could you allow the Minister to respond? Do not try to explain why you have asked the question.

**Dr. Kosgei:** Mr. Speaker, we had a meeting yesterday and just before Christmas. As you know, the Budget is now in the process of being formulated by the Ministries. This will be part of the Budget that will be submitted to the Treasury before April for consideration.

**Mr. Baiya:** Mr. Speaker, Sir, I would like to know from the Minister why they do not consider students in intermediary level who are equally deserving rather than laying so much emphasis on university education, which may not be demand driven in terms of the need of our economy?

**Dr. Kosgei:** Mr. Speaker, Sir, the Ministry of Higher Education, Science and Technology gives bursaries to students in technical schools. I am not aware that someone has been discriminated against.

**Mr. Mbau:** Mr. Speaker, Sir, recently, a few hon. Members, including myself, had an official visit to Uganda. We had the opportunity to meet the Kenyan High Commissioner who revealed to us that there are 8,000 Kenyan students in Uganda. I would like the Minister to advise hon. Members what arrangements she can make to ensure that those students from Kenya, who apparently believe that higher education in Uganda is cheaper than in Kenya are assisted. Can there be a mechanism that would enable hon. Members, as they use their CDF kitty to assist those students who are pursuing higher education locally---

**Mr. Speaker:** Order! Order! ask one question!

**Mr. Mbau:** What mechanisms can be put in place to ensure that we are able, through the CDF, to assist those students in Kampala International University, Makerere University and other colleges?

**Dr. Kosgei:** Mr. Speaker, Sir, with the greatest respect, I am not aware that any hon. Member is blocked by anyone from using the CDF money to educate anyone anywhere in the world.

*(Applause)*

With regard to accessing those universities, it is not normally the Ministry that gets positions for students. This is an individual and private matter. When I went to the University of Dar es Salaam, I was sent there by the Selection Board. In those days, students were selected by the universities jointly. The University of East Africa was disbanded in 1970. Therefore, anyone who goes there accesses that education. If they need help from us, obviously, the Ministry is ready to assist them. I am saying this so that the hon. Member may know because I think you did not actually ask me a question that would be helpful to those students. I had to take up the matter with my colleague in the Ministry of Foreign Affairs---

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

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir!

**Mr. Speaker:** Is it a point of order or a point of information?

**Mr. Imanyara:** It is a point of information.

**Mr. Speaker:** The point of information must be consented to by the hon. Member who has the Floor.

Do you want any information?

**Dr. Kosgei:** Yes!

*(Applause)*

**Mr. Imanyara:** Mr. Speaker, Sir, I just wanted to inform the gracious Lady that the University of East Africa collapsed not in 1970, but in 1977.

**Dr. Kosgei:** Mr. Speaker, Sir, I am a product of those universities. So, let me use the Floor to inform my learned friend - I am not a learned friend, but just a friend - that the University of East Africa was disbanded in 1970. I say so, with no fear of contradiction. Therefore, let me inform my colleague that our plan at the Ministry is to station an Education *Attache* in Kampala. You may be aware that earlier on, someone said that Kenya does not need Education *Attaches*. I am quite certain that when you have 10,000 students as we have to-date in Kampala, we need an Education *Attache*. We have found funding for it. We just want concurrence from my colleague in the Ministry of Foreign Affairs, so that we can assist the students who are there, and to also assist in giving the Ministry information on how best to serve Kenyan students and their families.

**Dr. Nuh:** Mr. Speaker, Sir, I would like to ask the Minister what guarantee we have that with the emerging need to give loans to parallel students, the regular students will not be elbowed out?

**Dr. Kosgei:** Mr. Speaker Sir, all those students who will qualify will get. It is not our intention to elbow others out. However, I think all Kenyans need to have accessibility to the Fund.

**Mr. Wamalwa:** Mr. Speaker, Sir, I was in Kampala recently. Apart from not receiving any support from the Government through the Higher Educations Loans Board (HELB), there has been discrimination against the Kenyan students at Makerere where they are required to pay higher fees than the locals. What is the Ministry doing to protect our students out there?

**Dr. Kosgei:** Mr. Speaker, Sir, this matter is with us. We are already making representations to the Government of Uganda through the East African Community colleague.

*Question No.496*STALLING OF LORRY PARK  
PROJECT IN MAUNGU

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

- (a) whether he is aware that the construction of a lorry part at Maungu has stalled;
- (b) if he could clarify whether a feasibility study was conducted before the project commenced;
- (c) how much money has been spent on the project so far; and,
- (d) what plans he has to revive the project and accelerate its completion.

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

(a) Yes, I am aware that the construction of a lorry park at Maungu, which commenced on 1st August, 2007, has slowed down due to financial difficulties experienced by the county council of Taita Taveta.

(b) A general survey was undertaken by the council's officials before the project commenced. However, no thorough study was carried out on the financial implications.

(c) Phase I of the project has so far cost the council Kshs13,728,155.90.

(d) The council has been advised to continue with the project with limited funds from LATF as the Ministry explores other sources of financing the project to accelerate its completion.

**Mr. Mwakulegwa:** Mr. Speaker, Sir, I would like to inform the Assistant Minister that the date of commencement was before 1st August, 2007. The state of the project now is still as it was in July, 2007. Why was the council allowed to undertake such a project without a feasibility study?

**Mr. Githae:** Mr. Speaker, Sir, I said that the council undertook a general survey. The council constituted a task force which made observations on the parking trends of lorries along the main road. They realised that, on average, more than 200 lorries are parked every night. So, they realised that if they were to charge each lorry Kshs100 per night, they would be getting Kshs7,300,000 per year. From that general observation, it made sense.

Mr. Speaker, Sir, the main problem has been the delay in completion. The total cost of the project was supposed to be Kshs28,027,943.20. However, they have only done the first phase. They are now supposed to do the second phase, which is supposed to cost Kshs5,958,151 - They have that money. The contractor has, however, refused to continue with Phase II because of the delay of more than three years. He is requesting a variation of the contract. He says that if there is no variation, then he will not do Phase II. The council met and approved that there was need to do a variation. They will meet again on the first week of February, 2009, so that they can agree with the contractor on how to proceed with the next phase.

The survey showed that the project was viable only that there was a big delay from the time the project started up to now. That is what resulted in escalation of costs.

**Mr. Mwadeghu:** Mr. Speaker, Sir, is the Assistant Minister telling this House that a project of that magnitude could be undertaken without a proper feasibility study? Is this not one of the projects that will end up being a white elephant project in Taita?

**Mr. Githae:** Mr. Speaker, Sir, I said that a general survey was done and not a full feasibility study. From that general survey, it is clear that the project is viable. The council will be in a position to receive Kshs7.3 million a year if they were to charge each of the 200 lorries parking there at night, Kshs100 per night as parking fees.

The problem is that the initial cost was Kshs28 million and the council did not have the full



amount when they awarded the contract. Phase I has been done. With regard to Phase II, they have about Kshs6 million, but the contractor has refused to proceed until the amount is varied because of the lapse of time. The contractor is A. Bayusuf. He said that due to lapse of time, the cost of fuel, materials and services has escalated. So, he is not prepared to do the second phase at the same rate. He has, therefore, asked for a variation. The council will be meeting on 7th February, 2009, to negotiate the amount of money the contractor requires to be added to the initial cost so that he can complete Phase II.

**Mr. Bahari:** Mr. Speaker, Sir, whenever there is an issue with regard to local authorities, you will hear of financial difficulties or constraints. What is this Ministry doing to ensure that councils are run efficiently and that their sources of revenue are stable?

**Mr. Githae:** Mr. Speaker, Sir, that is a problem we have observed in the councils. However, we are doing certain things to ensure that they give services to wananchi. After all, that is the main purpose of their creation.

All the town clerks and treasurers who mismanage their councils will, henceforth, not be transferred to other local authorities. They will, instead, be sacked and surcharged. We have realised that when you transfer them to another place, you are just transferring the same problem.

Secondly, there are reforms being undertaken by the Ministry so that the councils can increase their revenue base. That way, they will be in a position to meet their daily requirements.

Thirdly, the councils have been instructed not to incur any expenditure on a project unless they have the full amount required to complete the project. In this particular project, they did not have the full amount of money to complete the project. They did not even make alternative arrangements to look for extra money. They just proceeded with the project on the basis of faith and hope. We have told councils that if they start a project and they are unable to complete it, that will be deemed to be abuse of office.

Fourthly, councils have been told that by 2011, all debts must be paid. Any local authority which will not have cleared its debts by 2011 will not receive a single penny from LATF.

**Mr. Mwakulegwa:** Mr. Speaker, Sir, I seek your indulgence to inform the Assistant Minister one or two things. Due to lack of a feasibility study---

**Mr. Speaker:** Order, Mr. Mwakulegwa! A point of information can only proceed if the Assistant Minister consents to be informed. Do you want to be informed, Mr. Githae?

**Mr. Githae:** Mr. Speaker, Sir, Shakespeare said that there is no end to learning. I have no objection to being informed.

**Mr. Mwakulegwa:** Mr. Speaker, Sir, this project is located in Maungu Location. From the main town to where this project is located, it is more than a kilometre. If you expect truck drivers to park their vehicles at night and walk in darkness to town for lodging, it will never materialise.

Secondly, the local community and the councillors did not support this project. It was initiated by the then Chairman of the council and supported by the chief officers purely because we believed---

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. I seek your guidance on the rules of this House. Can the Questioner really come up to give information on the Question he has himself asked? The hon. Member asked the Question. After the Assistant Minister has answered, he now wants to give him more information. Is that really in order?

**Mr. Speaker:** It is in order provided, as I assumed, that the hon. Member is giving information to the Assistant Minister so as to lay the foundation for further interrogation as I have allowed him to ask the last question.

**Mr. Mwakulegwa:** Mr. Speaker, Sir, as I asked before, my question is: Where will the county council get money to finalise that project? If they are going to use the Local Authority Transfer Fund (LATF) money---

**Mr. Speaker:** Order, Mr. Mwakulegwa, you have had all the indulgence and you have done

well to ask the question after laying the foundation. Allow the Assistant Minister to then reply!

**Mr. Githae:** Mr. Speaker, Sir, it is true that, that project is about 2 kilometres from the main town. But that is not a big issue. There are many *boda bodas* in that place. The truck drivers can use that road to travel from the parking area to town. So, that is not the issue.

Secondly, in the third phase, there are supposed to be street lights from the main town to the parking bay. So, that will take care of the darkness. But, if I could use the Floor of the House to sound a warning to local authorities--- What happens is that whenever a new chairman is elected, he disowns all the projects that the previous council had initiated. Whenever we have new councillors, they disown the other projects that the other councillors had started. They even disown the employees who had been employed. I am telling them---

**Mr. Mwakulegwa:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is misleading the House. There are no *boda bodas* in Maungu. There are no taxis in Maungu. There are no street lights in Maungu. No donkeys either!

**Mr. Githae:** Mr. Speaker, Sir, I have said that traffic lights will come under Phase 111. As for *boda bodas*, that is a good opportunity for enterprising Kenyans to start that business. Even donkeys can do that. That is also a good opportunity for the hon. Member of Parliament to assist his constituents to acquire *boda bodas* for that purpose.

Thank you.

**Mr. Speaker:** Hon, Members, we will go back to the Questions that we left in abeyance, beginning with Mr. Were's Question.

*Question No.384*

RAID ON KTN PREMISES

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

(a) whether he could give the names of the persons who raided the premises of the Kenya Television Network (KTN) in March, 2006, and explain the motive of the raid;

(b) how many people have so far been arrested and prosecuted in connection with the raid; and,

(c) whether he could explain why the Standard Group and the owners of KTN have not been compensated to date and indicate when that will be done.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I beg to request that since my colleague had started answering this Question--- He promised that he will be here to answer it. We regret what happened. Let me ask for the deferment of the same until Tuesday next week. I undertake to ask him to come and give a reply to this Question. I am very sorry on behalf of our department.

Thank you.

**Mr. Speaker:** Hon. Ojode, please, when you go back, inform your colleague that he is in breach of the Standing Orders of this House and he must, therefore, not fail to turn up on Tuesday.

**Mr. Ojode:** Mr. Speaker, Sir, I will do that.

**Mr. Speaker:** The Question is deferred to Tuesday next week.

*(Question deferred)*

Next Question by Mr. Nyamai.

*Question No.473*CDF ALLOCATIONS AS STIPULATED  
IN THE ACT

**Mr. K. Kilonzo**, on behalf of **Mr. Nyamai**, asked the Minister of State for Planning, National Development and Vision 2030:-

(a) whether he is aware that the CDF allocations for 2005/2006, 2006/2007 and 2007/2008 financial years were allocated to the various constituencies based on estimates, and not the actual ordinary revenues collected as stipulated by the CDF (Amendment) Act; and,

(b) why he allocated funds to constituencies based on Kshs10.1 billion and not Kshs11.6 billion, which is the correct amount as stipulated in the Act.

**The Assistant Minister, Ministry of State for Planning, National Development and Vision 2030** (Mr. Kenneth): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that CDF allocations for 2005/2006, 2006/2007 and 2007/2008 financial years were allocated to various constituencies based on budget estimates. That was occasioned by the fact that the actual ordinary revenues collected can only be ascertained at the closure of the financial year and on the subsequent audit of the same. Therefore, it is not practical to base the CDF allocations on the actual ordinary revenues for a financial year under consideration at any one time.

(b) It is true that, in the current financial year 2008/2009, resource allocations were Kshs10.1 billion instead of Kshs11.6 billion based on estimated ordinary revenue for the year. Considering the events of last year, and the current global financial crisis, the ordinary revenue targets will only be accomplished with extra efforts by all.

Our Ministry, together with the Ministry of Finance, will continue to review the situation on a continuous basis.

Thank you.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I want to thank the Assistant Minister for that comprehensive answer and his admission that the CDF allocations in the previous years were based on estimates. Given that we were able to get Kshs11.6 billion as opposed to Kshs10.1 billion, when does he intend to remit the difference to the constituencies? Could he give a commitment on that?

**Mr. Kenneth:** Mr. Speaker, Sir, going back to the actual figures of collection - because I have the audited and actual figures - in 2005/2006, the 2.5 per cent as per the Act was Kshs7,000,085,675. I am giving this figure so that I can answer his question in comparative figures. The allocation that was given was Kshs7.2 billion. So, the allocation was higher than the actual amount. In 2006/2007, the amount of money allocated was Kshs10,038,000,000 and 2.5 per cent of the actual was Kshs8.5 billion. So there was an excess payment. In 2007/2008, the estimated figure that was used was Kshs10.1 billion, whereas the actual amount was Kshs10.07 billion. That gives a difference of Kshs1,067,000,000. We have been fighting with the Treasury because they are saying that in the previous years, they overpaid. But we have managed to get a position that the extra Kshs1 billion that should be distributed to the CDF should be put in supplementary estimates and brought before this House. It is upon hon. Members of the House to ensure that, that amount is in the supplementary estimates.

**Dr. Nuh:** Mr. Speaker, Sir, when we received that as members of the CDF Committee, we found that the figures that the hon. Assistant Minister is giving are inaccurate. That is because the Treasury owes CDF about Kshs8 billion, if you start counting from 2005 to the current financial year. It is prudent that the Ministry, after actual realisation of the revenue, updates its records and factors it

in the financial year that follows. But they have not been doing that. So, could the Assistant Minister make a commitment that the Kshs8 billion that Treasury owes the CDF will be returned?

**Mr. Kenneth:** Mr. Speaker, Sir, first of all, I do not know where the figure of Kshs8 billion has come from. In some of the financial years, CDF ought to have refunded the Treasury some money because more money was allocated than what was actually realised. Unless the hon. Member is adding what was due, plus what is due to hon. Members.

Secondly, the role of passing any estimates whatsoever lies in this House. Therefore, every hon. Member has a duty, when the estimates are brought here, to raise certain issues that pertain to this subject.

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

**Mr. Speaker:** What is it, Mr. C. Kilonzo!

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House that in some of the years the Constituencies Development Fund (CDF) got more from the Treasury, while it is very clear under the Act that it is not less than 2.5 per cent? I was a Member of the previous Committee and we negotiated for 2.5 per cent. Is he in order to mislead the House?

**Mr. Kenneth:** Mr. Speaker, Sir, I am not misleading the House in any manner. Section 3 of the Act is very clear about the 2.5 per cent. The issue was raised here when we were trying to raise the percentage to go beyond over 2.5 per cent. It is quite obvious that Treasury has tied itself to a figure of 2.5 per cent. That was the basis on which I was able to say that in "particular years", basing on 2.5 per cent, the CDF got more money. That was the basis.

**Dr. Nuh:** On a point of order, Mr. Speaker, Sir. I am not a lawyer but I seek your indulgence here. If the Act says "at least 2.5 per cent" can that be a basis for saying that the Treasury will tie itself to that figure and see anything above 2.5 per cent as an excess to CDF?

**Mr. Kenneth:** Mr. Speaker, Sir, I do not think that is a subject for lawyers only. It does not require the ability of lawyers. The minimum figure is 2.5 per cent, and that is what the Minister has been factoring into the Budget. Those Budgets are passed by this House. The figures for allocation have been based on the bare minimum, which is 2.5 per cent.

**Mr. Okemo:** Mr. Speaker, Sir, I think the Assistant Minister will be in order to give us the figure relating to the ordinary revenue that has been collected, because 2.5 per cent is the calculation. I have a feeling that the Assistant Minister could have problems with calculating 2.5 per cent. Could he give us the figure of ordinary revenue collected for each financial year and we shall do the calculation?

**Mr. Kenneth:** Mr. Speaker, Sir, I think I did, in the supplementary question asked by Mr. K. Kilonzo, give the actual figures of the revenue collected. I even have copies here. I gave the actual figures and the actual estimates. I also gave what the 2.5 per cent should have been. If Mr. Okemo was not in the House, I can table this response on the Table, or repeat what I said.

**Mr. Speaker:** Order, Mr. Assistant Minister! You do not need to repeat it.

Mr. C. Kilonzo!

**Mr. C. Kilonzo:** Mr. Speaker, Sir, as I said earlier, I was a Member of the CDF Committee. In Financial Year 2006/2007, we were allocated 2.5 per cent, and we sat with the Ministry of Finance when we realised that it had collected more money than it had estimated. The Treasury released funds to the CDF to fill the gap. Could he assure this House that if there is going to be a gap, he is going to release more funds?

**Mr. Kenneth:** Mr. Speaker, Sir, again, I did answer that question. I said that in the particular year being quoted by Mr. C. Kilonzo, the 2.5 per cent actual collection was Kshs8.5 billion, but Treasury released Kshs10,038,000,000. I also said that in the year 2007/2008, the figure released had a shortfall, going by 2.5 per cent, of about Kshs1 billion. This amount will be included in the Supplementary Budget this financial year.

**Mr. Speaker:** Last Question, Mr. K. Kilonzo!

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I want the Assistant Minister to tell this House why it has taken so long for the Ministry to release CDF money for this financial year.

**Mr. Kenneth:** Mr. Speaker, Sir, as far as I am concerned, the money is not with the Ministry. The money was released to the CDF management committee and I think they are going to release it. The last time I was answering a Question in this House, I undertook to this House that money was going to be released and it was. Now it is being released by the management committee. Hon. Members should check with them, because we all need to have the money in the constituency for work to go on .

**Mr. Speaker:** Next Question, Mr. Ruteere!

**Mr. Ruteere:** Mr. Speaker, Sir, I apologise for not having been in.

**Mr. Speaker:** Order, Mr. Ruteere! It is not enough to say that you apologise. You must give an explanation as to why you were not in.

**Mr. Ruteere:** Mr. Speaker, Sir, I had gone to take some drugs because I have a flu.

*Question No.115*

MOTOR VEHICLE FOR KIIIRUA  
POLICE STATION

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

- (a) whether he could explain under what circumstances a vehicle, GK 928Q, assigned to Kiirua Police Station was diverted to another district;
- (b) what he is doing to ensure that Kiirua Police Station has a motor vehicle; and,
- (c) what other measures he is taking to curb crime in Buuri Division.

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

(a) I am aware that GK A928Q, a Land Rover, is attached to Kiiru Police Station, and the same has never been moved to any other station since deployment in the area.

(b) I can only provide an assurance to the hon. Member that the station has a serviceable vehicle, which has never been redeployed elsewhere.

(c) In addition to the serviceable vehicle, patrols by both the Administration and regular police officers have been stepped up in the area.

**Mr. Ruteere:** Mr. Speaker, Sir, I thank the Assistant Minister for the answer he has given. What he is saying is the position as of now. At the time when, I was filing the Question, the position was not as it is now. However, the vehicle which is now in Buuri was parked at the Officer Commanding Police Division (OCPD's) office, because the vehicle that he is using is not serviceable. Could he consider giving the OCPD a serviceable vehicle, so that he does not have to rely on his juniors?

**Mr. Ojode:** Mr. Speaker, Sir, I need your guidance here. The hon. Member is talking of a GK928Q, but we have never had such a vehicle. The vehicle which we gave that particular station, which is Kiiru, [Mr. Ojode] but he is talking about Kiirua Police Station. Are we reading from the same script? Maybe that is why he was saying that he has not seen that vehicle. The only vehicle which came from the Ministry for deployment to Kiiru Police Station, and not Kiirua, is GKA928Q. It is better for the hon. Member to check whether we are reading from the same script.

**Mr. Speaker:** You have done your bit.

Last Question, Mr. Ruteere!

**Mr. Ruteere:** Mr. Speaker, Sir, I think I am not competing with the Assistant Minister over which GK vehicle there is. I am trying to appeal to him now that Kiirua has a serviceable GK vehicle, could he consider giving the OCPD, who is more senior than the Officer Commanding Station (OCS), a more serviceable vehicle, whatever the registration number?

**Mr. Ojode:** Mr. Speaker, Sir, as of now, that GK vehicle is serviceable, and I am not in a position to give him another new vehicle, maybe until the next financial year, because what was there has already been allocated to other areas.

*Question No.162*

ADJUDICATION/REGISTRATION  
OF LAND BORDERING YALA SWAMP

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

- (a) whether he is aware that all owners of land bordering or around Yala Swamp do not hold titles to their pieces of land;
- (b) when the Government will undertake the adjudication and registration of all parcels of land in the affected areas; and,
- (c) what plans the Government has to exploit the potential of the swamp for the economic gain and livelihood of the local communities, especially through agriculture and wildlife-related tourism.

**The Assistant Minister for Lands (Mr. Rai):** Mr. Speaker, Sir, I want first to apologise for coming late. I was held up on the way. That notwithstanding, I wish to answer my colleague, who is my best friend and I believe that he will also pardon me for my coming late.

Mr. Speaker, Sir, I beg to reply.

(a) I am aware that some owners of land bordering or and around Yala Swamp between Budalang'i and Alego-Usonga Constituencies do not hold titles to their pieces of land.

(b) Kaugagi in Alego-Usonga Constituency is registered. Bar Olengo, Nyadorera "B" and Sumba sections in Alego-Usonga Constituency have been issued with certificate of Finality. Currently, Kadenge Adjudication Section is at an advanced stage. Magombe and Lugari Sections in Budalang'i Constituency are on-going but are affected by the perennial floods.

(c) Yala Swamp's potential was studied by the Government, and that led to the reclamation of Area I of the Swamp in 1979. Siaya County Council allocated this area to the Lake Basin Development Authority in 1981. In 2003, the Lake Basin Development Authority signed a memorandum of understanding with the Dominion Group of Companies, whereby it leased land to them for a period of 25 years. The Dominion Group of Companies proposed to use the land for production of rice on a commercial basis through the irrigation system. Plans are also afoot to re-introduce cotton development programmes under African Growth and Opportunity Act (AGOA) initiative. The Dominion Group of Companies has made strides in utilizing land for the community's economic gains, and improvement of their livelihoods through agricultural development.

Mr. Speaker, Sir, in 2005, the Lake Basin Development Authority (LBDA), in collaboration with the Tourist Trust Fund (TTF) developed a tourism master plan proposal for Western Kenya which comprehensively covers the Yala Swamp ecosystem.

**Mr. Namwamba:** Mr. Speaker, Sir, I excuse my friend for arriving late and I thank him for the attempt to respond to my concerns in this Question. However, I want to tell the Assistant Minister that the lack of land adjudication and registration in this area has considerably hampered any moves by

the people in this area to exploit this land. I would have expected that he would give some undertaking. My question is whether he can give some undertaking especially in reference to adjudication and registration in the Magombe and Lugari areas, actually, what we call the Bunyala South zone of Budalang'i Constituency. Could he inform the House when that will actually be done? Secondly, could he also take note---

**Mr. Speaker:** Order, Mr. Namwamba! It is Question Time. You have asked a question on when it will be done. That suffices! Let the Assistant Minister answer!

**Mr. Namwamba:** But Mr. Speaker, Sir, can I expound?

**Mr. Speaker:** Order, Mr. Namwamba! I will not treat you differently!

**Mr. Rai:** Mr. Speaker, Sir, with all due respect, I have taken the sentiments of the hon. Member and I wish to give my personal undertaking, that if the situation is not going to change, I wish to assure you that come the next financial year, we are going to make some provisions for money so that this exercise can be undertaken and completed within a very short period.

**Mr. Olago:** Mr. Speaker, Sir, where land is not under adjudication and it is not registered under any Act, it is referred to as trust land and the law applicable is the Trust Land Act. In the past, that Act has been used by the Government to disinherit Kenyans and they are evacuated without proper compensation.

Could he inform the House what steps his Ministry is taking to ensure that the unregistered portions of this land are not going to be used to the disadvantage of Kenyans living there?

**Mr. Rai:** Mr. Speaker, Sir, to the best of my understanding, trust land belongs to the county council and if at any stage anybody wants to tamper with this kind of land, first of all, there must be the setting aside of that particular land and the Commissioner of Lands has to be involved. So, as and when there is, maybe, any attempt by anybody to try and acquire land from these particular areas, I think there are laws which govern this particular land.

**Dr. Khalwale:** Mr. Speaker, Sir, the Assistant Minister has said that the LBDA is developing tourism in this area. Could he specifically tell us what tourist products are actually being developed?

**Mr. Rai:** Mr. Speaker, Sir, as you are aware, I actually happen to be in the Ministry of Lands but since this was a Government programme and I took this initiative, I am given to understand that these particular people are actually working in collaboration with the community on the ground to actually come up with some economic activities towards the tourism activities in this particular area to provide these people with eco-tourism products.

**Mr. Namwamba:** Mr. Speaker, Sir, I want to tell the Assistant Minister that it will be manifestly unjust to the people of Budalang'i for him to use the excuse of seasonal flooding to delay any further process of adjudication and registration of land in this area. Therefore, I would want to insist again that he gives an undertaking here that these causes of adjudication and registration of land in the Bunyala South area of Budalang'i be undertaken on priority basis. Could he please give that undertaking?

**Mr. Rai:** Mr. Speaker, Sir, I want to assure the hon. Member that we would like to capture this one in the next financial year. I would also just want to inform him that Dominion Company has also planned to start exporting fish under the Export Processing Zone (EPZ) and they have already applied for a licence for this matter. So, we are actually working for the same cause and planning to ensure that at least we have money available this financial year so that at least this exercise can start. In the event floods come, then we shall have no alternative but to stop. In the meantime, we want to factor this one in the next financial year so that at least it can be done.

**Mr. Speaker:** Next Question by Mr. K. Kilonzo!

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I apologise to the House for coming late. I was caught up in the jam.

*Question No.294*ELECTRIFICATION OF LOCATIONS IN  
MUTITO CONSTITUENCY

**Mr. K. Kilonzo** asked the Minister for Energy what steps his Ministry is taking to ensure that Mwitika, Voo, Kyamatu, Endau and Malalani locations are supplied with electricity under the ongoing rural electrification programme.

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

Hon. K. Kilonzo gave us five projects as his priority ones which fall under the same locations which he has quoted here and we have only taken one project which is Tua Market within Mwitika Location which is going to be funded this Financial Year 2008/2009 at the cost of Kshs17.7 million. Mutito Constituency was this year allocated Kshs17.55 million. There are other projects in the hon. Member's market centres which he has also forwarded to the Ministry of which survey works are ongoing. They are due to be completed by the end of next month. We are considering the two projects in Sombe and Kilangueni markets which fall under some two locations in his constituency.

Mr. Speaker, Sir, at this time, let me also inform the House that we have allocated each constituency projects. There are 238 projects within 115 constituencies throughout the country which are ongoing. To date, there are 16 constituencies which have not submitted their priority list and I want to kindly urge my colleagues to please do that. Otherwise, we are going to reallocate the money to other constituencies. There are four constituencies whose projects are less than the amount which we have allocated. We only applied the Constituencies Development Fund (CDF) this financial year. Come the next financial year, our master plan for the whole country will be ready by March this year whereby allocation will be done on the need for electrification in established constituencies.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I want to thank the hon. Assistant Minister for that comprehensive answer. However, I would like him to give us a date when he will visit this area so that he can see how it is under-electrified. This is the source of the coal which will be mined and which will help this country so that we stop depending on importation.

**Mr. Keter:** The hon. Member is requesting me to visit his constituency. Truly, we are doing the coal exploration which is ongoing. When the hon. Member is ready, he can tell me so that I can accompany him.

**Dr. Nuh:** Mr. Speaker, Sir, for constituencies that are not within the national grid like Bura constituency, rural electrification fund of Kshs16 million or Kshs17 million may not be of much help. Could the Assistant Minister consider other ways of allocating money that would be of **[Dr. Nuh]** benefit to the constituency? Could he pool these funds together over two or three years so that lumpsom can be of benefit to the constituency?

**Mr. Keter:** The constituency is where the mini-grids are far. I think we had a meeting with 22 constituencies and the hon. Member knows very well that we have set aside some money to assist those constituencies because the main HP line will be expensive. The Kshs17 million, which we agreed on with the hon. Members from those constituencies, can be used to purchase solar panels which can be installed within some of the institutions which are there. That is the agreement which we had talked with Dr. Nuh.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, Masinga Dam, which is the biggest reservoir, is located in my district. The towns near the dam do not have power, particularly Masinga Constituency, Yatta, parts of Mavoloni and Ndalani. When Kenya Power and Lighting Company was putting the high voltage cables to Nairobi, they never compensated those farmers. To date they have not been compensated and they do not have power. What is the Ministry doing to ensure that people in that



district or the centres near that dam are supplied with power?

**Mr. Keter:** This is the second time that Mr. C. Kilonzo is asking that question. Last time, I made a commitment that the facilities near the areas where we generate power will be considered. Philip Secondary School is being considered.

**Mr. K. Kilonzo:** The Assistant Minister has said that he is ready and willing to accompany me to my constituency when I give him a date. I want to invite him to visit accompany me to my constituency on Friday at 10.00 a.m. at Zombe Market. Could he accept my invitation?

**Mr. Keter:** Mr. Speaker, Sir, I will decline the date from the hon. Member. This Friday, I have a commitment in my constituency on CDF. I will be free any time next week after Wednesday. We can even go on Thursday next week.

**Mr. Speaker:** Very well. You can arrange that out of the House. There is a Ministerial Statement on the matter of Kilgoris. I understand the Minister is ready.

### MINISTERIAL STATEMENT

#### NON-CONSTITUTION OF TRANS MARA COUNTY COUNCIL

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Speaker, Sir, I would like to make a Ministerial Statement in respect of the issues raised by Mr. Gideon Konchella where he requested a number of issues. I would like to enumerate them for memory's sake. One of the issues he sought to seek is why the operations of the county council of Trans Mara have come to a standstill; why the council has not been constituted; who is responsible for the sorry state of affairs, and why companies owned by South African nationals are not remitting funds due to the county council as park entrance fee.

Mr. Speaker, Sir, I wish to respond as follows:-

The County Council of Trans Mara, unlike other local authorities, was not constituted immediately after the last general election because of a series of court cases lodged by the councillors in their endeavour to control council affairs. My Ministry, vide Ministerial Circular dated 18th February, 2008, directed all the local authorities to constitute their respective councils. However, it was not possible to constitute the county council of Trans Mara because returns from the Electoral Commission of Kenya indicated that elections in 14 wards were not concluded. It was, therefore, not viable to constitute the council as required by law. By this time, only eight out of the 22 councillors who were duly elected had been sworn-in. They were: Yiamboi Moses, Joseph Keah, David Saitai, Simeon Nesiria, Nekuro Kinyamai, John Kitiko, Stephen Kingi and ole Nkoidila.

Mr. Speaker, Sir, on Wednesday, 11th June, 2008, elections for Kilgoris Member of Parliament were repeated where Mr. Konchella was elected and the 14 councillors that had been affected were also held as elected.

I do not have to list the names of the 14 councillors because they are there. I also want to state that the following councillors were later nominated: Gladys Shira Cherop, Tunai ole Kijabe, Richard Kiprono Tororey and Michael ole Labula.

Given that nomination of councillors had also to be undertaken, it was, therefore, not possible to constitute a council until Wednesday 9th July, 2009. On this material day, the County Clerk duly administered the oath on the mentioned councillors including the elected 14. Election of the council chairman and chairpersons of various committees were conducted. However, it became apparent that during the elections, the councillors were seriously divided into factions allied to different clans as well as different local politicians. I am sure Mr. Konchella is aware of this.

Mr. Speaker, Sir, arising from the outcome of the said elections, some of the councillors led by

Councillor Lekishon ole Gem were aggrieved and dissatisfied with the exercise. They opted to challenge the propriety of the same in an action lodged at the Kisii Law Court vide Civil Case No.454 of 2008. On Tuesday, 7th October, 2008, the court ruled in favour of the said councillor and annulled the elections. As the Clerk prepared for a repeat of the elections, the following councillors lodged an appeal on Wednesday 29th October, 2008, in Nairobi Law Courts and they obtained a temporary stay of order issued in the Kisii High Court, appeal No.562 of 2008. These are Mr. Peter K. Koidila, Moses Yangoi, Daniel Langat, Lucy Agosine, Joseph Siambolei, Daniel Mutendei. The order obtained by these councillors was discharged and remitted to the Kisii Law Courts for mention on Friday 24th November, 2008. The case is yet to be finalised to allow the council to be constituted.

Mr. Speaker, Sir, the question is: Who is responsible for this sorry state of affairs? The kind of wrangles I have just enumerated clearly attest to the very sharp differences inherent among the different political factions in Transmara District. These wrangles have greatly contributed to the sorry state of affairs currently being witnessed in the council. It is my wish and that of my Ministry that the local leaders, including Mr. Gideon Konchella, will help and proceed with speed to resolve these wrangles so as to pave the way for the council to be properly constituted and for its operations to be effected like those of other local authorities in the country.

On the fourth issue, my Ministry is not aware of any fake court orders that are being used by a company owned by South African nationals to deny the County Council of Transmara revenue derived from the park entrance fee of US\$40 per person per day. However, I am aware that there is a local company known as Oleluluu Game Ranch Limited which owns Mara Conservancy that is adjacent to the national reserve with which the council has entered into a traversing rights agreement owing to existing mutual concessions and previous court orders. The current directors of the company are Mr. Martin Forst, Chairman; Messrs. Nigel Pavit, Samuel Tunai, Kuya Kijape, Brian Hip, John Konchella, Robertson and the Clerk to the Council.

Mr. Speaker, Sir, in conclusion, with all the differences in place, my Ministry has, in the interim, ensured that the council, under the Clerk, is managed as effectively as possible and operating as smoothly as possible within the requirements of the Local Government Act, and it continues to render services to the local people.

Finally, I wish to take this opportunity to appeal to all the leaders in Trans Mara to put the interests of their people first and set aside their differences, so that the council can move on amicably. We are also consulting with the Office of the Attorney-General, so that we can get some very clear guidance on how to proceed on this matter.

**Mr. Speaker:** Mr. Konchella, I will allow you to seek a maximum of three clarifications. Please, limit them to clarifications.

**Mr. Konchella:** Mr. Speaker, Sir, this is a very weighty matter, and I will require time to try and understand the Minister. I thank him but I think he is totally misinformed about the affairs of the council. The issue here is corruption perpetrated by his Ministry, and corruption perpetrated through the courts. Indeed---

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. Whereas I do not intend to minimise the gravity of the issue at hand, is it in order for the hon. Member to refer to the Judiciary adversely without moving a substantive Motion? He has said that the Judiciary is corrupt.

**Mr. Speaker:** Mr. Konchella, you are out of order! If you want to discuss the Judiciary, bring a substantive Motion.

**Mr. Konchella:** Mr. Speaker, Sir, I have a letter here.

**Mr. Speaker:** Mr. Konchella, stick to my direction!

**Mr. Konchella:** Mr. Speaker, Sir, I have a document here---

**Mr. Speaker:** Mr. Konchella, seek for clarification on the Ministerial Statement issued.

**Mr. Konchella:** Mr. Speaker, Sir, the Deputy Prime Minister and Minister for Local

Government mentioned a number of issues which, I believe, should be addressed. I want us, as a House, to protect the people of Trans Mara, because it is the only part of Kenya where the people are not getting services. They have a right to get services like any other Kenyans. I have a right to defend them, knowing that corruption has taken hold of the activities of the council.

Indeed, the councillors went to court to request the removal of the case, so that they could proceed and hold an election, but the magistrate always disappears. He either fixes the case on dates lasting a month or two months, or he would not be there at all. As a result, my lawyer has written to the Chief Justice, asking him to invoke his powers as provided in law, try to and bring sense to solve this problem, but nothing has happened.

My lawyer has also written to the Minister, asking for guidance on how the council can be constituted. The Minister has not even bothered to reply to a document that I have given to him, where the lawyer has said: "The council should go and hold an election." Personally, I was there last week. I had a meeting with 23 councillors.

Mr. Speaker, Sir, I have a resolution from them here through which they have, indeed, elected themselves and appointed themselves to the positions, based on what they perceive would bring them together. I have signatures of all the councillors, except five councillors. The five councillors who did not turn up for the meeting are the cause of the problem.

The cause of the problem is US\$40 being paid by every tourist to enter the park. This money is not being remitted to the council, because they went to court to claim a fictitious claim of Kshs180 million. The transactions relating to this claim have never been audited. I have asked the Minister to---

**Mr. Speaker:** Order! Mr. Konchella! I have given you much indulgence, as you sought.

**Mr. Konchella:** Mr. Speaker, Sir, give me the last one.

**Mr. Speaker:** You must now come to what is relevant for this moment. What clarification are you seeking from the Minister's Ministerial Statement? What is it that the Minister has not explained that you want him to explain?

**Mr. Konchella:** Mr. Speaker, Sir, he has not addressed my request that he orders the county council to hold an election immediately, so that they can run the council.

**Mr. Speaker:** Mr. Konchella, that is the first one. To help you, all you need to tell the House is: Can the Minister authorise?" Then you move to the next one.

**Mr. Konchella:** Mr. Speaker, Sir, should that not happen, I will want an investigation to be carried out since the Judiciary is involved in the malpractice or the corruption. The Ministry is not able to act. The councillors cannot run the council.

**Mr. Speaker:** Order, Mr. Konchella! Mr. Deputy Prime Minister and Minister for Local Government, the second request is: Can you authorise an investigation to be done?

That is it! You should have done that very easily, Mr. Konchella!

**Mr. Ruto:** Mr. Speaker, Sir, the Deputy Prime Minister and Minister for Local Government has issued a Ministerial Statement, but Trans Mara is a constituency which is really suffering. It has seen a lot of chaos. It is one constituency where the local Member of Parliament is actually suffering without bitterness. All the problems that he has surround the council. Could he clarify the relationship between the council and Mara Conservancy, and the collection of revenue and the role of one of the Nominated Councillors, whom he mentioned as a director? They have also gone ahead to stop the use of the Constituencies Development Fund (CDF) money in the constituency. They seem to be only interested in using Trans Mara County Council as own.

**Mr. Speaker:** Order, Mr. Ruto! What clarification do you wish to seek?

**Mr. Ruto:** Mr. Speaker, Sir, the clarification I wish him to make is the role of these nominated councillors in the collection of revenue. Could he clarify whether they are not paralysing the county council, so that they can continue to collect revenue from the Mara Conservancy? They continue

looting! They rake in up to Kshs5 million shillings per week. Could he clarify those issues?

Mr. Speaker, Sir, the other clarification I would like to get is whether there is no conflict of interest between the councillors he nominated and the council they intend to serve. Probably, that is why they have even gone to court.

**Mr. Speaker:** Order, Mr. Ruto!

Lastly, Mr. Wamalwa!

**Mr. Wamalwa:** Mr. Speaker, Sir, this matter is very serious.

**Mr. Speaker:** What clarification do you want?

**Mr. Wamalwa:** Mr. Speaker, Sir, what I want to know from the Deputy Prime Minister and Minister for Local Government is; when he says that the council was not properly constituted, how many councillors it should have to constitute? Secondly, if they were not able to get enough councillors, or even if there were councillors, but they were not able to agree--- In other cases, we have seen the Ministry step in and even dissolve the council, appoint a commission, like they did some time back at the Nairobi City Council. What steps did the Ministry take to intervene in this situation? For over one year, the people of Trans Mara have not had a local authority to take care of their affairs.

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

**Mr. Speaker:** Mr. ole Lankas, we will make an exception, because of the geographical location of your constituency.

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

**Mr. Speaker:** What is it, Mr. Ogindo!

**Mr. Ogindo:** Mr. Speaker, Sir, I thank you for the opportunity. Given the confusion on this matter, it looks like there is a scheme to frustrate Trans Mara County Council. Lack of leadership in the county council is a design to deny the county council an opportunity to run itself. This is, in effect, denying the citizens---

**Mr. Speaker:** Order! You have stood on a point of order. What was out of order as at the time you stood up?

**Mr. Ogindo:** Mr. Speaker, would I not be in order to ask?

**Mr. Speaker:** That does not make it a point of order!

*(Laughter)*

I am afraid, you are out of order.

Yes, Mr. ole Lankas!

**Mr. ole Lankas:** Mr. Speaker, Sir, I want to seek clarification from the Deputy Prime Minister and Minister for Local Government on the role that his Ministry played in the agreement between the local authority and Mara Conservancy. Secondly, I want to seek a further clarification on the annual budget of Trans Mara County Council and what amount of that budget is being financed by Mara Conservancy, because---

**Mr. Speaker:** Order, Mr. ole Lankas! You have asked for a clarification. This is not the time for debate. The Minister will respond by giving you the clarification as you have requested. You have requested two clarifications. Okay? You have actually done very well!

Proceed, Mr. Minister!

**The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi):** Thank you, Mr. Speaker, Sir. I will respond as follows:-

First, with regard to the question raised by hon. Konchella, indeed, he did give me an opinion

by a lawyer he had talked to, Letangule and Company Advocates, about how the matter could be dealt with. I want to admit that I saw the document. We are looking at his opinion and we are also seeking the opinion of the Office of the Attorney-General on the same, so that we can proceed. So, it is an opinion which he gave me and I acknowledge that he gave me that document.

Mr. Speaker, Sir, the second point I would like to respond to is that, the Mara Conservancy, that is the organisation we are talking about, was set up seven years ago. It was an agreement between the County Council of Mara, that group of people and the group ranch. On the sharing of revenue collected, it was agreed that on the 15th of every month, 41 per cent of the revenue collected goes to Trans Mara County Council, 19 per cent goes to the group ranch and the balance is retained for the conservancy for the purposes of operating and maintaining roads, equipment and salaries for the functions that they entered into in that contract.

Mr. Speaker, Sir, I would like to state that Samuel Tenai was and is, really, an opponent of hon. Konchella in politics. So, we are also dealing with an element of rivalry moving away from the political arena and finding its way into the management of the local authorities. I would like to state that on the Mara Conservancy, there is also an issue in this debate which relates to the Kichwa Tembo Lodge and the council. The Kichwa Tembo Lodge is the one that was leased to a South African company. The lease was between them and the Ololua Ranch, where Mr. Tenai and Mr. Kijape are involved. Now, I am bringing out this particular issue so that the House can know that we are not just dealing with a regular or a normal situation here. We are dealing with a very serious element of vested interests within the resource base of the Mara Lodge and the Mara County Council.

Mr. Speaker, Sir, I would also want the House to note that I read who are the directors of that company. It will be important that one looks at the HANSARD because for purposes of this House and for memory, I will read once again that there is Martin Foster as the Chairman, Brian Hip, Samuel Tenai, K. Kijabe, Nigel Pavet---

**An hon. Member:** On a point of order, Mr. Speaker, Sir. We want to follow what the Minister is telling us, but the consultations are very loud.

**Mr. Speaker:** Yes, indeed! Hon. Members, will you, please, lower the level of consultations so that we can hear the Deputy Prime Minister and Minister for Local Government?

**The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi):** So, Mr. Speaker, Sir, I had reached the name of Nigel Pavet, James Robertson, John Konchella and the Town Clerk of Mara Town Council. Those are the board members of that Mara Conservancy.

That, be as it may, Mr. Speaker, Sir, the point that is clear is that the County Council of Mara was not able to be constituted earlier because, if we recollect, we had only eight councillors who were elected in the actual General Elections. Then, there were chaos in that constituency. In those chaos, a lot of ballot papers and other things were messed up. There was no clear election for the others. Therefore, we could not have constituted a council of 22 councillors using only eight councillors, when the bulk of the councillors had not been elected because of the election chaos that had taken place.

**Mr. Konchella:** On a point of order, Mr. Speaker, Sir. Out of that Minister's clarification, am I in order to say that Trans Mara County Council has now been left to fend for itself and that the Ministry has no business to handle the problem?

**Mr. Speaker:** You will be out of order because you sought the clarifications that the Minister has responded to. There are other ways that you can take up the matter further, if you are not satisfied with the clarification so far given!

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

That is it, Mr. Ruto! I am sure the same will apply to you!

**Mr. Ruto:** One more clarification, Mr. Speaker, Sir!

**Mr. Speaker:** No! You are out of order! The matter must rest where it is!

### CONSIDERED RULING

#### HON. KIMUNYA' REAPPOINTMENT TO CABINET CANNOT CREATE A CONSTITUTIONAL CRISIS

Hon. Members, before we proceed to the next Order, I have the following communication to make.

Hon. Members, on 27th January, 2009, the hon. Member for Ikolomani, Dr. Bonny Khalwale, rose on a point of order seeking the directions of the Speaker on certain matters relating to the reappointment of hon. Amos Kimunya to the Cabinet.

Hon. Members, you will recall that on 2nd July, 2008, this House passed a Censure Motion against hon. Amos Kimunya, incorporating a vote of no confidence in the hon. Member and demanding his immediate resignation as a Minister of the Government of Kenya.

Hon. Members, Dr. Khalwale has questioned the legality of the reappointment of hon. Kimunya to the Cabinet in the light of a number of issues, which he cites. These issues include:-

(a) The subsisting censure and vote of no confidence against hon. Kimunya.

(b) The fact that hon. Kimunya's reappointment preceded debate by this House of the Report of the Departmental Committee on Finance, Trade and Planning investigating the sale of the Grand Regency Hotel.

(c) The fact that the reappointment was made, notwithstanding the Report of a Commission of Inquiry appointed by the President to investigate the matter of the sale of the Grand Regency Hotel had neither been made public nor tabled in this House.

(d) The fact that no independent institution had cleared hon. Kimunya from the grounds that culminated in his resignation. Dr. Khalwale further sought to know from the Speaker, the implication of what he refers to: "The Executive defying and ignoring Parliament."

(f) Finally, the hon. Member seeks the Speaker's direction on the way forward for: "The apparent constitutional crisis between the Executive and the Legislature."

Hon. Members, I have, in previous rulings called the attention of this House to the doctrine of separation of powers that is at the core of the functioning of our constitutional democracy. I have emphasised that it is a well settled principle of constitutional law, which is anchored in our own Constitution, that the Government functions best when its powers are dispersed among different branches. I have further emphasised that each branch of Government should exercise its powers in a fine balancing act to ensure that it properly and effectively carries its functions, while at the same time, it does not infringe on the powers and responsibilities of the other branches of Government.

Chapter 2 of the Constitution of Kenya establishes the Executive arm of Government, which comprises the President, the Vice-President, the Prime Ministers and Ministers. Executive powers are also provided for under Chapter 2. The appointment to and removal from the Office of Ministers of Government of Kenya is governed by Section 16 of the Constitution, which empowers the President, subject to the provisions of any written law to appoint Ministers from among Members of the National Assembly. The circumstances in which the Office of a Minister falls vacant are set out under Section 16(3) of the Constitution.

Section 16 of the Constitution, as read with the rest of the Constitution and other statutes, makes it clear beyond any shadow of doubt that the appointment and removal of Ministers of the Government of Kenya is the prerogative of the President. If the person appointed as Minister is eligible

in accordance with the terms set out in the Constitution and relevant laws, the legality of the appointment cannot, in my considered opinion, fall in the province of the Speaker to question. The constitutional discretion to appoint Ministers is, therefore, vested in the President.

Hon. Members, by dint of the self same constitutional principle of separation of powers, the conduct of the business of this House is controlled by the House itself, and not by the Executive. The tabling of the report of the Departmental Committee on Finance, Trade and Planning, and its disposal by the House, are matters under the exclusive superintendence of the House. The Executive cannot determine when or, indeed, if ever, the House will debate a report laid on the Table of this House.

*(Several hon. Members stood  
at the Bar)*

Hon. Members at the Bar may come in. It will take a little more time to finish.

Hon. Members, indeed, there have been reports laid on the Table of this House on which no further action was taken. For this reason, I am not persuaded by the view that the operations of the Executive, including the appointment or removal of Ministers, can be suspended indefinitely for the reason only that the House has not yet debated its own report.

I take a somewhat similar view on the subject of the Report of the Commission of Inquiry. The appointment of commissions of inquiry is governed by the Commissions of Inquiry Act, Cap.102 of the Laws of Kenya, the long title whereof provides that it is:-

"An Act of Parliament to provide for the appointment of commissioners to inquire into and report on matters of a public nature referred to them by the President, to prescribe their powers, privileges and duty and to provide for other matters relating thereto."

Section 7 of that Act makes it the duty of a commissioner:-

"To make a full, faithful and impartial inquiry into the matter into which he is commissioned to inquire in accordance with the directions contained in the commission, and in due course to report to the President in writing the results of the inquiry and the reasons for the conclusions arrived at."

The appointment and operations of a commission of inquiry, including the submission of its report and the action, if any, taken thereon, are matters within the province of the Executive. If the Executive chooses to involve the House, this is done by the tabling of the report of the commission on a Motion for its adoption by this House. Indeed, you will recall that on Tuesday, 27th January, 2009 this House had occasion to debate and adopt the Report of the Commission of Inquiry into Post-Election Violence. For these reasons, I am unable to accept the view that this House is entitled to receive and debate any particular report of a commission of inquiry, nor the fact that the report of such a commission has not been made public; a report not being tabled in the House does not in any way affect the prerogative of the Executive to appoint a Minister of Government. The recourse of this House, if it is dissatisfied with this state of affairs lies, as I will explain later in this Ruling, in its law making function.

Allow me to take a sip of water.

*(Mr. Speaker sipped water)*

Hon. Members, I believe that the foregoing grounds suffice to dispose of the contention that no independent institution, commission or any other authority has cleared Mr. Kimunya of the grounds that culminated in his removal. The removal of Ministers is not a matter, without more, that concerns the Chair. Indeed, the grounds for removal of a Minister are neither communicated nor required to be communicated to the Chair or to this House. They are matters peculiarly within the ambit of the

Executive.

Let me now turn to the question of the implications of what Dr. Khalwale referred to as "the Executive defying or ignoring the Motion of censure and vote of no confidence" in Mr. Kimunya as Minister of the Government of Kenya. This is, probably, at the core of the matters raised by Dr. Khalwale. It is a question that has vexed legislatures in other jurisdictions as well. In the Australian House of Representatives, if a Motion of censure or of no confidence in a Minister were successful, and its grounds were directly related to Government policy, the question of the Minister or the Government to continue holding office becomes one for the Prime Minister to decide. If the grounds relate to the Minister's administration of his or her Ministry, or sickness or otherwise to hold ministerial office, the Government need not necessarily accept full responsibility for the matter, and may opt to leave the question of resignation to the particular Minister to reckon with his or her conscience, or to the Prime Minister to appease the House and satisfy its sense of justice. In the Senate of the Australian Legislature on the hand, the passage of a censure Motion against a Minister will appear to have no substantive effect even though, depending on the circumstances, it may contribute to the pressures leading to a Minister's resignation or his/her dismissal.

Nearer home, in Uganda and Ghana, this question has been dealt with in relation to the same matter as is confronting us now, by explicitly making provision in their respective Constitutions. Article 118 of the Constitution of Uganda, provides for censure of a Minister by more than half of Parliament and sets out the ground upon which such censure may be made. The Ugandan Constitution then provides that upon a vote of censure being passed against a Minister, the President shall, unless the Minister resigns his or her office, take appropriate action in the matter.

Article 82 of the Constitution of Ghana makes similar provision. A Minister may be censured by Parliament by a resolution supported by not less than two-thirds of all Members of Parliament and where such resolution is passed against a Minister, the President may, unless the Minister resigns his office, revoke his appointment as a Minister. Note that the Ghanaian provision there says: "The President may unless the Minister resigns, revoke his appointment."

Hon. Members, in Kenya as in a good number of other jurisdictions, no Constitutional or legal provisions exist on the effects of a censure Motion or a vote of no confidence against an individual Minister of Government. Such a Motion is an expression of dissatisfaction in the performance or conduct of the concerned Minister by the National Assembly, which Assembly, under our Constitution, gives voice to the sovereign will of the people of Kenya. I emphasize the words "which Assembly gives voice to the sovereign will of the people of Kenya." It is to be expected that the Executive will think long and hard before taking any action that flies in the face of an unequivocal pronouncement of this House on such an important matter.

It is to be expected that in such a situation, the Executive might also consider invoking Standing Order No.42 to try and persuade the House to rescind its decision of censure. The Executive is at liberty, if it is so inclined to ignore the wishes of this House and proceed with the exercise of its constitutional functions, without taking heed of the proceedings and decisions of this House in as far as a censure Motion is concerned. The framers of our Constitution thought it wise to leave the Executive to be the best judge of its own interests. But if the Executive chooses to act in a manner inconsistent with a subsisting decision of this House, it must know that it does so at its own peril. This House, as hon. Members are no doubt aware, has at its disposal adequate constitutional and statutory mechanisms to respond to a challenge to its authority.

Hon. Members, the position as far as this House is concerned, is that the Motion passed by this House on 2nd July, 2008, censuring hon. Amos Kimunya and resolving that it has no confidence in him, and demanding his immediate resignation as a Minister, remains in effect.

Finally, hon. Members, allow me to allay hon. Dr. Khalwale's concerns as to the existence of what he described as "a Constitutional crisis between the Executive and the Legislature." There is, in



my considered opinion, no such thing. This matter has not, to my mind, generated anything close to a Constitutional Crisis. Indeed, it is probably a celebration of the functioning of our Constitution and, if you wish, democratic practice. I hold the view that the health of any democracy is best gauged when its core principles are put to test.

Thank you.

*(Applause)*

Next Order!

## PROCEDURAL MOTIONS

### EXTENSION OF SITTING TIME

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, notwithstanding the provisions of Standing Order No.17(2), this House orders that the time of interruption of business today, Thursday, 29th January, 2009, be extended from 6.30 p.m. until the conclusion of the business appearing in the Order Paper.

Mr. Speaker, Sir, the Motion is necessitated by the nature of the business appearing on the Order Paper today and I would urge Members to support it. This is a Procedural Motion that is normally moved when the House has urgent matters before it. The matter before hand, having been a rider after consultations, which not only involved the two sides of the Coalition, but also Members of Parliament, is by nature urgent.

Therefore, I beg to move.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae) seconded.

*(Question proposed)*

**Mr. Imanyara:** Mr. Speaker, Sir, since this is only a Procedural Motion, which no one has any serious objection to, I beg to support.

*(Question put and agreed to)*

### REDUCTION OF PUBLICATION PERIOD: CONSTITUTION OF KENYA (AMENDMENT) BILL

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order No.98, this House orders that the publication period of the Constitution of Kenya (Amendment) Bill be reduced from 14 days to one day.

Mr. Speaker, Sir, it will be recalled that this Bill has been arrived at after consultations, not only between the two sides of the Grand Coalition Government but also consultations that involved the entire Parliament in a *Kamukunji*. That meant that although it could have been developed during our recess, we waited for when Parliament was sitting to arrive at a consensus on these very weighty

matters. The Bill was, therefore, published yesterday after the conclusion of those consultations.

Mr. Speaker, Sir, I dare say that all Members are aware of the contents of this Bill, having discussed it together. I would also like to remind hon. Members that we adopted the very same procedure of shortening the period of publication of the Bill when we ushered in the National Accord that brought in the Grand Coalition Government and also, last year after consultations that necessitated publication of a new Bill for the Constitution of Kenya (Amendment) Bill in accordance with the Kriegler Report.

Mr. Speaker, Sir, I would urge hon. Members to support the Motion to enable us deliberate on the matters of the Constitution of Kenya (Amendment) Bill which will enable us to discuss the next Motion to usher in the statute for the Special Tribunal to rid of the country of the garbage brought by the violence of the election period.

I beg to move.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Speaker, Sir, I beg to second.

*(Question proposed)*

**Mr. Imanyara:** Mr. Speaker, Sir, once again and in order to shorten time, I urge that the Question be put.

*(Question put and agreed to)*

**Mr. Speaker:** Next Order!

REDUCTION OF PUBLICATION PERIOD:  
SPECIAL TRIBUNAL FOR KENYA BILL

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of Standing Order No.98, this House orders that the publication period of the Special Tribunal for Kenya Bill be reduced from 14 days to one day.

Mr. Speaker, Sir, the reasons for this are similar to those I gave for the earlier Motion.

I beg to move.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Speaker, Sir, I beg to second.

*(Question proposed)*

**Mr. Imanyara:** Mr. Speaker, Sir, for the reasons that I gave previously, I suggest that you put the Question.

*(Loud consultations)*

**Mr. Speaker:** Order, Mr. Imanyara! Your colleagues have not heard you. They want to hear you.

**Mr. Imanyara:** Mr. Speaker, Sir, I am suggesting that because this is a procedural Motion and for the reasons I have given in the previous Order, I ask that you put the Question.

*(Question put and agreed to)*

**Mr. Speaker:** Next Order!

**BILL**

*First Reading*

THE CONSTITUTION OF KENYA  
(AMENDMENT) BILL

*(Order for First Reading read -  
Read the First Time -  
Ordered to be read the Second  
Time today by leave of the House)*

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

**Mr. Speaker:** Next Order!

THE CONSTITUTION OF  
KENYA (AMENDMENT) BILL

*Second Reading*

*(By Leave of the House)*

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

**Mr. Speaker:** What is it, Mr. Imanyara?

**Mr. Imanyara:** Mr. Speaker, Sir, as the Order Paper clearly indicates, in order for this House to proceed to Second Reading, leave of the House is required. I am standing to signify that we are opposed the granting of leave. The hon. Members who are standing with me, agree with me.

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

**CONSIDERED RULING**

SECOND READING OF CONSTITUTION  
OF KENYA (AMENDMENT) BILL  
CANNOT BE TAKEN AFTER LEAVE  
OF THE HOUSE HAS BEEN DENIED

**Mr. Speaker:** Order, hon. Members! Given that Mr. Imanyara is standing to indicate that the House does not want to grant leave, I would want to draw your attention to Standing Order No.98 which says:-

"No Bill shall be introduced unless such Bill, together with the memorandum referred to in Standing Order No.97 (Memorandum of objects and reasons), has been published

in the Gazette (as a Bill to be originated in the House), and unless, in the case of a Consolidated Fund Bill, an Appropriation Bill or a Supplementary Appropriation Bill, a period of seven days, and in the case of any other Bill, a period of 14 days, beginning in each case with the day of such publication, or such shorter period as the House may resolve with respect to the Bill, has ended".

Hon. Members, I want us to move on to Standing Order No.99 which says:-

"Save with the leave of the House, not more than one stage of a Bill may be taken at any one sitting:

Provided that the provisions of this Standing Order shall not apply to or in respect of any Appropriation Bill or Consolidated Fund Bill"

So, the only exceptions where two or more stages may be conducted by this House in any one sitting, are the Bills which are specified under Standing Order No.99.

Hon. Members, the leave of the House is given if no Member objects. But, if a Member objects and he has the support of at least two other Members, then that leave shall be deemed not to have been granted.

*(Applause)*

This is set out clearly in the Standing Orders pertaining to definition of "Leave of the House" which I shall read:

"Leave of the House" means there being no objection by any Member either with the sympathy of Mr. Speaker, or with the support of at least two other Members".

In this case, hon. Members, please, note that Mr. Imanyara does not require the sympathy of the Speaker because he has the support of two other Members. Therefore, leave is not granted.

*(Loud consultations)*

Order, hon. Members! In view of what has transpired and in respect of Order No.11 in the Order Paper, it is, therefore, not possible for the House to take Order No.12.

We will now proceed to Order No.13.

## **BILL**

### THE SPECIAL TRIBUNAL FOR KENYA BILL

#### *First Reading*

*(Order for First Reading read - Read the First Time - Ordered to be read the Second Time today by leave of the House)*

## **COMMUNICATION FROM THE CHAIR**

DEFERMENT OF SECOND READING/  
COMMITTEE STAGE: THE SPECIAL  
TRIBUNAL FOR KENYA BILL

**Mr. Speaker:** Order, hon. Members! Order No.13 on the Order Paper is now dealt with appropriately. This is because that was First Reading and it is actually permissible. Now, Order No.14 and Order No.15 will have to be deferred. We will then proceed to Order No.16.

### MOTIONS

#### ADOPTION OF REPORT ON SALE OF GRAND REGENCY HOTEL

THAT this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the sale of Grand Regency Hotel laid on the Table of the House on Tuesday, 21st October, 2009.

*(Mr. Okemo on 28.1.2009)*

*(Resumption of Debate  
interrupted on 28.1.2009)*

**Mr. Speaker:** Mr. Konchella, you have a balance of eight minutes!

**Mr. Konchella:** Thank you, Mr. Speaker, Sir.

*(Loud consultations)*

I would like to seek the indulgence of the Chair that I be heard.

The Grand Regency Hotel is the property of the people of Kenya. The purpose of disposing of the hotel was for Kenyans to gain. However, as this Report indicates, there is more than we can imagine. I will spare a little time to highlight areas of concern that we must address. As legislators, we must address the issue of impunity, corruption and the looting of resources of this country by a few people who want to enrich themselves.

Mr. Speaker, Sir, I stand here on a matter of principle. I am here to advocate for justice and talk against the impunity I have just talked about. The sale of the Grand Regency Hotel was a matter of economic sabotage of our country and its people. It was, indeed, immoral and injustice to the people of Kenya. The Grand Regency Hotel was built 20 years ago using public money. The best the Executive could have done was to sell the property to the people of Kenya. There are co-operative societies and other institutions which could have bought the hotel. The people of Kenya should have been given priority when the hotel was being sold.

The media has informed us that Kenya needs to be liberated from greed, laziness and plunder by leaders. This is the time we must say no to the acquisition of our national resources by individuals for their own economic advantage. Nobody has talked about NSSF. The Minister has, all along, tried---

*(Loud consultations)*

**Ms. Odhiambo:** On a point of order, Mr. Speaker, Sir. Hon. Members are consulting too loudly.

**Mr. Speaker:** Order, hon. Members! Please, lower the level of your consultations so that we can hear the hon. Member on the Floor.

**Mr. Konchella:** Thank you, Mr. Speaker, Sir. Unless there is a group that does not want to hear what I am saying, I will continue.

The Minister for Labour has tried to find a voice that would help him address the issue of theft of billions of money at the NSSF. Nobody seems to care because those who took the money are being protected. They have operated with impunity.

The other day we were talking about the oil saga. This is already a problem in this country. Our people are now paying dearly in order to fuel their vehicles. These are the things that we must address. We have just been talking about the maize scandal. People are going without food because somebody has stolen all the maize in this country. It is time for us to defend our people.

Mr. Speaker, Sir, when I look at this Report, I get the feeling that it is an attempt by the Committee to address this matter. However, they are not able to do so because every aspect of this Report has an element of sabotage. Allow me to go through some of the lines in the Report. In Section 3(1) of the Report, it states that the Minister informed the Committee that due to sensitivity of the issues surrounding the sale of the hotel, the information given to the Committee would be limited. This means that the Committee was not given full disclosure. When you continue downwards, the Minister further clarified that there was connection between the repossession and the disposal of the Grand Regency Hotel and granting amnesty to Mr. Kamlesh Pattni since the criminal case was between KACC and the Attorney-General. The Minister also informed the Committee that the hotel did not make any profit from 1999. He further informed the Committee that the CBK did not receive any money from the hotel between 1999 to 2002 since Uhuru Highway Development Limited (UHDL) was in charge. There was no trace of money there.

Let us now move to a Kenyan, Mr. Ndaa, who was appointed to manage the hotel. In page 6, it is said that he was appointed the receiver manager of the Grand Regency Hotel on 31st May, 2004 purely on professional basis. He was proposed by UHDL and he denied being a friend of Mr. Kamlesh Pattni. At the time of his appointment, the hotel was facing liquidity problems, but within six months, he managed to turn round the hotel and paid all the debts. This means that the hotel was viable from the beginning. We must be told where the money from this hotel for 20 years went. They know where it is.

Mr. Speaker, Sir, this gentleman termed the allegations by the CBK and the Treasury that the hotel had never made any profit as misrepresentation of facts because the hotel's performance had greatly improved since 2004 and was making profit. He informed the Committee that the CBK had access to the financial statements of the hotel.

Mr. Speaker, Sir, Mr. Wanjohi, as underlined here on page 3 said that, the valuation of the Hotel was carried out by another valuer, Lloyd Masika from the Central Bank of Kenya in February 2008. But the CBK did not disclose the content of that valuation up to date. So, whether they valued it for Kshs10 billion, we do not know. That is because it has never been disclosed. He further informed the Committee that Kamlesh Pattni had the entire 13th Floor of the complementary rooms where he would accommodate his guests for free, except for meals. As a result, he had a debt of Kshs7 billion.

*[Mr. Speaker left the Chair]*

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

Madam Temporary Deputy Speaker, that being the background of what is going on, hon. Justice Ringera pointed out some very pertinent issues which this House must really address, if we want to sort out this issue. The Director said in Part 6: "He further stated that KACC did not consult the Attorney-General on Grand Regency Hotel matter as this was a civil suit and not a criminal suit."

What I am trying to bring out is the issue of Pattni occupying the 13th floor and the issue of those who came to buy that property.

The Director further informed the Committee that the hotel bank account had over Kshs341 million. That was money that was raised out of the management of the hotel for six months. He had cleared all the bills and put that money in the account.

Madam temporary Deputy Speaker, when you look at what Pattni said--- He categorically said he had handed over the Grand Regency Hotel to the Central Bank of Kenya on condition that all criminal and civil cases against him and his associate companies would be withdrawn. The handover of the hotel was meant to give him amnesty in regard of all civil and criminal cases against him and his associated companies in respect of the Goldenberg saga. The consent order was just part of a global arrangement in which all cases against him and associated companies are withdrawn. That is the basis upon which we are inclined to believe that actually, it is Pattni, himself, who decided the value of the property, the sale and bought the property. That is shown very clearly in this Report. Mr. Pattni considered the price of the hotel. That is on page 13, for those who have the Report. He considered that the price of the hotel was Kshs2.9 billion, which is \$45 million, given that no renovation had been done on the hotel, including the replacements. There was Kshs342 million which was lying idle. He went further to request for some pocket money because it was his money that was there.

Madam Temporary Deputy Speaker, Sir, when you look at what was going on here--- How did Mr. Pattni know the value of Kshs2.9 million, if he was not part of the scheme to sell the same property?

**The Minister for Environment and Mineral Resources (Mr. Michuki):** On a point of order, Madam Temporary Deputy Speaker, Sir. My point of order arises from what my friend here has stated. Is it in order for the hon. Member to try to prove his points by referring to Kamlesh Pattni who, in the eyes of Kenyans, could not be trusted because of the way in which he twisted the Central Bank of Kenya? Is he in order to refer to him as a person who can be relied upon and quoted in a House like this one?

**Mr. Konchella:** Madam Temporary Deputy Speaker, Sir, I am shocked that the former Acting Minister for Finance can raise this matter. That is because it is in black and white here. Mr. Pattni here says that he recommends the hotel be sold for Kshs2.9 billion, as that is what it is worth. He occupied the 13th floor of the Grand Regency Hotel. Even the people who came from Libya to buy that hotel told him to occupy the same floor. So, that is the same saga. He was getting a global amnesty for the money that he had looted out of this country through the Goldenberg saga. It is the money from Goldenberg which went to Libya. He was laundering money here in Kenya by cheating again in the Grand Regency Hotel. This is the message I am telling the Kenyan people. That day we deal with Pattni, we shall be finished as Kenya. We will be finished by this because it is going to finish one Minister after the other. They will be cheated to enter into deals which one man and his team are planning day and night. That is how to sabotage and control the resources of this country. Out of greed, people will fall prey to a man who has destroyed the economy of Kenya. Today, where the hon. Minister comes from, children cannot go to school because of jiggers. How much money do we spend to help people affected by jiggers? How much money have we provided to help people who are dying from hunger because there is no food in this country. We allow people to loot and take money out of Kenya and yet, our people are dying. Yet, we are leaders who are supposed to stop these things.

That is why the Committee did its jobs. This House must adopt this Report because it has nothing to do with hon. Kimunya. It is to do with corruption, impunity and the rule of law in this country, which we must address as leaders. We are here to legislate. We are not here to finish our friends because each and everyone of us will be there tomorrow. We must address the issue of the rule of law so that those who will be here tomorrow will not dare do the same thing.

Thank you.

**The Assistant Minister for Information and Communications** (Mr. Khaniri): Thank you very much, Madam Temporary Deputy Speaker, for giving me the opportunity to make my remarks on this Bill.

Madam Temporary Deputy Speaker, as one of the senior-most Members in this House, I will begin by giving advise to this Tenth Parliament free of charge. The advise is this: If there is anything that we must always unite as House to fight is corruption. If there is anything that we must all get together and take head on is corruption. When it comes to fighting corruption, we must forget which side of the divide we belong to! Whether you are in PNU, ODM or ODM-K, it does not matter. Whether you sit on the Front Bench or Back Bench, when it comes to fighting corruption, we must forget that.

Madam Temporary Deputy Speaker, corruption is the single- most reason why our country is on it knees today. Corruption is the reason why we have poverty and hunger in this country today. Corruption is the reason why we have bad roads and other bad infrastructure in this country today. Therefore, when it comes to fighting corruption, we must all unite and just take it head on without any fear or favour. This Motion is coming in the wake of the many corruption scandals that are facing our Government and country today. The oil and maize scandals are very vivid in our minds. Therefore, Kenyans have their eyes on us this afternoon to see how we are going to vote on this particular Motion. Kenyans this afternoon have opened a page and divided it into two. On one side, they have written those who are opposed to corruption. On the other side, those who support corruption. It is up to you hon. Members to decide which side you want to be counted on. I have taken my time to go through this Report. Personally, I see no reason why anybody should oppose this Report, unless there is something they are hiding.

Madam Temporary Speaker, the Okemo Committee has made some recommendations here. This is what they are asking us to adopt as a House. In recommendation No.6.3, on the Attorney-General, they are recommending:-

"That the Committee recommends that in the matters of this nature, the Attorney-General should be involved."

All Government agencies, particularly the Central Bank of Kenya (CBK), should work closely together.

The Committee also recommends that the Attorney-General's office should, in future, proactively get involved when legal matters of public interest are brought to his attention formally or informally. Is that a bad recommendation? They are telling us that the Committee recommends that the Attorney-General speedily reviews and concludes all Goldenberg-related cases. Could someone stand up and tell me if it is a bad recommendation? The Committee noted that it was in the best interests of the country to encourage foreign investment as a way of stimulating economic growth and creating employment for Kenyans. In this regard, the Committee noted that Libyans have shown interest in investing in various sectors of the economy. That is commendable and should be encouraged. However, the Committee observes that all transactions, whether by foreign or local investors, should be done in accordance with the law. That holds true for all investors, whether private or government to government investors. These are good practices that we must embrace and pass as a Parliament with one voice. I do not expect any dissenting voice on this Motion.

Madam Temporary Deputy Speaker, I have no grudge, or anything else, against my friend, Mr. Kimunya, the Minister for Trade, but my advice to him, and the few who are opposed to this Report, is that rather than oppose the entire report, they should seek to expunge recommendation number 6.1, which says that Mr. Kimunya should be severely reprimanded and the question of the breach of Section 21 of National Assembly Powers and Privileges Act being referred to a committee. If they have a problem with that, let them move for this recommendation to be expunged from the Report. This is a good report and I am urging hon. Members to support it in totality.



Madam Temporary Deputy Speaker, as I said, Kenyans have their eyes on us this afternoon to see if when we say that we are fighting corruption, we mean it. We are going to demonstrate that by the way we vote on this Motion. I want to urge my colleagues to fully support this Motion, so that we can demonstrate to Kenyans that the Tenth Parliament does not condone corruption in whatever form.

With those few remarks, I support the report.

**Mr. Ogindo:** Madam Temporary Deputy Speaker, thank you very much for this opportunity. First, I want to concur with the previous speakers that this is a matter that we need to debate with utmost sobriety. We are in this House as Members of Parliament. This House has three cardinal roles: Legislation, representation and oversight. As representatives of the people, when we speak in this House, we need to reflect the feelings and the wishes of the people we represent. It is the feeling and the wishes of Kenyans that we rid this country of corruption. As hon. Members, we are the watchdog and trustees of public property. It is incumbent on us that we safeguard public property. That role is ours squarely and we cannot buck-pass on it. In any case, any hon. Member who tries to defraud Kenyans of their hard earned properties, then such a person deserves condemnation. As individual Members of this House, we also have three responsibilities. First, we have a responsibility to this nation. Out of patriotism, we need to lead this country into prosperity for the benefit of us, our children and our children's children. As individual members of this House, we also have a responsibility to our parties. Ahead of elections last year, I remember that every party was campaigning on a platform of "zero tolerance to corruption". I want to see hon. Members practise the same. The other responsibility we have as individual members of this House is responsibility to our conscience. We really need to ask ourselves whether our conscience is clear when we are supporting acts that are depriving Kenyans of their hard earned taxes money.

Madam Temporary Deputy Speaker, Sir, it will be time to write history in this country and in this House when we conclude this debate. I concur with the previous speaker that when it comes to the end of this debate, we want to know which side each one of us will vote for.

The core issue here is the sale of Grand Regency Hotel. What we have a quarrel with is the procedure. Was the due procedure followed? We would have expected the Grand Regency Hotel to ordinarily have reverted to the CBK. After that, it should have been disposed of according to the Privatisation Act and the Public Procurement and Disposal Act. That was not the case, and that is where the problem is. Parliament realised that the procedure was not followed. Procedures are there to safeguard various interests, and cannot only be circumvented to protect various interests. It is on that account that we feel, as a House, that somebody needs to take responsibility.

Arising from that, various steps have been taken. This House, in playing its role of watchdog, had a Motion of censure on the then Minister for Finance and it was passed. Thereafter, a Committee of the House investigated the issue, and today we have its report here with recommendations. Outside this House, there was the Cockar Commission. We have known the recommendations of the Cockar Commission through the media. All these three bodies have come to the same conclusion; that procedures were not followed. It is only fair that we condemn non-observance of procedures. The only way we can do that is to adopt this Report. While the hon. Members were debating this issue during the Motion of censure, they were being paid using taxpayers' money. The Select Committee and the Cockar Commission used taxpayers' money. It would be irresponsible of us to let those responsible to go scot free.

Madam Temporary Deputy Speaker, I also want to concur with the Speaker's ruling today that this House stands by its censure Motion. In effect, what this means is that this House is not going to deal with hon. Amos Kimunya as a Minister within this House and this will also apply to his deputy.

With those few remarks, I want to support the adoption of this Report.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Thank you, Madam Temporary Deputy Speaker, for giving me this

opportunity. We have been consulting in this House to find the way out because if we go into the merits of the Report, it is clear that there are some recommendations which are good and we should not throw the baby with bath water. So, after full consultations with the Members of the House, I want to propose an amendment that the Report is adopted but Recommendation No.6.1 be deleted. I think that is the only recommendation that seems to be having a problem in the House. So, if we delete Section 6.1, we could even call for the end of the debate.

Madam Temporary Deputy Speaker, I am proposing an amendment which reads as follows:-  
"That Recommendation No.6.1 be deleted".

I beg to move and ask Mr. Kiunjuri to second my proposed amendment.

**Mr. Shakeel:** On a point of order, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Prof. Kamar): Hon. Shakeel, is your point of order on the new Motion?

**Mr. Shakeel:** Yes, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Prof. Kamar): Then let the Assistant Minister second it first.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): The Motion is not yet seconded. *Wee kaa chini kidogo!* There is no Motion on the Floor. We do not need your help.

Madam Temporary Deputy Speaker, the hon. Member should know that a Motion is only before this House when it is already seconded. I rise to second the proposed amendment. I have several issues on why this amendment should be moved.

First, I should be on record that I support the fight against corruption. Corruption must be fought. It is a cancer that is spreading dangerously in this country and it must be healed once and for all. We know there is no country in this world that can develop with high level corruption as we are witnessing today. Being a third world country and hoping that in years to come, it will be history, all of us should rise up in arms to fight corruption. However, we must recognise that there are issues that must be addressed by this House because this House is under siege. One, we have perfected the art of double speak. We say this today and tomorrow we say another thing.

Madam Temporary Deputy Speaker, we are speaking and giving half-truths and half-baked information and we are still in this House. If you were here yesterday, you can be a witness of what I am going to say because this is a volcano. We have already seen the signs of a volcano erupting. The temperatures are building up and this volcano must erupt. We cannot allow Members of this House to come here knowing very well that in one way or the other, they are related in some cases and defend those cases that they feel can affect them.

Madam Temporary Deputy Speaker, we raised the issue of maize here yesterday and every Member of Parliament was in arms against Dr. Khalwale. Why? Because some of them are already mentioned. None of them has taken any action to step aside from their own departmental committees or any committees they represent in this House for them to be investigated. They want to drink wine and preach water in this House. They want to come here and talk of corruption while they have been mentioned adversely. None of them is raising a finger.

Madam Temporary Deputy Speaker, if you consider the Grand Regency Hotel saga and the maize scandal, the latter one is just a drop in the ocean. This issue of maize has made whoever has "eaten" from the maize bin be a murderer. Why do I say this? Because we are witnessing every day on our national television and in newspapers people dying of hunger.

**Ms. Odhiambo:** On a point of order, Madam Temporary Deputy Speaker. Is the hon. Member in order to suggest that corruption of whatever amount is correct; that if a thief who steals Kshs1,000 then you are better than a person who steals Kshs10,000? Is the hon. Member in order to encourage the House to be corrupt?

**The Temporary Deputy Speaker** (Prof. Kamar): Hon. Odhiambo, I think he has said that

he does not condone corruption.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Madam Temporary Deputy Speaker, I have said I do not condone corruption and I do not have to respond to her. I have said it clearly that Members of Parliament who were involved in corruption deals should be ready to also face the consequences and we shall know them very soon. They must step aside from their committees that they serve and that is going to happen.

Madam Temporary Deputy Speaker, however, when we talk of corruption in this country, we talk of these Bills and yet we have Internally Displaced Persons (IDPs) that we have no action on. It is a shame to us. We have the new constitution that is coming up and it is going to prevent what Parliament wants today. That Parliament should have the duty of care; that is, to vet all Members of the Cabinet appointed by the Government. That one is coming up. It is a thing that we must push to make sure that during the review of the Constitution, we must make sure that this House will have the responsibility to vet who becomes a Cabinet Minister and who does not qualify.

Madam Temporary Deputy Speaker, in this House today, we want to see how many Members of Parliament will serve the test of time today. We want to see how many of them will pass this litmus test so that they can cast the first stone.

Madam Temporary Deputy Speaker, there are sins of omission and commission. We have gone through this Report of the Committee and we have noted that there is no way hon. Kimunya was involved directly or mentioned as having been connected in any corrupt deal. All what it has said is that he misled the House and that he lied. That is the word they have used because Members only mislead the House. If it is the case of manslaughter, you cannot sentence the same person as if he has committed murder. Those are different cases and already, hon. Kimunya has been condemned six months down the line and today we want to continue on that debate. We do not want to tell Kenyans who stole maize. Why do you not tell us first who stole maize, who has "eaten" and who has not "eaten"? This is because if I "eat" alone, then that is a sin. When we collectively "eat", then it is no longer a sin.

This House must be put under interrogation. The House must interrogate itself.

**Mr. Shakeel:** On a point of order, Madam Temporary Deputy Speaker. Is the hon. Assistant Minister in order continue discussing the maize issue when he stood up to support the proposed amendment? Is it in order to start discussing another subject?

**The Temporary Deputy Speaker** (Prof. Kamar): Hon. Assistant Minister, would you please confine yourself to supporting the Motion since you have forgotten it?

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Madam Temporary Deputy Speaker, I can only be out of order if the examples I am giving are not related to the Motion in front of us. We are discussing corruption. There is corruption in it and I believe hon. Shakeel should tell us more about maize. If you are really opposed to me mentioning the maize issue which is making Kenyans suffer today---

**The Temporary Deputy Speaker** (Prof. Kamar): Order, Ms. Odhiambo! You asked for permission to second the amendment and not to debate. You have forgotten the amendment you rose to second. You have not even told us what you want to amend. You are actually derailing everybody and moving away from the subject matter.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Madam Temporary Deputy Speaker, I rise to support the amendment with regard to Paragraph 6.1. It is already well-moved and articulated by Mr. Githae. I can conclude in two minutes times. We support this amendment---

**Ms. Odhiambo:** On a point of order, Madam Temporary Deputy Speaker. If I look at Paragraph 6.1---

**The Temporary Deputy Speaker** (Prof. Kamar): Could you allow me to propose the

Question and then you can debate?

**Ms. Odhiambo:** No, Madam Temporary Deputy Speaker. I do not want to debate. I just want to raise a point of order which will guide his debate.

**The Temporary Deputy Speaker** (Prof. Kamar): You are not debating?

**Ms. Odhiambo:** No, I am not debating. I am just raising a point of order.

**The Temporary Deputy Speaker** (Prof. Kamar): What is your point of order?

**Ms. Odhiambo:** My point of order is that Paragraph 6.1, which we are being asked to expunge, talks about Section 21 of the National Assembly (Powers and Privileges) Act that was supposedly not followed. The mover did not raise it and the Secunder did not address himself to that. Could we, please, get them to address that?

**The Temporary Deputy Speaker** (Prof. Kamar): For clarity's and record's sake, can you clarify what we are amending?

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Madam Temporary Deputy Speaker, we are amending Paragraph 6.1 and we do not have to read through it.

**The Temporary Deputy Speaker** (Prof. Kamar): Could you read the page and refer so that hon. Members know what you are requesting for?

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): It is on Page 59 under the Committee's Paragraph No.1 which states:-

"1. The Committee recommends that hon. Kimunya be severely reprimanded and the question of his breach of Section 21 of the National Assembly (Powers and Privileges) Act be referred to the House Powers and Privileges Committee for action."

It is only lack of experience and we cannot blame an hon. Member for lack of experience. We are properly---

**The Temporary Deputy Speaker** (Prof. Kamar): Your ten minutes are almost over.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Madam Temporary Deputy Speaker, I second this amendment.

*(Question, that the words to be  
left out be left out, proposed)*

**Mr. Mbadi:** Madam Temporary Deputy Speaker, I stand to oppose the proposed amendment. If you look at the recommendation which is proposed to be deleted, according to me, this is the core of this Report. It is true from the Report that Mr. Kimunya went to the Committee on 21st May and told the Committee that Grand Regency Hotel had not been sold yet on 8th of the same month, which is two weeks before, the Central Bank of Kenya had already received part payment for the hotel. At the time, when Mr. Kimunya appeared before the Committee, they realised that already a sale agreement had been signed. That amounts, to me, mis-informing the Committee and it requires sever reprimands.

Madam Temporary Deputy Speaker, yesterday I listened attentively to Mr. Kimunya trying to explain why he took the position that he took when he presented himself before the Committee and I realised that he decided to jump from being an accountant to a lawyer by insisting that he felt that the hotel had not been sold by the mere fact that the transfer of title had not been made.

Mr. Kimunya is a reputable accountant having been the chairman of the Institute of Certified Public Accountants of Kenya (CPAK). Mr. Kimunya should have known that in accounts, the moment you receive money for sale of an asset, you will automatically, in your books, credit the asset account. You will debit your account with money and treat any money outstanding as receivables. In which case, as accountants, we deal with the substance and not the legal form. I realised that Mr. Kimunya decided, even yesterday, to continue misleading this House. For that reason, I find it inappropriate to

delete this section because then, we will have negated the very import of this particular Motion.

Madam Temporary Deputy Speaker, I stand here to oppose very strongly the removal of this section.

Thank you.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Madam Temporary Deputy Speaker, since we have heard arguments from both sides, would I be in order to ask the Chair to call for the vote?

**The Temporary Deputy Speaker** (Prof. Kamar): Before I put the question, I think the interest is high. I had seen Mr. Michuki and Mr. Okemo who is the initiator of the Report. Let us listen to two or so hon. Members and then we go to the vote. I think it is important for us to understand the amendment.

**The Minister for Environment and Mineral Resources** (Mr. Michuki): Thank you very much, Madam Temporary Deputy Speaker, for noticing my presence---

**The Minister of State for Defence** (Mr. Haji): On a point of order, Madam Temporary Deputy Speaker. What we are asking you to put the question is on the amendment and not the Motion as such. So, I think---

**The Temporary Deputy Speaker** (Prof. Kamar): I am with you, Mr. Haji. I think I should allow the Mover of the Report to make a comment before I put the question. I have allowed one person, so I would like to allow only two.

**The Minister for Environment and Mineral Resources** (Mr. Michuki): Madam Temporary Deputy Speaker, I just want to make two points. First, the basis on which the recommendation was made to the House for Mr. Kimunya to appear before the Committee of Powers and Privileges is the allegation that he told a lie; that he did not tell the truth. On the question of whether or not a sale had taken place when he spoke on 29th April, it turns out to be that the signing of the agreement was done on 8th May. Therefore, there was no basis for that recommendation.

I want to be on record that when I went to the Treasury as Acting Minister for Finance in July, I looked for all these documents and studied them. I was satisfied that what I am saying now was the truth. That is the first point I want to make.

Secondly, I want to also correct the impression that the sale of the hotel was done secretly.

Madam Temporary Deputy Speaker, it is being forgotten that Mr. Kamlesh Pattni had been all over the place. When the property was conferred to the Central Bank of Kenya (KCB) by the Kenya Anti-Corruption Authority (KACA), even though illegally, since the CBK Act does not allow the CBK to hold any property, the CBK had to do whatever it could to get rid of it. These matters should be taken into account. This Report, read as a whole, does not say anywhere that Mr. Kimunya was corrupt. Therefore, we cannot mix the issue of corruption with other issues. We are all agreed that we must fight corruption, but as it was said here---

**The Temporary Deputy Speaker** (Prof. Kamar): Mr. Minister, I am trying to understand what you are debating. I am not sure whether you are debating the Report or the amendment.

**The Minister for Environment and Mineral Resources** (Mr. Michuki): Madam Temporary Deputy Speaker, I am debating the amendment.

**The Temporary Deputy Speaker** (Prof. Kamar): Please, stick to the amendment, so that we can dispose of it and go back to the Report.

**The Minister for Environment and Mineral Resources** (Mr. Michuki): Madam Temporary Deputy Speaker, Sir, in fact, both are permitted by the Standing Orders. One can debate both, but I am restricting myself to the amendment.

What I am saying is that there is no evidence that Mr. Kimunya was corrupt. Therefore, it is

correct to purge and delete the section that refers to him in that context.

With those few remarks, I support the amendment.

**Mr. Okemo:** Madam Temporary Deputy Speaker, I stand here to oppose the amendment to the Motion. I have very good reasons for doing so.

If one has really read through this Report, one should have seen that the common denominator that runs right through the Report, from the beginning to the end, was the issue of secrecy and speed with which the transaction was carried out. When a transaction takes shorter than it ought to, then you raise many questions. I do not even know where Mr. Michuki has found the word "corruption", because it is not in this Report. I do not know which report and which page he has referred to.

Madam Temporary Deputy Speaker, we have recommended what we recommended on the basis that Mr. Kimunya seems to appear to have something to hide. A Committee of Parliament represents Parliament. When we summon a witness before such a Committee, we expect to be given full facts, which facts did not come out when Mr. Kimunya appeared before us. That is what we have said in the Report.

Even if you look at the evidence that relates to the Director-General of the National Security Intelligence Service (NSIS), Maj-Gen. Gichangi, you will see that he raised very fundamental issues. He is the head of security intelligence in Kenya. Can I just quote quickly what he said, because it is at the very heart of our recommendations. He said as follows:-

"There were concerns that had been raised across the board surrounding the surrender of the Grand Regency Hotel to the CBK by Mr. Kamlesh Pattni. There are fears being expressed that procurement and privatisation procedures have not been followed---"

**The Minister for Public Health and Sanitation** (Mrs. Mugo): On a point of order, Madam Temporary Deputy Speaker. I believe we are debating the amendment, and not the whole Motion. So, could the hon. Member restrict himself to the amendment seeking to expunge the name of Mr. Kimunya from the Report.

**Mr. Okemo:** Madam Temporary Deputy Speaker, I am building a case to prove that the whole transaction, of which Mr. Kimunya was central, was shrouded with secrecy, and was also done exceptionally fast. So, I am building up a case. By saying that all the arms of the Government, including Mr. Kimunya, seemed to know what was going on, I am trying to make a point. That, the fact that Mr. Kimunya had material facts, which he did not disclose to us, means that he may have had reasons as to why he did not do so. He did not say so when he came to give his---

**Mr. Kioni:** On a point of order, Madam Temporary Deputy Speaker. On page 5 of this Report, the Committee recorded as follows:-

"The Minister informed the Committee that due to the sensitivity of the issues surrounding the hotel, the information given to the Committee would be limited."

This Committee recorded that the information that the Minister was going to give to them would be limited, on request. It would then be wrong for this Committee to now come and say that the Minister withheld information, while the Committee actually consented because of the sensitivity of that issue. The Committee did record that position on page 5 of this Report.

**Mr. Okemo:** Madam Temporary Deputy Speaker, the hon. Member has missed the point completely. We recorded what was said by Mr. Kimunya - that he would not disclose information, because it was sensitive. Our argument is: What can be so sensitive in relation to disposal of an asset that belongs to the public of Kenya? What is so secret about it? This is an asset which had been acquired wrongfully by Mr. Kamlesh Pattni, through fraudulent means, and was being reverted back.

However, instead of the Government getting this asset revert to the CBK, which was provided for under the consent order, they decided to take a short-cut, which was to sell it by statutory power of sale. All these things point towards one direction, which is that there was a reason as to why they were taking short-cuts. There was a reason as to why information was not being disclosed. Does it

require a genius to conclude what the motive could be?

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

**The Temporary Deputy Speaker** (Prof. Kamar): Mr. Kiunjuri, I hope you are raising a genuine point of order. What we are trying to get is information. I gave ten minutes to the Mover and ten minutes to the Seconder of the Motion. We must be fair to the Chairman of the Committee by allowing him to utilise his ten minutes. So, unless yours is truly a point of order, I would want us to dispose of this amendment.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Madam Temporary Deputy Speaker, my point of order is clear. Is the hon. Member in order to continue opposing this amendment when the Committee, very clearly, recommends that Mr. Amos Kimunya be severely reprimanded, and that the question of his breach of Section 21 of the National Assembly (Powers and Privileges) Act, be referred to the House's Powers and Privileges Committee for action? How did the Committee determine that breach and yet the House's Powers and Privileges Committee has not sat to recommend the same?

**The Temporary Deputy Speaker** (Prof. Kamar): Mr. Kiunjuri, I do not know what the difficult is---

**An hon. Member:** Point of order!

**The Temporary Deputy Speaker** (Prof. Kamar): I will not allow another point of order! We need to get back to the Chairman and allow him to finish his explanation. There is no difficulty in the explanation that he is giving us. He is just giving us the reasons as, a Committee, they think the name of Mr. Kimunya should not be expunged from the Report.

Let us allow that explanation to be made, so that we can move on.

**Mr. Okemo:** Thank you, Madam Temporary Deputy Speaker.

The whole thrust of this Report rests on the former Minister for Finance and the CBK not being able to tell the public of Kenya what was happening in relation to the transactions of the Grand Regency Hotel. There must be reasons as to why the Attorney-General was completely kept out of the transactions. We even have recommendations from the Director-General of the KACA, Justice Ringera, who was successful in retrieving this asset, that it should have been disposed of in accordance with the Privatisation Act.

Madam Temporary Deputy Speaker, it is abundantly clear that Mr. Kimunya should be treated in accordance with the recommendations contained in this Report.

*(The Temporary Deputy Speaker  
(Prof. Kamar) put the Question  
twice, but could not decide  
which side had it)*

**The Temporary Deputy Speaker** (Prof. Kamar): Hon. Members, I think we will go for a Division. It is very difficult for us---

*(Loud consultations)*

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

**The Temporary Deputy Speaker** (Prof. Kamar): Order, hon. Members! I am standing.

Could you, please, take your seats?

**An hon. Member:** Put the Question again!

**The Temporary Deputy Speaker** (Prof. Kamar): Let me repeat the Question for the third time.

**An hon. Member:** No!

**The Temporary Deputy Speaker** (Prof. Kamar): I will repeat the Question for the third time. Hopefully, I will make a ruling on that.

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

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

**An hon. Member:** We demand a Division!

**The Temporary Deputy Speaker** (Prof. Kamar): Okay, Hon. Members. Let us do a headcount. Give us a chance to do that.

*(The Clerks-at-the Table counted  
the hon. Members standing)*

Okay! The Noes have the numbers for a Division! So, we will go for a Division.

*(Applause)*

Ring the Division Bell!

*(The Division Bell was rung)*

### **DIVISION**

*(Question put and the House divided)*

*(Question carried by 63 votes to 32)*

**AYES:** Ms. Abdalla A., Messrs. Affey, Ali M.H., Baya, Ms. Chepchumba, Messrs. Duale, Gaichuhie, Githae, Haji, Kamau J.I, Kamau J.M., Keynan, Kiilu, Kimunya, Kinyanjui, Kioni, Kiptanui, Kiuna, Kiunjuri, Mrs. Kones, Messrs. Kutuny, Dr. Laboso, Lagat, Mrs. Leshomo, Messrs. Letimalo, Litole, Magerer, Maina, Mathenge, Metito ole, Michuki, Mututho, Mohamed I.E, Mrs. Mugo, Messrs. Mung'aro, Dr. Munyaka, Messrs. Mureithi, Muriithi, Munya, Murungi, Musila, Musyoka, Muthama, Mwaita, Mwakwere, Mwathi, Nanok, Ndambuki, Ms. Ndeti, Messrs. Ngugi, Nguyai, Njuguna, Nyamweya, Obure, Ombui, Onyonka, Poghisio, Prof. Saitoti, Messrs. Sirma, Rai, Thuo, Waibara and Wathika.

Tellers of the Ayes: Mr. Kioni and Dr. Monda.

**NOES:** Messrs. Bahari, Chepkitony, Dr. Eseli, Mr. Ethuro, Dr. Gesami, Messrs. Godhana, Gunda, Prof. Kaloki, Messrs. Kapondi, Kilonzo C.M., Konchela, Lankas ole, Lessonet, Magwanga, Mbadi, Midiwo, M'Mithiaru, Dr. Monda, Messrs. Namwamba, Ochieng, Odhiambo A.B., Ms. Odhiambo M.G., Ogindo, Okemo, Omollo, Onyancha C., Outa, Otichilo, Mrs. Shabesh, Messrs. Shakeel, Wamalwa and Washiali,

Tellers of the Noes: Messrs. J.M. Kamau and Wamalwa.



*(Resumption of Debate on the  
Motion as amended)*

**The Minister for Energy** (Mr. Murungi): Madam Temporary Deputy Speaker, we have been patiently listening to the debate both on the original and the amended Motion. Hon. Members who have contributed to both Motions have exhaustively discussed all the issues and I do not think that there is anything new that further debate is going to introduce.

*(Applause)*

Madam Temporary Deputy Speaker, I am, therefore, praying that the Mover be called upon to reply and the matter be put to vote.

*(Question, that the Mover be called  
to reply, put and agreed to)*

**The Temporary Deputy Speaker** (Prof. Kamar): Hon. Members, the Mover is not in the House! I will, therefore, proceed to put the Question!

*(Question put and negatived)*

Next Order!

ADOPTION OF REPORT ON STUDENTS'  
UNREST IN SECONDARY SCHOOLS

THAT, this House adopts the Report of the Departmental Committee on Education, Research and Technology on the Inquiry into Students' Unrests and Strikes in Secondary Schools, laid on the Table of the House on Thursday, October 23, 2008.

*(Mr. Koech on 11.12.2008)*

*(Resumption of Debate  
interrupted on 22.1.2009)*

**The Temporary Deputy Speaker** (Prof. Kamar): Mr. Affey was on the Floor last time!

**Mr. Affey:** Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity to contribute to this very important matter.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Prof. Kamar): Order, hon. Members! Please, consult quietly so that we can hear the hon. Member.

**Mr. Affey:** Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity to support this important Report. The crisis that faces the education sector in this country is real. It is unfortunate that the Government has decided not to give this matter the importance it deserves. This afternoon, you saw how critical the Government considered other sectors of this country. The House was fuller than it is now because the Government felt that the matter that was being discussed was of national importance.

Madam Temporary Deputy Speaker, however, a very critical issue that this House needed to discuss is that of the teachers' strike. I want to thank the teachers of this country, especially the Kenya National Union of Teachers (KNUT) for spearheading the welfare of teachers in a manner that this Government has resisted. It is a question of time before this matter is resolved. I would like to appeal to the Government and the relevant Departmental Committee to consider improving and fast-tracking the current mediation efforts so that teachers can go back and teach our children. Two weeks, you will agree with me, is such a long time for this matter to continue and not receive attention from the Government.

Madam Temporary Deputy Speaker, what teachers are seeking is what this Government can discuss with them and reach an agreement. These teachers are Kenyans. They are role models. They are also reasonable human beings. However, denying them their right to protest or issue ultimatums to the Government through their union, is an unfortunate thing. I, therefore, would like to request the Government to fast-track these efforts and give teachers sufficient hearing. The Government should discuss with them whether, in fact, these monies can be paid in two or three phases. That has been the major point of contention. I am happy that the relevant Departmental Committee has undertaken to review this matter and to work with the Government.

Madam Temporary Deputy Speaker, one of the issues that this Report emphasises is the shortage of teachers in the country. We, from the North Eastern Province, have always complained that quite a number of our schools are understaffed. The more a school is understaffed, the less the performance of the children in the national examinations. One of the reasons why the schools are understaffed is because there are no sufficient students from the affected constituencies who are given an opportunity to join the teacher colleges. This is because the Government raised the bar for joining these institutions of higher learning in order to become teachers.

Madam Temporary Deputy Speaker, a few years ago, we used to train even candidates who had acquired a mean grade of D+ (Plus) to enable them pursue a P1 course. Since there has been a review, the Government has decided not to take into account the peculiar circumstances that our children find themselves in. Not too many of our children get the stipulated mean grades.

Madam Temporary Deputy Speaker, the ones who get C plus or C plain in their secondary examinations consider to advance their education by doing bridging courses and later on join diploma colleges. For that reason, we have not been able to get young people from North Eastern Province to join teachers training colleges in order for Teachers Service Commission (TSC) to employ them. I believe that we can get students from that province who are able to go to teachers training colleges and become teachers. We had a policy of the Government to establish a teachers training college in Garissa. The initial intention was to get more students from that region to join that college. The province was supposed to be a catchment zone for that college. What has happened now is that 99.9

per cent of students in Garissa Teachers Training College come from other parts of the country. That is a good thing, but it denies the local students the opportunity. The reason why the college was established in the province was to help the local students. We have difficulties in students obtaining the necessary qualifications that are required to join those colleges. Due to that, students who finish Form IV cannot get the required grade to join those colleges.

*(The Assistant Minister for Education  
(Prof. Olweny) entered the Chamber)*

I have asked the Minister for Education - and I am happy that he has just walked in - to reduce that requirement, so that we can be able to get quite a number of young people from the province to teachers training colleges and, therefore, help to offset the teachers shortage that this country is facing.

Madam Temporary Deputy Speaker, there is also the question of discipline and overloading of the curriculum in our schools. There is also the question of allowing our children to access programmes that come on the television. Part of what the Kenya Communications (Amendments) Bill wanted to address was to reduce graphic images of certain aspects that we believe are not fair for our children to watch, particularly during prime hours before they go to bed. Given that there is no proper regulation, you will find all sorts of things being shown on television screens. You find films that actually glorify indiscipline in families and work places. Those films are accessed by children. Then, our children would think that it is a good thing to repeat in their schools by burning them. That has become a big problem. I am happy that the Committee was able to identify that issue. It is very critical that certain contents of programmes in our TVs that are watched by our children should be regulated. The media houses should regulate what is regarded as a disservice to our children.

Madam Temporary Deputy Speaker, finally, I want to repeat this because the Assistant Minister has come in: Please, sort out the crisis the teachers are facing today. You can sit down with them and pay them in two tranches. If the Ministry wants more money, this House is ready to give teachers some more money.

With those few remarks, I beg to support the Report.

**The Assistant Minister for Education** (Prof. Olweny): On a point of information, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Prof. Kamar): You want to inform him now? You will have your right of reply.

**Mr. Affey:** I welcome his point of information if it is in favour of our teachers.

**The Assistant Minister for Education** (Prof. Olweny): Madam Temporary Deputy Speaker, with regard to the teacher strike, the strike has just been called off. Teachers will teach as from tomorrow. The problem has been sorted out.

**Mr. Affey:** Congratulations to the Assistant Minister and the Government!

**Mr. Kapondi:** On a point of order, Madam Temporary Deputy Speaker. Since this issue has been on the Floor of this House from December last year, may I request that the Mover be called upon to reply.

**The Temporary Deputy Speaker** (Prof. Kamar): The Assistant Minister has not responded. But before he does, let us allow Mr. Githae to contribute.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Madam Temporary Deputy Speaker, thank you for giving me the chance to contribute to this Motion. Let me first begin by thanking the Chairman of the Committee, Mr. Koech, and Members of his Committee for a job well done. They toured the country and visited primary and secondary schools. They did interviews with members of the public and other

stakeholders. That is why they came up with such an informed Report.

Madam Temporary Deputy Speaker, we have just received the news that the strike has been called off, but there are some things that we can say concerning the strike, and that we should learn from. Previously, when I was growing up, the people who had the best houses, the best vehicles, the most beautiful wives, the best clothes and shoes were teachers. I do not know what has happened. If you go to the rural areas, that is no longer the case. We should go back to the former position. Teachers were well respected, because of the way they dressed and the houses they lived in. In my village, three teachers had pick-ups, while other people used to walk. We need to go back to that position by paying them adequate salaries. By adequate salaries, I mean that there should be no distinction between teachers and the civil servants. If a teacher is in Grade "A", then he or she should get the same salary and allowances as that person in Grade "A" in the main Civil Service.

Madam Temporary Deputy Speaker, I was also one of the first people in this Parliament to say that we also need to analyze and reform our salary structure. The United States of America (USA) has worked so well because there are two categories of employees. There is the political and professional. If you are in the political group, which is basically the cabinet or director level, you are appointed by the President, and when he retires, you go home with him. That is accepted and it works very well. If you are in the professional category, your salary has no relation whatsoever with the political administration that is in place. Secondly, the system works well because each individual employee is given a grade and not salary structures. The grades are from 1 to 12. The President is Grade "12" and the lowest person is Grade "1".

If you are in the Federal Service, then you have a grade. The grade dictates the salary, house allowance and any other payment that you are going to get. Therefore, it is easy to move from one Ministry to another, because you move with your grade and not with job groups and positions. I am one of the people who have said in this House that we need to reform our salary structure for everybody in the public service, from the President to the messenger. We need to reform our salary structure. I do not see the difference when you say that you are giving somebody a salary of Kshs10,000, a house allowance of Kshs5,000 then travelling allowance of Kshs2,000--- Why can we not just close it up and give out one cheque of Kshs20,000? Madam Temporary Deputy Speaker, the same case should apply to Members of Parliament. We should just gross up everything. Does it matter whether you call it motor vehicle allowance or this? It really does not matter. Just gross up everything simply for everybody. Whether you are a judge or in the Kenya Anti-Corruption Commission (KACC), just gross up. I will be taking up this issue with the relevant authority and I will say that it is a good idea but Parliament can not afford the pension on the gross amount. So, actually as employees, when your salary is not grossed you are actually missing and this is the point that we need to tell all the civil servants and teachers. When your salary is not grossed and your pension is based on your basic pay, you are losing. It is better to be taxed everything.

For example, in Parliament, I think we contribute 5 per cent of our basic pay and Parliament contributes 15 per cent. So, if everything was grossed up, we would actually be the beneficiaries. We will not miss everything. So, this is one point I have been saying that we need to reform our salary structures. It should be for everybody and not just for teachers. We must accept that the President being the head of the Public Service, nobody should earn more than him. We also need some safeguards. We should say that between the lowest and the highest salary, it should not be more than 20 and 30 per cent. Those should be the guidelines. If we do that, then we will benefit.

Madam Temporary Deputy Speaker, coming to the Report, I have said it is very well researched. I have particularly liked this idea of the Committee saying that they need more day secondary schools. Day secondary schools are the future of this country. If we have day secondary schools, we are going to minimise high rates of indiscipline. This is because if your child comes from your home every morning and you pick him or her every evening, if that child starts drinking alcohol,

smoking cigarettes or *bhang* or is indisciplined, you, as a parent, will be the first to know.

I remember an incident in the past when my children went to Nairobi Primary School and at one time the head teacher called us. What he showed us shocked us. He had confiscated from Standard Six and Seven pupils adult movies, very expensive mobile sets, a lot of drugs and cigarettes. When parents of those children were shown these things they were shocked. They had no idea that their children were actually taking alcohol and *bhang*. So, we need to emphasis day secondary schools.

Madam Temporary Deputy Speaker, secondary schools are cheaper to run even by the Government. We should only have boarding schools in those areas where it is not possible for students to come from their homes, for example, in the Arid and Semi-Arid Lands (ASALs). To me, those are the only areas where we should have boarding schools. The rest should be day secondary schools.

Madam Temporary Deputy Speaker, in my constituency, as one of our strategic plans, we resolved that we will have a secondary school for every primary school and we have succeeded to do that. Our problem now is that we are not being given teachers by the TSC. Whenever we establish a secondary school, we get only one teacher who becomes the principal. So, the parents are forced to hire other teachers privately. We need to give all schools adequate number of teachers. The issue of teacher shortage should be declared a national disaster so that money from the Government emergency fund can be used to hire more teachers. When you are told that there is a shortage of more than 60,000 teachers, if we employed today 60,000 teachers in the rural areas, they would improve the economy of the rural areas. Teachers were the only ones, during my time, who could afford to drink bottled beer. The rest of the people had to do with *busaa*. If we do that, we will improve the economy in the rural areas and the domino effect will increase disposable income in the rural areas and other small businesses can take place. Even if the Government were to borrow money and employ the 60,000 teachers to address the shortage, to me, it is a good investment. We will not go wrong.

Madam Temporary Deputy Speaker, the Committee has also talked about videos, television and modern buses. We must move with the times. In our times, we used to have lorries as school buses. Now they have modern buses. I do not see anything wrong with schools having modern buses with comfortable seats, music, a television and a video. Let the students be entertained and be happy when they are on the road. I do not see anything wrong with that.

The other point that the Committee missed out is on enrolment. Every year in January, you will find parents moving from one school to another looking for places for their children. We should copy the United Kingdom system where on 1st September you go to the nearest primary or secondary school where you stay. You are not required to fill any application form. All they require is a water and electricity bill which shows where you stay. That will enable the people in the area to improve the schools in that area.

Madam Temporary Deputy Speaker, in Runda, where I stay, we have a primary school known as Cheleta. The children of the people who stay in Runda do not go to that school. So, although that school is in a posh area, it is run down because the students who attend that school live in the surrounding coffee estate. If there was such a rule that would force the people of Runda to take their children to Cheleta Primary School which is the nearest, then they would have an interest in renovating and developing that school. So, we need to make the rule that on 1st January, parents should enrol their children to the nearest school in the area. There should be no application or interviews. If we were to do that, we would sort out the problem.

Lastly, I would like to talk about two rules that the Committee has identified. I fully agree with their recommendations.

Madam Temporary Deputy Speaker, I do not know the origin of the rule that says district and provincial schools should admit 85 per cent of students from their local areas. It is wrong. I do not know how this rule came about, or who came up with it. This is the rule that has caused tribalism in

this country. For secondary school education, I went to Maseno High School in Nyanza Province.

We used to get second class concession fare from the Kenya Railways Corporation. Each student used to pay Kshs5.50 for a return ticket, from Nairobi to Kisumu. We need to go back to the rule of giving students concession fares. Even the defunct Kenya Bus Service (KBS) used to give concession fares to students in Nairobi. However, nowadays *matatu* crews do not care. If a four-year child sits on a seat, he pays the full fare.

Madam Temporary Deputy Speaker, we need to abolish the rule that says 85 per cent of students admitted to district and provincial secondary schools must come from the surrounding areas to enable children to join schools in other areas, so that they can meet and mix with children from other communities. We need to do this, as a matter of national urgency and importance, in order to reduce tribalism, if not eradicate it altogether.

This will also ensure that students do not get cultural shocks when they subsequently meet students from other communities for the first time at other stages of life. Primary schools have about 100 per cent of the pupils from the local communities. If children go to secondary schools whose enrolment is 100 per cent from their local communities, when they grow up and get employed away from their home areas, they get shocked that there are other tribes in Kenya. So, we must abolish that rule.

Madam Temporary Deputy Speaker, the other issue is on national schools. I do not see why we should have national schools. At best, we should have a national school, or what the Ministry has talked about - centre of excellency - in every district. If we do so, we will give equal chance to all the students countrywide.

With those very many words, I support the recommendations of the Committee.

**Mr. Njuguna:** Thank you, Madam Temporary Deputy Speaker, Sir, for giving me the opportunity to say a few things on this very important Report.

I would like to take this opportunity to, first, thank the Speaker of this House for creating an opportunity for this Committee to move around the country to gather facts on Students' Unrest in Secondary Schools. We also express our happiness for the funds that were set aside for the same operation. We also thank the Parliamentary staff who did good work, day and night, by way of compiling the Report and accompanying the Committee to all the areas it visited.

Madam Temporary Deputy Speaker, I would also like to take this opportunity to thank the Committee for having been able to work out a programme which saw it visit all the provinces in the country. The Committee was able to visit schools in all the eight provinces and made a tremendous effort in making sure that it was able to have 33 sittings. The Committee was also able to bring together the major stakeholders in the education sector.

Out of the eight visited provinces, the North Eastern Province (NEP) was unique in that it did not experience any strikes or students' unrest. What comes out of the Report is that the NEP is really unique because of the way the inhabitants in that area practice their faith and culture.

Madam Temporary Deputy Speaker, Sir, another observation that has come out very clearly concerns the role of the stakeholders in the education sector. One of them is the role played by the Board of Governors (BOGs). It is properly captured in this Report that BOGs, as a key component in the management of the education sector in our country, is interfered with too much by politicians.

It comes out clearly that some of the persons who sit on school BOGs are appointees of politicians. So, execution of the education management mandate is interfered with. It is, therefore, important that we, politicians, desist from this practice. We should create a good distance between ourselves and institutions of learning. It, therefore, goes without saying that, when we have incompetent Board of Governors (BOGs) which are not able to deliver the required services--- They have, at times, caused the strikes that we have experienced in some of our schools. Incompetent BOGs will not be able to provide physical facilities in the schools like water, electricity, adequate labs and

other required facilities. When those facilities lack in the institutions the students are bound, therefore, to react to the current situation.

Madam Temporary Deputy Speaker, the other observation that is very clear in the Report is about the role of the Parents-Teachers-Associations (PTAs). Once they collect funds in the schools, that money is never used properly. Accountability and transparency is not, therefore, realized. The parents and students would, at times, communicate. When the parents express their displeasure to the students, they react by way of destroying property in their schools. So, accountability must be maintained. Therefore, it becomes clear that the role of the Ministry is called upon to make sure that the accounts of those schools are audited regularly. It was noted that there are schools which would stay for two or three years without auditing their accounts.

Madam Temporary Deputy Speaker, another very critical point that we noted is about the role of the Kenya National Examinations Council (KNEC). It is emerging from the Report, and it is common knowledge that, the Kenya Certificate of Secondary Education (KCSE) examination in 2007 had so many irregularities and leakages. That really caused some anxiety and concerns to the students, who were hoping to pass the examinations. But with the leakages that were experienced in 2007, they, more or less, concluded that there will be a repetition. Therefore, the managers at KNEC should be people of proven ability, credibility and integrity. It is, therefore, recommended in the Report that there should be a dissolution of the entire KNEC, so that the entire student population and parents of this country could have some degree of trust and confidence in the manner in which examinations are done in this land.

Madam Temporary Deputy Speaker, the sale of examination papers from KNEC was also noted as a concern. That was noted in Coast Province. The role of the principals in our institutions--

**Mr. Affey:** On a point of order, Madam Temporary Deputy Speaker. I truly appreciate the contribution of the hon. Member, who is actually a member of the Committee. I think that he has done sufficient justice to the Report in terms of his contribution. Would I be in order to request that you call upon the Mover to respond? That is in the interest of time.

*(Applause)*

**The Temporary Deputy Speaker** (Prof. Kamar): I will give Mr. Njuguna one last minute to wind up. Mr. Njuguna!

**Mr. Njuguna:** Thank you, Madam Temporary Deputy Speaker. Maybe, by way of concluding, I would like to remind all the stakeholders in the education sector, particularly the churches, to play their central role in instilling or providing the pastoral care in our schools. Once again, they should introduce chaplains in our schools. That is because it is felt that spiritual growth is lacking in our students. It is, therefore, important that they take their responsibilities very seriously.

With these few remarks, Madam Temporary Deputy Speaker, I beg to fully support the Report.

**The Temporary Deputy Speaker** (Prof. Kamar): Thank you. Hon. Members. May I now call upon the Assistant Minister to respond?

**The Assistant Minister for Education** (Prof. Olweny): Madam Temporary Deputy Speaker, Sir, I stand to support the Report, because it is very good. We have copies in the Ministry and we have looked at it. It is a very well done piece of work. We will remember that last year, in the second term, 290 schools out of a total of 5,600 secondary schools had unrest and strikes. So, it was a major problem for us in the Ministry. We went out and collected information to try and find out the problem that the unrest was related to. Our findings and the findings in this Report, are not far apart. In fact, what they have included and highlighted in the Report are basically the same things that we noted as problems in our schools.

To address the problems associated with the unrest in schools, the Ministry has made a number of moves. We have taken a number of steps so as to ensure that our schools have a good learning environment for our children, the youth of this country.

We have come up with the "School as a Safe Zone Programme". This has been implemented in a number of district schools in ten districts. The programme, "School as Safe Zone" for our children, has revealed that we need one another. We need parents, teachers and stakeholders to ensure that schools are safe for the youth. In fact, we have come up with a national school safety manual, which is now in print. It is to be launched very soon.

Another programme, which we have come up with is "Peace in Schools". In fact, late last year there was an international workshop here with regard to peaceful coexistence in schools and outside schools. How can our students, teachers, parents and all the stakeholders have peace in schools? When you have unrest, there is no peace. Everybody is exposed to danger.

Under the peaceful coexistence both in and out of school, we have developed a peace education manual, which was launched in August last year. In that programme, we have trained 500 teachers and field officers on how to use that manual. So far, about 2,600 teachers have been trained in various areas. We selected Eldoret, Kericho, Kisumu and Nakuru as pilot areas.

Madam Temporary Deputy Speaker, one of the problems that has led to unrest in our schools is mismanagement, which touches on the capability of the principals and the BOGs, because those are the managers of our schools. To improve on that, the Ministry has streamlined the appointment of principals and their deputies in secondary schools. It will be strictly based on merit. Interviews will be conducted for someone to be promoted to a principal. This is because, previously, there has been a lot of interference from politicians who want their strong supporters to be made principals. There was also interference from faith-based organisations and all kinds of stakeholders. This ends up in the mismanagement of the institutions.

Madam Temporary Deputy Speaker, the principals will also be retrained on proper management of schools, because many of them are not performing well in regard to management. The Ministry will ensure that all the institutional managers are properly trained to manage schools. We shall strengthen the guidance and counselling at the national, provincial, district and schools level in order to provide adequate skills for handling of learners in schools. The Ministry will undertake all that. One of the major problems which we had in schools was the issue of Mock examinations. Actually, teachers were involved. It was business. People would set examinations for commercial reasons. They would be taken at district and sometimes divisional level. There was also false information moving around that Mock results would be used in the Kenya Certificate of Secondary Education (KCSE) grading. That was wrong information, accompanied with the fact that some teachers were not performing. By the time Mock examinations were being taken, you would find a large variation among schools in terms of covering of the curriculum. So, if there is one school that had not done enough and another one had covered quite a bit and you put them together in the Mock examinations, the latter would perform better because it has done much more than the other one. This means that some schools would perform poorly as compared to others. So, that is one of the factors that led to unrest in schools. If that was so, then students were actually justified. If in your school, you have covered maybe only two-thirds of the curriculum while another school has covered it fully and then you are examined together and there is a rumour that the results would be used to gauge the performance in the national examinations, you would expect resistance from students. So, the Ministry has banned Mock examinations. If any school wants to assess its students, it must be school-based. That is one of the measures that we have taken to solve the problem.

We also came to know that some students always transfer from one school to another. Some of them are the troubleshooters. After they cause problems in one school, they move to another school where they also cause problems. We have now put in place guidelines on transfer of students from one



school to another. The principal who is releasing a student must indicate that there is no disciplinary problem with that student. The District Education Officer (DEO) and Provincial Director of Education (PDE) on both the releasing and receiving ends must ascertain that, that student is not facing a disciplinary case before he or she is allowed to move from one school to another. They must ascertain that, that student is not facing a disciplinary case before he or she is allowed to move from one school to another. It is now not easy for student to transfer from one school to another.

Madam Temporary Deputy Speaker, parents are also a failure in many cases. You know growing up is a challenge to the youth. If parents are not giving parental guidance to their children, that problem ends up in schools. It then explodes in the form of unrest amongst students. Therefore, we are appealing to parents to take their role and make sure that they guide their children. Let them play the role of good parents so that we have a good population of the youth in schools.

Madam Temporary Deputy Speaker, there are stakeholders who have been interfering with the management of schools. These include politicians. Politicians always indicate that, "unless so and so heads that school, there is no rule". Politicians have their choices of principals. Politicians also insist on having certain teachers who sometimes do not even perform. The same applies to sponsors. Recently, we had problems with several faith-based schools who insisted on certain teachers to be the principals of secondary schools or they say they do not want certain teachers. I remember early this month, I had very bad encounters with some leaders of faith-based organisations because they insisted on having certain teachers to be appointed principals of those schools, although they did not have the qualifications. When the Provincial Director of Education (PDE) did not allow it, they camped at the Teachers Service Commission (TSC) to insist on some individuals to head those schools. We appeal to sponsors, most of whom are faith-based, to help us in proper management of schools. Otherwise, if faith-based organisations insist on their people being appointed principals of schools, we will end up with problems.

Madam Temporary Deputy Speaker, the same applies to the communities. We need everybody to help us in managing schools.

Madam Temporary Deputy Speaker, in the meantime, we are going to benefit from the issues highlighted in this Report plus what we have.

With those few remarks, I beg to support.

**Mr. Koech:** Thank you, Madam Temporary Deputy Speaker, for this opportunity. I would, first of all, thank the Chair for ensuring that we debate this Motion. We started debate on this Motion in December. Many hon. Members have contributed to the same.

Madam Temporary Deputy Speaker, allow me to take this opportunity to sincerely thank the Members of this House. All of them have supported this Report. They have made suggestions which are for the good of the education sector.

Madam Temporary Deputy Speaker, I would not wish to use a lot of time, but let me also sincerely thank the staff who worked very closely with us.

Madam Temporary Deputy Speaker, this Report is on students' strikes. We want to bring this to an end. I would want to ask that the recommendations that we have made here are implemented to the letter so that we bring to an end the issue of strikes and unrest in schools.

Madam Temporary Deputy Speaker, as a country, we lose a lot when students go on rampage or strike and destroy property. Even when they sit-in, we end up interrupting learning in our institutions.

Madam Temporary Deputy Speaker, Sir, this Report covers the students' strike that took place last year. This year, the teachers' strike came up. All of them are one and the same thing. They all operate in a classroom.

Allow me to use this opportunity to sincerely thank the successful brokering of the negotiations. We, as a Committee, it has been our great concern this stalemate is solved once and for

all. I would like to sincerely thank hon. Members of this House for their solidarity with teachers during this moment. They have shown there is need for us, as a country, to consider the plight of the teachers. As hon. Githae said, a teacher was a point of reference in yesteryears in the society. Today, teachers have been reduced to a level that has forced them to be on the streets. We, as a Committee, in this Report, recommended that there is need for us, as a Government or a country to be proactive in all that we do, so that we do not find ourselves in the current quagmire.

The Report captures, very ably, the position taken by students that a lot they learn from school, apart from the core-curriculum, they also have the extra-curriculum. The students told us that what they do depends on what decisions we take as politicians. I call upon us all, as leaders, to realize that there is need to resolve matters through dialogue, so that we do not send wrong signals to our students. For the one-and-a-half weeks that the teachers have been on strike, our students have been seeing them demonstrate, carry twigs, burn effigies and evade tear gas. That is the kind of learning our students have been subjected to. All this has to come to an end.

Yesterday, we, as a Committee, took the initiative to talk to the Kenya National Union of Teachers (KNUT). We, as a Committee, are very grateful that they listened to us. Today, we had a meeting with the Ministry of Education. I thank the Ministry because we were able to candidly discuss and see the way forward. I am very grateful that these talks have reached this far, based on some of the recommendations that we came up with as a Committee.

Madam Temporary Deputy Speaker, we, as a Committee, do not wish to see our teachers or any other group on the streets. Let us, as a Government, be more proactive in addressing plight of our workers. Many suggestions have been made and I want to thank all hon. Members.

With regard to the media, we said that there is need to vet what is presented by the media. In our recommendations, we said that the Kenya Film Corporation and the Media Council of Kenya, in consultation with the Ministry of Education, assess what is appearing on our television screens. All that we are saying is that we are in changing times. We believe that the State corporations and the Ministry are also in concurrence with the same. Therefore, what the media says is good today, may not be good tomorrow.

More importantly, we talked about enrolment. We said that there is serious congestion in some of the very competitive schools. Therefore there is need to address the issue and ensure that we stop over-crowding in a few schools, while we leave some schools under-enrolled. Our Report gives room for further suggestions.

Our last recommendation which is very important and paramount for us, as a country, is on page 70. We suggested that the Government undertakes a long term review of the education system and structure to provide for specialization in career development and reduce wastage. This is very important. We believe that it is possible for the Ministry of Education to start from there, of course, after implementing the many recommendations that we have suggested. I believe that, we, as a country, can come together to provide the way forward.

Finally, we, as a country, and as people, need to be more proactive in all that we undertake.

With those few remarks, I beg to move.

*(Question put and agreed to)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Prof. Kamar): Hon. Members, that concludes the business on the Order Paper. The House is, therefore, adjourned until Tuesday, 3rd February, 2009, at 2.30 p.m.

The House rose at 7.15 p.m.