

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 15th December, 2010

The House met at 9.00 a.m.

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

PRAYERS

NOTICES OF MOTION

PEACEFUL REFERENDUM IN SOUTHERN SUDAN

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

THAT recognizing the critical role by the Government of Kenya as the Chair of IGAD and a party to the comprehensive peace agreement for the Sudan Peace and noting that the Comprehensive Peace Agreement has specific protocols towards the referendum on 9th January, 2011; further aware that Parliament passed a resolution to become a member of the Amani Forum whose vision is a region free of conflict; this House urges the Government of Kenya to do all in its power to ensure there is a peaceful referendum on the future of Southern Sudan and further urges that the referendum scheduled for 9th January, 2011 be held on the stated date and calls upon all parties to the Comprehensive Peace Agreement to respect the outcome of the referendum.

REPEAL OF THE INTERNATIONAL CRIMES ACT

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

THAT, aware that Kenya promulgated a new Constitution on 27th August, 2010 which has had fundamental changes in circumstances upon which several statutes had been enacted in the past including the International Crimes Act which domesticates the Rome Statute, this House resolves that the Government takes immediate action to have the International Crimes Act repealed so that Kenya be immediately released from any obligation to implement the Rome Statute and further that any criminal investigations or prosecutions arising out of the post-election

violence of 2007/2008 be undertaken under the framework of the new Constitution and that the Government suspends any links, co-operation and assistance to the International Criminal Court forthwith.

CENSURE OF USA AMBASSADOR TO KENYA

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

THAT, deeply concerned about the conduct of the American Ambassador to Kenya, His Excellency, Michael Rannerberger, in respect of his activities which portray Kenyan leaders in negative light, noting further that his recent activities in the country in dealing with the youth and during the pre-referendum period amount to undermining elected leaders in the country; cognizant that his conduct is in direct contravention of Article 47 of the Vienna Convention which states *inter alia* without prejudice to their privileges and immunities; it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state, and that they also have a duty not to interfere in the internal affairs of that state; this House censures His Excellency, Michael Rannerberger, the United States of American (USA) ambassador to Kenya for his undiplomatic conduct and resolves that he be recalled back and another official to be deployed in his place in order to preserve the existing cordial relations between the two countries.

QUESTIONS BY PRIVATE NOTICE

KMTC ADMISSIONS IN 2010

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I beg to ask the Minister for Medical Services the following Question by Private Notice.

(a) How many trainees were admitted to the Kenya Medical Training College in 2010?

(b) Could the Minister provide a per-constituency list of students admitted to the college?

The Assistant Minister for Medical Service (Mr. Kambi): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

A total number of 4,480 trainees have been admitted into the Kenya Medical Training College (KMTC) for various courses which commenced in September, 2010. The administrative unit that the KMTC has been working with at the province, district or division---

Mr. C. Kilonzo: On a point of order, Mr. Temporary Deputy Speaker, Sir. This Question was actually answered and the Assistant Minister is expected to give the formular which favoured one particular area against other areas.

The Temporary Deputy Speaker (Mr. Imanyara): Indeed, Mr. Assistant Minister, you do not have to answer the part of the Question that you answered. Just restrict yourself to the criterion that was used.

The Assistant Minister for Medical Services (Mr. Kambi): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for reminding me that.

In admitting students for various courses which started in September, 2010, the college worked with the 1999 population census results. Although a subsequent census took place in 2009, the results had not been released as at June, 2010 when the admission exercise was concluded. The guidelines and the criteria which were used were:-

(i) Admission of students is based on existing guidelines approved by the board of management and the Ministry. The guidelines had the following variables for consideration in distribution at various places across the country.

- (a) Population size
- (b) Regional balance
- (c) Poverty index
- (d) Affirmative action for gender
- (e) Disability
- (f) Minority groups who had expressed interest by way of application

Mr. Temporary Deputy Speaker, Sir, in applying the population variable, 75 per cent of existing vacancies per training discipline were shared out equally *pro rata* to population levels among the eight provinces while the remaining 25 per cent were shared out according to the poverty index, again for the eight provinces. After the share of each province was determined, it was then shared among the districts in the province based on population levels. The final consideration honoured gender, home districts and divisions.

The population and poverty index figures used in the computation of the vacancies are summarized below:- Nairobi with a population of 2,807,155 has a poverty index of 22. Coast Province with a population of 3,278,668 has a poverty index of 59. North Eastern Province with a population of 1,106,309 has a poverty index of 74. Eastern Province with a population of 5,821,635 has a poverty index of 51.

Mr. Kabogo: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member---

The Temporary Deputy Speaker (Mr. Imanyara): Order! You do not stand on a point of order and proceed before you are allowed to proceed. Let the Assistant Minister finish before you raise your point of order.

The Assistant Minister for medical Services (Mr. Kambi): Mr. Temporary Deputy Speaker, Sir, Central Province with a population of 4,377,915 has a poverty index of 31. Rift Valley Province with a population of 8,728,247 has a poverty index of 49. Western Province with a population of 4,343,051 has a poverty index of 53. Nyanza Province with a population of 5,051,562 has a poverty index of 47.

The computation of the vacancies in a particular course per province on population and poverty indexes was based on 75 per cent of the total vacancies applied for in each course. The remaining 25 per cent of the total vacancies were computed based on the poverty index levels. These were worked out per course as follows: The total regular pharmacy courses were 144. The 75 per cent will be 75|100 times 144, which

gives 1.08. The remainder is the 25 per cent of the 36 vacancies. I can table the computed positions.

(Mr. Kambi laid the document on the Table)

The Temporary Deputy Speaker (Mr. Imanyara): The supplementary questions should be limited to the criteria because that was the purpose.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, the criteria given by the Assistant Minister is not clear in relation to the Question. However, because this Question is appearing for the third time, much as I may not be satisfied, I would like him to tell us what he intends to do to ensure that the next intake will be done as per constituency.

Mr. Kambi: Mr. Temporary Deputy Speaker, Sir, I have already directed my Permanent Secretary to write to the medical training colleges informing them that the next intake should be per constituency.

Eng. Rege: Mr. Temporary Deputy Speaker, Sir, in the last report that was given by the Assistant Minister, he indicated that Rachuonyo Constituency, which is not available---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Eng. Rege! I said clearly that we are restricting the supplementary questions to the criteria as hon. Ruto has done because the other issues were dealt with.

Mr. Letimalo: Mr. Temporary Deputy Speaker, Sir, if an affirmative action is one of the criteria used in the admission of students to medical training colleges, which I believe takes care of the marginalized communities, how come the number of students from the marginalized communities is still low?

Mr. Kambi: Mr. Temporary Deputy Speaker, Sir, we cannot admit students who have not attained the required qualifications. However, we admit almost all those with the right qualifications from marginalized communities when they apply. It depends on the applicants and their qualifications. The qualifications are very cardinal in this exercise.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, when the Board came to Turkana, we agreed that for the CDF to contribute to the construction of classrooms, hostels and the kitchen laboratory, 50 per cent of the intake must be from the local community. That is why we are using our local resources. When will he ensure that 50 per cent of the intake to the Medical Training College, Lodwar, is from the local community? The Constitution allows affirmative action under Section 56.

Mr. Kambi: Mr. Temporary Deputy Speaker, Sir, I want to thank the Member because he has contributed a lot in construction of training facilities in his constituency. However, I want him to urge his people to take these courses seriously because---

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am not asking for more positions. I would not have built more facilities if the demand was not high from where I come from. We have qualified people for those courses. The Assistant Minister should just admit them.

Mr. Kambi: Mr. Temporary Deputy Speaker, Sir, if they have the required qualifications, there is no doubt that we will admit them. However, if they do not have the required qualifications, we cannot admit them.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister did not tell me in clear terms how the population was used. My main question was why Bomet District could get only 52 positions, while Nyeri District got 162 and Kisii District got 192. Are these districts three or five times bigger than Bomet District?

Mr. Kambi: Mr. Temporary Deputy Speaker, Sir, everything largely depends upon the number of people who apply in the various courses. In Bomet District, the applicants were fewer than the applicants in the other districts.

STRIKE BY MIGORI MUNICIPALITY WORKERS
OVER UNPAID ARREARS

Mr. Pesa: Mr. Temporary Deputy Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Local Government the following Question by Private Notice.

(a) Is the Minister aware that workers at the Migori Municipal Council have been on strike since Friday 3rd December, 2010, due to three months' unpaid salary arrears?

(b) Could the Minister state the current financial position of the Council, clarify whether there are any funds meant for the Council held by the Ministry and state the measures the Ministry is taking to address the problem and avert recurrence of the same in the future?

(c) What is the state of the working relationship between the Chief Officers and the Councillors, and what measures is the Minister taking to restore a functional working relationship?

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

(a) I am not aware that workers in the Migori Municipal Council have been on strike since Friday, 3rd December, 2010, due to unpaid three months' salary arrears. However, it should be noted that the salary arrears were paid.

(b) The Ministry is not holding any funds meant for the council. The councils, through Circular No.11201 dated 31st March, 2010, were advised to clear all statutory debts and salary arrears. All local authorities were encouraged to explore available options through which they can raise sufficient funds to clear outstanding debts.

(c) The relationship between the chief officers and the council is normal. However, I have directed the Regional Local Government Officer in charge of Nyanza region to investigate the situation in the case of Migori Municipal Council and report back to me for further action.

Mr. Pesa: Mr. Temporary Deputy Speaker, Sir, I do not know where to start from. The Assistant Minister started by saying that he is not aware that workers in Migori Municipal Council are on strike. I would like to know whether the Assistant Minister is in charge. This Question was raised some time back and the fact of the matter is that those workers have been on strike since 3rd December, 2010 until last Saturday when they were persuaded to resume work because the municipality was very filthy. That was when they resumed work.

The Temporary Deputy Speaker (Mr. Imanyara): The Assistant Minister has told you clearly that he has given instructions in relation to that claim.

Mr. Pesa: But Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has said that he is not aware.

The Temporary Deputy Speaker (Mr. Imanyara): That is why he has told you that he has given instructions for a report to be compiled and be sent to him. This is because you have brought the matter to his attention.

Mr. Nguyai: Thank you, Mr. Temporary Deputy Speaker, Sir, for coming to my protection. The truth of the matter is that we have the investigations going on. We also have documentary evidence to show that all the arrears have been paid.

The Temporary Deputy Speaker (Mr. Imanyara): How long will your investigations take?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, we have directed the Provincial Local Government Officer (PLGO) to investigate the relationship between the two. Through the letter from the Permanent Secretary, we have not given a deadline, but we will be able to find that out.

The Temporary Deputy Speaker (Mr. Imanyara): We want a specific time frame within which you can come and report to the House.

Mr. Nguyai: Taking into account that we will go into a festive season, can you give us a month before we get back to the House?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Pesa, is one month okay?

Mr. Pesa: Mr. Temporary Deputy Speaker, Sir, let us take this matter more seriously. The chief officers on the ground do not work now. So, how can we give him one month?

The Temporary Deputy Speaker (Mr. Imanyara): So, how long do you wish the Assistant Minister to have?

Mr. Pesa: He can call down there and give us an answer tomorrow in the afternoon.

The Temporary Deputy Speaker (Mr. Imanyara): Given the nature of business of the House, I think one month is reasonable. We will allow the Assistant Minister 30 days before you report to the House. This Question will be deferred until that time.

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, I think it is only part “c” of the Question that will be deferred.

The Temporary Deputy Speaker (Mr. Imanyara): Yes. It is with regard to the report that you will get after the investigations. That is what the House will be expecting from you.

Mr. Kabogo: Mr. Temporary Deputy Speaker, Sir, the first part of that Question was whether the Assistant Minister is aware that people are on strike.

The Temporary Deputy Speaker (Mr. Imanyara): And he answered that he was not aware and that is why he has requested for a report.

Mr. Kabogo: Mr. Temporary Deputy Speaker, Sir, this Question was sent to the Ministry over 30 days ago. If it takes an Assistant Minister a fortnight to know that the workers in the local government are on strike, what is he saying?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Nguyai, what are you saying? Can you tell Mr. Kabogo what you are saying?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, this is a Question by Private Notice and it did not come 30 days ago. It came, I think, within the last 24 hours.

The Temporary Deputy Speaker (Mr. Imanyara): Indeed, that is a valid point, if it is a Question by Private Notice. We will give the Assistant Minister one month.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.514

GAZETTEMENT OF NOMINATED COUNCILLORS/PUBLIC OFFICERS

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

(a) whether he could indicate the procedure followed prior to gazetteMENT of nominated Councilors and Public Officers, stating who is responsible at every stage; and,

(b) when he will gazette the nomination of Ms Sarah Areman (ID No. 11512739 and voter registration number 134/119/227022621810) as a Councillor of Laikipia County Council, Mr. Yusuf Ali as a Public Officer at Lodwar Municipal Council and Mr. Jackson Apenyu Imana at Turkana County Council?

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

(a) The legal position with regard to the nomination of councilors provided under the Local Government Act, Cap.265(26) and (27) for the municipal councils which include the City Council of Nairobi and Sections 29 and 40 for county councils and town councils, after the 1997 IPPG recommendations that both the Constitution of Kenya and the Local Government Act were simultaneously amended under the State Laws Repeals and Miscellaneous Act, 1997 to provide as follows:-

(i) The persons to be appointed shall be nominated by political parties according to the proportion of every political party in the local authority taking into account the principle of gender equality.

(ii) The proportion under the above shall be determined by the electoral body after every general election and shall be signed by the political parties. The information on who is to be nominated is then forwarded to the Electoral Commission which checks a proportionate number of councilors for nomination; whether the person proposed is a registered voter of that local authority; observance of the gender principle in nomination; whether the nominee is over 18 years of age and has a national identity card; and, whether the nominee is able to read and write. If the electoral body is satisfied with the information provided, the names are forwarded to the Minister for Local Government for publication in the Kenya Gazette. For public officers, prior to the amendment of the

Local Government Act, 1997, District Commissioners were appointed by the Ministry of Local Government to represent Government interest in local authorities. After the amendment of the Act in 1997, the act of treating DCs as councilors in the local authorities was discontinued. In 2003, the Minister for Local Government re-introduced the appointment of public officers in local authorities as councilors to represent Government interests. The objective of the appointment was to ensure that Government policies are implemented at local level. The Minister for Local Government under the Kenya Gazette Supplement 118 of 16th November, 2007 on establishment of local authorities provided that under Section 4(b), the number of councilors nominated under local authority and one who shall be a public officer, the legal notice empowers the Minister to appoint a public officer formerly appointed as a Government representative.

(b) The gazettment of all pending changes made by sponsoring political parties through the Interim Independent Electoral Commission for nomination of councilors will be done in two weeks time. I wish to also include in the same Kenya Gazette edition, the appointment of public officers as appropriate.

While I have received communication from the IIEC on Sarah Areman, there is no communication from the IIEC on Jackson Apenyu Imana.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I want to thank the Assistant Minister for that elaborate answer. My problem is that the Ministry sits on this information even when it gets communication from the IIEC. That communication was sent to the Ministry six months ago. Why has the Assistant Minister not gazetted those names? What assurance can he give to this House that in the two weeks he has talked about, he will gazette those names? Why does he need the two weeks and not today or tomorrow?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, the number of changes against nominated councilors and public officers normally come from time to time. The changes mainly come from political parties. If they come without appropriate documentation, we have to refer them to the IIEC for ratification. Once that is done, we use the legal process which includes using process servers to sometimes degazette certain nominated councilors. Since they come in lots, we normally try to batch them and do them on a periodic basis. In this case, I would like to assure the hon. Member that our legal officer, the state counsel has done all the necessary paper work and is just waiting to receive one or two items. We have been assured that we will be able to do that within the next two weeks.

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, if I got the Assistant Minister right, gazettment of the names by his Ministry is just a matter of procedure. This is because when I look at the system and criterion used in that process, I find nowhere he has clearly stated that his Ministry has any serious duty to do with the vetting and the decision on who to gazette.

So, Mr. Temporary Deputy Speaker, Sir, in view of that, we would want to know from the Assistant Minister. After a name is given to the Ministry by the Interim Independent Electoral Commission (IIEC), how long are you supposed to take in a case of gazettment where there are no issues and where you really do not have to refer to anybody else? That is exactly what we are asking because we have found cases whereby

you take six months or even beyond to gazette a councilor or a public officer when there are no issues at all related to his gazette.

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, where there are no issues, we should not take long at all. Unfortunately, in a majority of the cases, there are issues because so long as there is an existing nominated councilor who is being removed from a position, then there are issues of process servers for the existing nominated councilor to be served. But in the case of deceased nominated councilors, there are no issues. So, we are able to proceed pretty expeditiously.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, now that the Government Printer can object to publishing or printing, like we saw recently, what happens in this case? What is plan “b” for the Ministry, just in case one of these days they take things to the Government Printer and they refuse to print?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, I am not aware that the Government Printer has the capacity to object instructions from the Minister of Local Government.

Thank you.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I think the Assistant Minister is talking about areas where the councilor is being degazetted or where there is controversy. The issues I am raising are very straight – where there is communication from a party to the Assistant Minister. Let him update these appointments as per the scheduled period he has stipulated because this is one Assistant Minister who has capacity to issue a letter for councilors in Thika to congregate and be paid, and it was done. Why can he not do the same with my nominees?

Mr. Nguyai: Mr. Temporary Deputy Speaker, Sir, as you can understand, the two cases that the hon. Member is referring to over here, one, we do have instructions or communication from the IIEC and for that, we will take action. We still do not have communication for Mr. Jackson Apenyu Imana. I think it is on record that the Minister has certain capacities. One, he can make requests but not issue instructions on payments of councilors.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Next Question by the hon. Member for Makadara!

Question No.548

TRANSFER OF ASSISTANT CHIEF’S OFFICE
IN HARAMBEE SUB-LOCATION

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Mbuvi not here? The Question dropped.

(Question dropped)

Question No.602

CONSTRUCTION OF BUILDING NEXT TO CID HEADQUARTERS

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Ngugi not here? The Question dropped.

(Question dropped)

Question No. 621

SETTLEMENT OF SQUATTERS IN BANITA SETTLEMENT SCHEME

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Kigen not here? The Question dropped.

(Question dropped)

Question No.641

PAY RISE FOR YOUTH POLYTECHNIC INSTRUCTORS

The Temporary Deputy Speaker (Mr. Imanyara): With regard to Question No. 641, the Chair has been informed that both the Minister and the Questioner have sought deferment of this Question. It is, therefore, deferred to such other time when the two will be back in the country.

Dr. Monda: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am the Questioner of the Question No.641. I am not privy to your directions that we are in agreement with the Minister that we defer the Question.

The Temporary Deputy Speaker (Mr. Imanyara): I have received this information from the Clerk-at-the-Table, Mr. Sialai.

(The Clerk-at-the-Table consulted with the Chair)

I understand these instructions came from the Deputy Speaker. So, while I seek what exactly is the position, I will go to the next Question, but I will defer the decision while I await clarifications from the Clerk-at-the-Table regarding the circumstances under which these instructions were brought on the Order Paper.

Next Question by Mr. Waibara!

Question No.671

COURT'S DIRECTIVE ON CRIMINAL CASE NO. 51 OF 2005

Mr. Waibara asked the Attorney-General:-

(a) whether he is aware of the judgment delivered in Criminal Case No.51 of 2005 at the Nairobi High Court on 18th September, 2007 and the court's directive that the defendants be prosecuted for perjury; and,

(b) what steps he has taken to ensure prosecution of those convicted and compliance with the judgment.

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

(a) I am aware of the judgment delivered in Criminal Case No.51 of 2005 on 18th September, 2007. But the Court's directive was not that I prosecute, but that I order professional criminal investigations to be conducted in respect to some witnesses to establish whether the offences of perjury and conspiracy to defeat the ends of justice had been committed and, if so, to prosecute the same.

(b) Prior to the conclusion of the case, the Attorney-General had already become aware and had come to the same conclusion as the court itself and had directed the Director of Criminal Investigations to carry out further investigations as follows:

(i) whether Michael Waweru and John Maina Waweru recorded and signed the statements on record,

(ii) record statements from the officers who recorded statements of the two persons referred to in (i) above confirming or denying having recorded statements of the aforementioned two persons,

(iii) record a statement from one Mr. Moseti about his alleged role in the recording of the statements of the two,

(iv) take specimen signatures and handwritings of the two aforementioned persons; that is, Michael Waweru and John Maina Waweru, as well as the statements of the two to the handwriting experts for his opinion.

(v) Charge and caution statements to be taken from the two when investigations are complete.

(vi) Carry out further or other investigations that are pertinent to the case.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General is yet to receive the investigation file.

Mr. Waibara: Mr. Temporary Deputy Speaker, Sir, what has the Attorney-General done with regard to directives by the judge; to cause investigations to be done to establish a possible existence of conspiracy in defeating justice?

Mr. Wako: Mr. Temporary Deputy Speaker, Sir, as I have just replied, I have directed the Director of Criminal Investigations to carry out further investigations as directed by the judge. I had come to the same conclusion but I am yet to receive the investigation file from the Director of Criminal Investigations.

Mr. Kabogo: Mr. Temporary Deputy Speaker, Sir, from 2007 up to now, it is three years and yet the investigation file has not yet been returned to him. What is it that the Attorney-General is going to do to make sure that he expedites this process so that those culpable are brought to book?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I have sent reminders to the Director of Criminal Investigations Department, but I am yet to receive the investigation file. Fortunately, whereas under the previous Constitution I

could order direct investigations, at least under the new Constitution, the Police Commissioner must comply with my---

The Temporary Deputy Speaker (Mr. Imanyara): Order! He is asking about from 2007 up to now; it is a long time. He is asking why there has been a delay from 2007.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, your concern is also my concern, that the Police Commissioner, through the Director of Criminal Investigations, has not been complying and there are a number of files with directions to investigate. Under the previous Constitution, the Attorney-General could not enforce the directive, because the Criminal Investigation Department is answerable to the Police Commissioner and to the Minister in charge of internal security; the situation was not as at the time of Independence when the Directorate of Criminal Investigations was answerable to and was part of the State Law Office.

When you talk about the issue of impunity, this is a typical case of impunity where investigations are not carried out, even where directives have been issued. Because of that problem, which has been identified, we took care of that in the Constitution that was endorsed by the people. Article 157(4) states that the Director of Prosecutions shall have the power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct. The previous Constitution stopped there but under the new Constitution, an Inspector-General shall comply with any such directions. Those words were added because of the practice of the police not complying with such directives.

It is my intention in this case, and in many other cases, to draw the attention of the Commissioner of Police that if he does not comply with the directive to investigate, he will be in breach of the specific provision of the new Constitution, and that we shall take action accordingly, even if it means instituting abuse of office charges against him. In this case, and in many other cases, we are taking steps to notify the Commissioner of Police that he has to pull up his socks and comply with the directives to investigate.

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, the Attorney-General has agreed that a specific provision in the Constitution makes it compulsory for the Inspector-General of Police Service to comply. What I find not clearly provided for is the time within which the compliance must take place. So, I would want to hear from the Attorney-General when he is giving the directives, and whether he will give a clear time frame within which the investigations report should be given to him for further action.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, what we are now doing is that when we ask the Commissioner of Police to investigate a case, we give some indication of the time within which we expect a completed investigation file on our desk, or when we expect an interim report on the status of investigation and when the Commissioner of Police expects to complete the investigations. This is because time to investigate each case varies.

In this particular case, it should not have taken more than 30 days, because it was just a question of taking statements and specimens and coming back to us. It should not have taken very long. In this particular case, it should be not be more than 30 days.

Mr. Waibara: Mr. Temporary Deputy Speaker, Sir, I want the Attorney-General to give a commitment as to when he will give instructions to the Police Commissioner to start conducting this investigation. He should also table the names of those who conspired to defeat justice.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I cannot really table the names of those who conspired because the investigations can be prejudiced. What we are doing in many of these cases, where the police have had a long time to investigate and there has been no response, the Chief Public Prosecutor is giving the police 30 days to comply in accordance with the new Constitution.

The Temporary Deputy Speaker (Mr. Imanyara): Is Mr. Konchela not here?

Question No.646

SALE OF KENYAN HIGH COMMISSION IN AUSTRALIA

The Question is dropped.

(Question dropped)

Question No.648

CESSATION OF TRAIN SERVICE BETWEEN NAIROBI/NANYUKI

Mr. Mbau asked the Minister for Transport:

(a) what caused the cessation of train service between Nairobi and Nanyuki;

(b) what plans there are to revive the service for the residents along this line given the escalating costs of transport caused by high fuel prices; and,

(c) what became of the Rift Valley Railways that was meant to provide mass transport to the majority of Kenyans at an affordable rate.

The Assistant Minister for Transport (Mr. Ogari): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The services between Nairobi and Nanyuki ceased after a major wash away at Ndarungu River Bridge at kilometre 45/7 in late 2009. This was compounded by major vandalism of the line.

(b) The Rift Valley Railways has commenced repairs of the bridge and replacement of vandalized rail fittings and services will resume as soon as the repairs are complete.

(c) Under the concession agreement, the Rift Valley Railways are supposed meet passenger service requirements as detailed in Schedule 3 of the agreement, which I have reproduced in part and which I would wish to table before the House.

(Mr. Ogari laid the document on the Table)

The underperformance of the Rift Valley Railways passenger services are as a direct result of the investment and technical capacity challenges that the concessionaire has faced since commencement of service.

The Government of Kenya and Uganda signed deeds of amendment to the agreement on 25th August, 2010 and it is expected that an investment of US\$40 million will take place in the next two years to improve the services. In addition, it is important to note that the passenger concession to RVR ends in June, 2012 and the Government is implementing a plan to modernize and expand commuter rail services in Nairobi.

In terms of long passenger services, a study will be undertaken to identify the most appropriate way to provide quality long distance passenger services.

Mr. Mbau: Mr. Temporary Deputy Speaker, Sir, I have asked this Question in view of the escalating fuel prices affecting the cost of transport to many persons in this country. Earlier on, railway transport used to assist people move around within this very densely populated part of central Kenya. Now, the Assistant Minister is telling us that the passenger concession to the RVR will end in June, 2012 even before this company delivers service.

Mr. Temporary Deputy Speaker, Sir, could we know whether due diligence was done before we concessioned Kenya Railways to RVR. The RVR's contractual term has come to an end and the firm has not given any service to the needy part of this country? Was there any appraisal or due diligence?

Mr. Ogari: Mr. Deputy Speaker, Sir, I wish to respond that the issue of concessioning of RVR was done with due diligence. It is due to unforeseen circumstances, managerial, financial and operational challenges which were not seen in the appraisal. That is why we have found ourselves in that situation. However, since then, after the amendments that were signed by the Governments of Uganda and Tanzania, the mistakes were realized. It is our hope that services will be improved.

Mr. Njuguna: Thank you, Mr. Deputy Speaker, Sir. While I thank the Assistant Minister for that brief answer, I would like him to remember that railway stations in Nairobi, Uplands and Matassia are in a very deplorable state. They have been neglected for a long time. What programme does the Kenyan Government or RVR have to modernize and renovate those railway stations?

Mr. Ogari: Mr. Temporary Deputy Speaker, Sir, in the last part of my answer, I clearly pointed out that the Government is implementing a plan to modernize and expand commuter rail services in Nairobi. That will not only happen in Nairobi because the Government is looking at all the railway lines so that they can be modernized. That is in our programme and it should be realized soon.

Mr. Bahari: Thank you, Mr. Temporary Deputy Speaker, Sir. The extension of the railway line to Nanyuki is very important for farm produce and other livestock products. Could the Assistant Minister tell us exactly how much money has been set aside for the repair works and when does he expect that to be completed?

Mr. Ogari: Mr. Temporary Deputy Speaker, Sir, I am not in a position to state the amount that has been set aside. That is because it is the RVR which is doing the repair

works. However, I have been given an indication that the work will end very soon. By “soon”, it means one or two months from now.

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, the Government has been allocating very substantial resources to construct roads. However, we know that those roads are being used by big trucks and lorries which are causing a lot of damage to the roads at an extremely high rate. That is happening because the Government cannot enforce the Road Act. On the other hand, without a functional modern railway system, there is no way the Kenya economy will move forward. Could the Government tell us clearly what it is doing to address transport problems all over the country? Without a railway system, there is no way we can control traffic jams. It is a big mess. What is the Government doing about that?

Mr. Ogari: Mr. Temporary Deputy Speaker, Sir, I said that the Governments of Uganda and Kenya have signed an amendment to the concession. One of the major highlights of the amendment was that prior to those amendments, the Governments were prevented from carrying out development projects on the conceded railway corridors. That condition has since been amended to allow for the construction and operation of standard gauge railway lines and any other development that the Government may deem necessary for the purpose of alleviating the transport problem in this country. This is a matter that we are addressing. We had that prohibition clause before but now it has been removed. The Government of Kenya is addressing that issue. We are working on the modernization and expansion of the railway transport system.

Mr. Mbau: Mr. Temporary Deputy Speaker, Sir, in view of the fact that the Assistant Minister has said that, that railway line stopped operation in 2009 due to vandalism and a bridge which was washed away, could he tell us when RVR will be through with the repairs, given that the bridge was washed away in 2009? Today, we are nearing the end of 2010. Could we know exactly when RVR will be through and operational so that people from this area can begin to benefit?

Mr. Ogari: Mr. Temporary Deputy Speaker, Sir, it is important to note that the bridge was washed away towards the end of 2009. I know that we are now at the end of 2010. However, I had earlier indicated that we got an indication from RVR that repairs will be completed soon. We have interpreted “soon” to mean two to three months from now. So, we are expecting that towards the end of February, the repairs will be complete.

Question No.654

EXISTENCE OF INFORMAL SCHOOLS IN
URBAN UNPLANNED SETTLEMENTS

Mr. Kioni, on behalf of **Mr. Mwangi**, asked the Minister for Education:-

(a) whether he is aware of the existence of informal schools in the urban unplanned settlements and if so, how many such informal schools are operational in Nairobi;

(b) whether the Ministry recognizes such schools and if so, how much money was allocated to the schools during the current financial year; and,

(c) what plans does the Ministry have towards taking over all informal schools in the unplanned settlements in the country.

The Assistant Minister for Education (Mr. Mwatela): Mr. Temporary Deputy Speaker, Sir, this question seeks to interrogate a very serious matter concerning the education of our less fortunate persons. It came to my notice yesterday. I have since established that there were some monies which were allocated but they have not been disbursed. I would like to be given more time so that I can come here with a more comprehensive answer or even, if possible, make sure that the money is allocated.

Mr. Kioni: Mr. Temporary Deputy Speaker, Sir, he should indicate how much time he is asking for.

The Temporary Deputy Speaker (Mr. Imanyara): How much time do you require?

The Assistant Minister for Education (Mr. Mwatela): Mr. Temporary Deputy Speaker, Sir, a week would be good enough.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very serious Question because those schools are owned by CBOs and NGOs pretending that they are donning out charities while, in the actual sense, they collect money from those poor people and from the people who fund those Community Based Organizations (CBOs) and Non-Governmental Organizations (NGOs). The circumstances under which those children learn are worse than some of our public schools. Here, we are and the Government want to pump in more money.

In view of the fact that we are likely to close for recess, could we push the Assistant Minister to come back to us tomorrow so that when schools open in January, the schools would have reverted back to the public?

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. Similarly, I am also very disturbed by issues of informal schools in slum areas. There are similar issues being experienced by the IDPs. When the Government asks for more time, that only perpetuates poverty. We appeal to you to order the Assistant Minister, for the sake of the poor people of this Republic, that he comes tomorrow with an answer.

The Temporary Deputy Speaker (Mr. Imanyara): The Assistant Minister has already conceded that this Question raises very important issues. Mr. Assistant Minister, will you be ready tomorrow?

The Assistant Minister for Education (Mr. Mwatela): Mr. Temporary Deputy Speaker, Sir, first of all, I want to concur with Mr. Ethuro that this matter addresses critical issues. Our very unfortunate children who have grown up in slums---

The Temporary Deputy Speaker (Mr. Imanyara): Are you willing to give this answer tomorrow afternoon?

The Assistant Minister for Education (Mr. Mwatela): It is not possible, Mr. Temporary Deputy Speaker, Sir. That is why I would like to be given at least a week so that we can scrutinize the issue. As the hon. Member has alluded, there are some cases

where we have schools that are pretending to be schools. We want to scrutinize them so that when we disburse the money, we disburse to really needy schools.

The Temporary Deputy Speaker (Mr. Imanyara): I appreciate the Assistant Minister's concerns and his admission that this matter requires serious attention. If he requires one week, the Question should be put on the Order Paper after one week!

(Question deferred)

Next Question by Mr. Boaz Kaino!

Question No.665

LIST OF MANAGING TRUSTEES OF NSSF SINCE 2000

Mr. Kaino asked the Minister for Labour:-

(a) whether he could provide a list of all the Managing Trustees of the National Social Security Fund (NSSF) since 2000 and indicate the rate of investment growth for the respective periods served by each of the Managing Trustees;

(b) whether he could confirm that the current Managing Trustee of the Fund was sent on compulsory leave by the Board and, if so, state why; and,

(c) what measures he is taking to streamline the operations of the Fund and to guarantee its stability.

The Assistant Minister for Labour (Mr.Ojaamong): Mr. Temporary Deputy Speaker, Sir, I think we had written to the Office of the Clerk of the National Assembly yesterday so that this Question can be put in the Order Paper tomorrow. We are not yet prepared to answer it. I, therefore, do not know why it was put on the Order Paper today.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Kaino, what do you say?

Mr. Kaino: Mr. Temporary Deputy Speaker, Sir, I oblige.

The Temporary Deputy Speaker (Mr. Imanyara): So, you would like the Question to come tomorrow? That would be subject to tomorrow's Order Paper because as you are aware, the programme for the week has already been published. So, subject to there being available space tomorrow, it can come in the Order Paper.

(Question deferred)

I will go back to Question No.641 by Dr. Robert Monda!

Question No.641

PAY RISE FOR YOUTH POLYTECHNIC INSTRUCTORS

Dr. Monda is not here! The Question is, therefore deferred!

(Question deferred)

Next order!

MINISTERIAL STATEMENT

The Temporary Deputy Speaker (Mr. Imanyara): I understand there are a number of Statements to be made.

The Minister of State for Provincial Administration and Internal Security, please, proceed!

IMPLEMENTATION OF THE ALCOHOLIC DRINKS CONTROL ACT

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, on the 8th December 2010, Mr. Fred Kapondi, Member of Parliament for Mt. Elgon Constituency---

The Temporary Deputy Speaker (Mr. Imanyara): Is the Member in the House?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Yes, Mr. Temporary Deputy Speaker, Sir. I can see him; he is here.

The Temporary Deputy Speaker (Mr. Imanyara): Very well!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, the hon. Member rose on a point of order to seek a Ministerial Statement from my Ministry with regard to the implementation of the Alcoholic Drinks Control Act (2010). The hon. Member sought clarification on the following:-

(i) When the regulations to implement the provisions of the Alcoholic Drinks Control Act (2010) will be gazetted.

(ii) The opening hours for business premises dealing in alcoholic drinks and the steps that have been taken to ensure that law enforcement agencies do not intimidate or harass business people on the account of opening and closing hours without legal justification.

Mr. Temporary Deputy Speaker, Sir, I wish to say the following. As all Members must be aware pursuant to the Alcohol Policy, this honorable august House enacted the Alcoholic Drinks Control Act (2010). This came into force on 22nd November 2010.

Immediately following the coming into force of the Act, the Government on making regulations contemplated under Section 68 of the Act, as this honorable House might appreciate, the exercise of making regulations requires extensive stakeholder consultations and consequently is time consuming. However, the Government has made admirable progress.

In reply to the clarification sought by the hon. Member, the draft Alcoholic Drink Control Licensing Regulations (2010) is now ready. The draft regulations have made provisions for the conduct of the business and affairs of the district committee, the fees payable for issuance of each licence under the Act and the hours of business of different licences issued under the Act.

Mr. Temporary Deputy Speaker, Sir, the draft Legal Notice containing the regulations was forwarded to the Attorney-General on 10th for approval and subsequent gazettelement. The regulations will be gazetted anytime from today.

Until the regulations are gazetted, the opening hours remain as before. In this respect, the police have been directed to wait until such a date when the regulations to make provisions for hours of business shall be gazetted. In other words, I would not expect the police officers to harass bar owners. I would not expect the District Liquor Committee to harass bar owners. Let them wait until the regulations are gazetted and until I make another announcement that the regulations have now been gazetted. As for now, I will not expect any kind of harassment from any quarters. The bars will continue with their previous operating hours.

The Temporary Deputy Speaker (Mr. Imanyara): Are there any clarifications apart from those by Mr. Kapondi?

Mr. Kapondi, remember our practice is one clarification at a time.

Mr. Kapondi: Mr. Temporary Deputy Speaker, Sir, first, I would like to congratulate the Assistant Minister for coming up with a very comprehensive Statement touching on areas I needed clarification on. However, the Ministry operates when giving instructions to the District Liquor Boards. It is always through a memo or a letter to confirm the directives to the effect that the hours would remain the same until the gazettelement is done. Could the Assistant Minister table the letter he wrote instructing his officers to show that they have to comply until the gazettelement? Otherwise, a mere verbal directive might be meant for the public gallery.

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

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

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Assistant Minister, why do you not wait for some more clarifications and then you can take them?

Mr. Ochieng: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister fell short of mentioning illicit brews. Do they also fall within the gazettelement that is supposed to be done by the Minister in due course? I mean the time of opening and closing the social places where these people drink illicit brews.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Assistant Minister, please, proceed!

Did you want to say something, Mr. Gunda?

Mr. Gunda: I am okay, Mr. Temporary Deputy Speaker, Sir.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I have instructed the Permanent Secretary in our Ministry to issue a circular to all district liquor boards to take care of that. A circular is being circulated to the district liquor committees to enforce the law. It is until I table the regulations which are being published as we are talking that the law will take effect. In the meantime, bar owners are free to use the previous licences, timings and business hours. So, that, notwithstanding, I have directed that bar owners should never be harassed. If there is any harassment, I am around to control that.

On the issue of illicit brews as he has mentioned, it is illicit! That means it is illegal. Any illicit brew is not allowed. Even the new Act says the same! We will not allow any illicit brew to be sold because of the death cases which we have witnessed. We will rein in those who have those illicit brews. I believe those are the two issues which they wanted me to clarify.

Mr. Temporary Deputy Speaker, Sir, I have another Ministerial Statement!

The Temporary Deputy Speaker (Mr. Ethuro): Proceed, Mr. Assistant Minister.

POINTS OF ORDER

RE-EMERGENCE OF SABAOT LAND DEFENCE FORCE

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, on Tuesday 30th November, 2010, Mr. Wamalwa stood on a point of order and requested for a Ministerial Statement from my Ministry. In the statement, he sought to know the position on the allegations of the re-emergence of the Sabaot Land Defence Force (SLDF). He also wanted the Minister to assure the neighbouring districts of Bungoma and Trans Nzoia of their security in case the allegations are, indeed, true. Finally, he wanted to know whether the army camp which had been earlier promised has been established in the area. I beg to reply as follows:-

(i) The allegations that the SLDF militia is re-grouping are not true. However, rumours have been making rounds for the last one month that they are re-grouping. Those rumours are, as purported, originating from unsatisfied individual groups which are dissatisfied with the sub-division of Chebyuk Phase 3. The reasoning behind the rumours is to cause fear and panic and have the Chebyuk Phase 3 sub-division, which is in its final stages, abandoned. The reasons for those individuals spreading rumours stem from several factors which include the following:-

(ii) Some of them and their supporters are not in the list of beneficiaries of the land being sub-divided now. There are some individuals or brokers who had been soliciting money pretending to have the capacity to allocate individuals with pieces of land in Chebyuk Phase 3. As they fear being required to refund the monies they have solicited, they are, obviously, intending to cause confusion so that they can find a scapegoat for not refunding such monies.

A community which illegally occupy the Chepkitale Game Reserve and who are supposed to be beneficiaries of the Chebyuk Phase 3 sub-division fear that they will be

required to move out of the game reserve once the exercise is over. Because they own large herds of cattle, they fear that the sizes of land being allocated will not be enough for their animals. We have agreed that those who are occupying the game reserve land must leave the game reserve. They will have to leave it. It is also worth noting that intelligence reports indicate that a group of illegally armed members of that community harassed a young man at Cheptandan area last month, claiming that they are SLDF. Afterwards, they gave an interview to one of the local dailies which went ahead to publish a story intimating that SLDF is up again. Further, some members of the same community are opposed to Kapsiro Division being administered from the new Cheptais District. However, majority of the inhabitants of the division are opposed to having their division sub-divided into two so that, in future, they can request that it can be made a district. The said members have opted to create fear and panic as a way of pushing forward their agenda.

Recently, a number of suspects who were arrested for being members of the militia have been released from custody for lack of evidence on their cases by the court. Some activists are, therefore, capitalizing on this arguing that they will regroup to cause further mayhem. I want to assure the residents of Mt. Elgon and the neighbouring districts of Bungoma and Trans Nzoia that they need not worry about their security as the allegations are not true.

Further, the respective district security intelligence committees of Mt. Elgon, Trans Nzoia and Bungoma are working in collaboration to stem any threat if it emerges. The three districts are living in peace and there is also harmony.

Further and finally, I want to confirm that there is an army camp with permanent buildings established at Banarntega in Emia Location of Cheptais District. We also have a platoon of GSU personnel at Kipsigon in Emia Location and Kipsikiro in Chebyuk. Those security forces are supposed to boost the capacity of both the regular and Administration Police officers present in the Mt. Elgon region. Intelligence gathering and patrols are ongoing daily and security is thus guaranteed.

Mr. Kapondi: Mr. Temporary Deputy Speaker, Sir, I would like to take this opportunity to thank the Assistant Minister for a job well done. He has been spot on. I only wish that my colleague and neighbour, Mr. Wamalwa, was here. That is what created acrimony here between him and I. One, he sought for a Ministerial Statement over an issue which is not there in my constituency. I term that malice. Secondly, I wish to ask the Assistant Minister to clarify---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Kapondi! Any hon. Member of this House – and all these are Members of the National Assembly- can ask a question on any matter, including matters in your constituency.

Proceed!

Mr. Kapondi: Mr. Temporary Deputy Speaker, Sir, it is always good to understand the background of certain issues and we have to be guarded as hon. Members so that we do not issue alarming statements that can end up causing despondency on the ground. Otherwise, I wish to ask the Assistant Minister to clarify what will happen to a number of Non-governmental Organizations (NGO) which are also part and parcel of those rumours. The other day, the Western Kenya Human Rights Watch based in

Bungoma came up with an outrageous statement and when they were told to clarify and appear before the police to write a statement, they went underground. Secondly, there is another NGO in Kitale, Free Pentecostal Church, which is purporting to be undertaking reconciliation and conflict resolution in Mt. Elgon. What will the Assistant Minister do about those NGOs that are purveying falsehood for the purpose of getting funds from the donors by painting Mt. Elgon negatively?

Mr. Affey: Mr. Temporary Deputy Speaker, Sir, I want to thank the Assistant Minister for telling the country the truth about the existence of SLDF; that it is no longer a problem and we want to congratulate and thank the Government and the local leadership of that area for making it possible for people to live in peace. But he has said that there are rumours and he is confirming to the country that, indeed, there are rumours regarding this issue. He has not made any arrests regarding that. Has he done any arrests or any investigations in order to stop the rumour-mongers from creating chaos in the constituency?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, hon. Kapondi is asking what we are doing to those who are generating these rumours.

Mr. Temporary Deputy Speaker, Sir, we will look for the human rights watch fellow who has gone underground. We have also summoned those who are behind the Free Pentecostal Church--- The law is very clear on those who peddle rumours to cause unrest to those who live in harmony. If anybody comes up with a rumour, we would like to know the source. If at all there is evidence that he is the one who is peddling rumours, we will arrest the fellow and take him to court. The law is very clear. At this time of Christmas, I would want each and every Kenyan to live peacefully and enjoy Christmas festivities without any problem.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Assistant Minister! Hon. Affey was just putting you to task. With your own statement, you have confirmed some rumours. What have you done to the peddlers of the rumours?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I have mentioned here that some of those who were peddling rumours have gone underground and the law will catch up with them. The police are looking for them.

I want to assure hon. Members that we will bring to book those who are spreading these rumours. I would also request the leadership fraternity within those areas to report matters to the police and not leave rumour- mongers walking from one bar to the other. If they continue walking from one bar to the other, I will also use my powers to close down those bars. We will definitely catch up with these fellows.

ALARMING SMS MESSAGES SENT TO KENYANS

Dr. Nuh: On a point of order, Mr. Temporary Deputy Speaker, Sir. I had sought for a Ministerial Statement from the Minister for Information and Communications sometimes in early September. Sometimes back the Minister even disputed and said that he had given the Ministerial Statement allegedly during one of the closing sessions of

Parliament. The Speaker ruled last week that the Ministerial Statement had not been given and it was due yesterday. I was here yesterday, but the Minister was not here. Today, I do not foresee anything coming up.

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Temporary Deputy Speaker, Sir, I must apologise that I am not privy to what the hon. Member has just claimed. However, I will pick it now and ensure that we issue this statement by Thursday.

He says my colleague, hon. Poghiso, had given an undertaking that the statement would be issued yesterday. Unfortunately, hon. Poghiso is out of the country on official duty and is due back on Sunday. I undertake to make this statement tomorrow afternoon.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Speaker, Sir. You heard the Assistant Minister very clearly. He says, "I claimed." These are not claims; they are things which are recorded on HANSARD. Could he withdraw the word "claim"? I am not claiming; these are facts. The Speaker gave the ruling last week to the effect that the Minister had to give a Ministerial Statement yesterday.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Assistant Minister, the Member requested a statement. It is even recorded in our schedules. So, you can only respond.

The Assistant Minister for Information and Communications (Mr. Khaniri): Mr. Temporary Deputy Speaker, Sir, as I said earlier, I apologise that I am not privy to the request by the hon. Member. Let me withdraw the word "claim" and substitute it with the word "stated".

KENYAN DELEGATION TO SOUTHERN SUDAN

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I wish to request for a Ministerial Statement from the Ministry of Foreign Affairs. This is in the light of two delegations of Members of Parliament and Cabinet Ministers who made their entourage into Southern Sudan. I wish the Minister, in his statement, to cover the nature of this visit, including who provided the funding and how much money was spent. He should also tell us whether this visit was a Parliamentary Committee visit or an Executive or a Ministerial delegation. What was the purpose of the visit and the mandates of the Members of Parliament? What were the issues which were addressed in Southern Sudan by the Members in their tour? Did the visit enhance the interest of Kenya's foreign policy or jeopardized the Kenya's standing in terms of becoming an arbitrator in the case of Southern Sudan and Sudan in general?

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I will communicate the request and we can have this statement by Tuesday, next week.

Mr. Affey: On a point of order, Mr. Temporary Deputy Speaker, Sir. I just want to plead with the Chair to let the Minister bring this statement Thursday this week because the information that they have does not require a lot of research. The delegation went there in the presence of the Assistant Minister for Foreign Affairs. Tuesday next

week is slightly a long period of time. This is a matter that this House must discuss. This is a matter that touches on the diplomacy of Kenya.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, Thursday is tomorrow. I am aware that the Acting Minister has been away, and probably, he is still away. The Assistant Minister just came back. I am not sure what his schedule is like. We would rather commit something that we can control. I believe Tuesday, next week is not too far.

The Temporary Deputy Speaker (Mr. Ethuro): Very well. On Tuesday, next week. Let us receive the request first and then we can allow Ministers to proceed with their statements.

KILLING OF ELEPHANTS IN CONSERVANCIES IN SAMBURU EAST DISTRICT

Mr. Letimalo: On a point of Mr. Temporary Deputy Speaker, Sir. I would like to request for a Ministerial Statement from the Minister for Forestry and Wildlife regarding the killing of 12 elephants in conservancies based in Samburu East District. The Minister, in his statement, should:-

- (i) Specify the affected conservancies where elephants were killed.
- (ii) State the circumstances under which these elephants were killed in an area patrolled by Kenya Wildlife Service (KWS) and Northern Range Land Trust Rangers.
- (iii) Quantify the financial loss and its implication on tourism.
- (iv) Does Northern Range Land Trust have the capacity to protect wildlife in the community based conservancies in Samburu East District?
- (v) Finally, the action taken against poachers, including arrests and the mechanism to stop further killings of elephants.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I will communicate the same. I would ask for Wednesday, morning, next week.

MINISTERIAL STATEMENT

ETHNIC PROFILING AND INDISCRIMINATE SWOOPS ON MEMBERS OF SOMALIA COMMUNITY IN EASTLEIGH AND SOUTH C NAIROBI

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I wish to give the following Statement.

Mr. Temporary Deputy Speaker, Sir, on Tuesday, 7th December, hon. Kapondi, Member of Parliament for Mount Elgon stood on a point of order seeking a Ministerial Statement on ethnic profiling and indiscriminate swoops on members of Somali community in Eastleigh and South C Nairobi. In the statement, he wanted a clarification on whether the Government has embarked on profiling of persons of Somali ethnic group in Eastleigh.

He also sought clarification on the progress of investigations so far made following incidents in Eastleigh, which precipitated the profiling of security measures. Further, he wanted the Minister to clarify whether or not such profiling is not an infringement of the rights of Kenyans, a blatant violation of the Constitution, and whether the profiling amounts to a blanket condemnation of the entire Somali community and treating it as guilty of the crime of exploding the devices that killed the Administration Police officer in Eastleigh. Finally, he sought clarification on what provisions of the Constitution the police were applying to hold the 350 ethnic Somali persons in cells in Nairobi after the Saturday swoop.

Mr. Temporary Deputy Speaker, Sir, security swoops are normal police security operations intended to rid the City of criminals hiding in the estates. The security swoops that were carried out in Eastleigh on 5th and 6th December, 2010 were not for the purpose of profiling persons of the Somali ethnic group. The swoops were security operations carried out in the whole of Nairobi area, whose aim was to reduce crime in the city generally, but particularly during the month of December, when crime tends to increase.

However, there were no swoops carried out in South C during the mentioned dates. The swoops, which are still on, were not precipitated by the explosion that occurred in Eastleigh. The operations had been planned earlier. Investigations into the explosion are still on, and a comprehensive report will be released once the investigations are completed. Releasing any information at this particular stage may jeopardise the progress of the investigations so far undertaken.

Mr. Temporary Deputy Speaker, Sir, security operations are normally conducted within the legal framework, and are not targeted to any ethnic groups. So far, persons of the following descriptions have been arrested: Kenyans of different ethnic origins, 954; Somali nationals, 340; Ethiopian nationals, 20; total number of persons arrested, 1,324. Out of the 1,324 persons who were arrested, 1,084 were taken to court and charged with various offences, while 240 persons were released after they were found to have committed no offence. Cases are now pending before court.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Kapondi: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has not been very satisfactory and clear in his Ministerial Statement. I would like him to come out clear as to why the swoops always happen immediately after a criminal incident has occurred.

Secondly, on the 1,324 persons who were arrested in the swoop, the Assistant Minister is not very clear as to whether this number is specifically for Eastleigh or for other parts of the country.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, I would like to thank the Assistant Minister for carrying out that swoop, because it appears to have been very successful, having unearthed that 340 Somali nationals and 20 Ethiopians were living in Nairobi illegally. What is the Government doing to ensure that the Ministry of State for Immigration and Registration of Persons is up to the task? Why has the Ministry allowed 360 aliens to settle in the country in spite of it being in place?

Finally, what is the Government doing to ensure that the business environment in Eastleigh is not such that none Somali Kenyans find it difficult to do business there?

Mr. Affey: Mr. Temporary Deputy Speaker, Sir, of course, the Assistant Minister has not given us a very satisfactory answer and in line with what hon. Kapondi had asked. The Government is on record asking for the profiling of Somali businessmen in Kenya to establish their business contacts and their source of money. None other than his Permanent Secretary confirmed this position. This compelled members of the Somali community to go to court. Therefore, there is general discrimination as evidenced by the fact that the Office of the President asked to have people of Somali origin doing business--

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order, hon. Affey! Seek clarification!

Mr. Affey: Mr. Temporary Deputy Speaker, Sir, there are police officers who are involved in crime every time we have such swoops. Whenever there is a swoop, there are police officers who go beyond the call of duty and collect monies illegally from traders, and release them even before they are taken to police stations. What has he done to those criminals in uniform, whose only purpose is to harass innocent Kenyans who are doing good business?

Mr. Letimalo: Mr. Temporary Deputy Speaker, Sir, in his Ministerial Statement, the Assistant Minister said that amongst those who were arrested in the swoop were Ethiopians and Somali people, whom I believe are aliens. This is an indication that during the swoop that was carried out by the police, there were many others who, probably, slipped through. What arrangements has he put in place to ensure that aliens do not make Kenya a transit point? Some of them must have gone to other countries through Kenya without being noticed.

Secondly, he said that the explosions were planned earlier. How come the criminals were not arrested before the swoops were carried out? Why did he have to wait until he carried out the swoop to arrest them? He should have arrested those criminals if the explosions were planned earlier.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Affairs (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, police operations are carried out as and when need arises. We do not conduct any operation simply because something has happened. Arrangements for the operations were made earlier. After Eastleigh, we are going to carry out operations somewhere else. I do not wish to mention where, but we are going to carry out similar operations even in Mombasa. Why? This is because we would want to have a clean city or a city without thugs. I would, therefore, request my colleagues to support the efforts being made by the police to get rid of fellows who create mayhem in the city.

We do not discriminate against any particular tribes. A thug is a thug. Whether one comes from Nyanza or Somalia or Ethiopia, we have got to identify what you are doing in Nairobi. We have to establish whether you have valid papers. If you do not have valid papers, we take you straight to the airport for deportation. You have to go back to where you came from. It is quite imperative for my colleagues to support police efforts to get rid of thugs in our cities. We are not going to do this in Nairobi alone. After Nairobi, we will move to Mombasa. After Mombasa, we will move to Eldoret. After Eldoret, we will move to Kisumu in order for us to have cities without thugs.

Mr. Temporary Deputy Speaker, Sir, on the extortion bit, I would like to say that some of these are just rumours. I have ordered the Commissioner of Police to ensure that police officers put on name tags as part of their uniform, so that when an officer extorts money from anybody, including Kenyans of Somali origin, he can be identified by name and personal number. Let anybody who is extorted money write down the name of that particular officer and report the same to any police station, or to me, in order for me to take action.

Mr. Kapondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Assistant Minister to mislead the House? He said that those who were arrested were aliens. When did aliens become thugs? Is he in order to mislead the House when those aliens had papers?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, if you heard my statement, I said that we managed to get 1,320 people. Out of 1,320, 240 who were also netted in the swoop had no problem at all and they were released. In other words, we want to check whether these Ethiopians have got papers for them to stay in this country or whether they are the people who are causing problems. That is quite in order. So, it is not all of them who are thugs but some of them. Some of them leave their countries to stay here without papers.

On the issue of immigration, Mr. Temporary Deputy Speaker, Sir, we have been having meetings with them and we told them the Department of Immigration should scrutinize and peruse all papers for all those who are coming into the country. I think the police should be commended. The hon. Letimalo wanted to know whether some of these fellows are criminals or just businessmen. Those who purport to be coming to this country to do business, some of them are people who are also wanted in their own countries. I must commend the work of the police because we managed to get those who purport to be businessmen and yet they are not. They are the people who are causing mayhem; they are the people who are printing fake money and also roaming around. I am going to arrest all those illegal aliens in this country.

I want to assure my friends that if you want to try something this time round when they are doing police reforms, you will see that the police mean business and we mean business for real. We are going to continue with the operations until we get rid of these fellows. Thank you.

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

MOTION

ADOPTION OF REPORT ON APPOINTMENT OF KBC BOARD OF DIRECTORS

Eng. Rege: Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Committee on Energy, Communications and Information on the appointments of the Kenya Broadcasting

Corporation Board of Directors laid on the Table of the House on Thursday 18th November, 2010.

Mr. Temporary Deputy Speaker, Sir, the Committee on Energy, Communications and Information was constituted on June, 17th 2009 and its membership was as follows:-

The hon. (Eng.) James Rege, MP	-	Chairman
The hon. Maina Kamau, MP	-	Vice-Chairman
The hon. Danson M. Mwakulegwa, MP	-	Member
The hon. Mohammed Hussein Ali, MP	-	Member
The hon. Eng. Nicholas Gumbo, MP	-	Member
The hon. Edwin Yinda, MP	-	Member
The hon. Emilio Kathuri, MP	-	Member
The hon. Ekwe Ethuro, MP	-	Member
The hon. (Prof.) Philip Kaloki, MP	-	Member
The hon. Cyprian Omolo, MP	-	Member

Mr. Temporary Deputy Speaker, Sir, the hon. Wilfred Ombui who was also a member has ceased to be a member of the Committee since 21st April, 2010, when he was appointed an Assistant Minister in the Ministry of State for National Heritage and Culture. The Committee congratulates hon. Ombui for his appointment and wishes him well in his duties.

The Committee is mandated to consider the following: Development, production, maintenance and regulation of energy, communications, information, broadcasting and information communication technology (ICT) development. The Ministries assigned to the committee are the Ministry of Energy and the Ministry of Information and Communications.

Mr. Temporary Deputy Speaker, Sir, following Parliamentary Question on 21st and 26th October, and 2nd November, 2010, and subsequent responses by the Minister for Information and Communications and the interest on the matter by the House, you made a ruling from the Chair on 2nd November, 2010, directing the Committee to look into the matter and report with speed.

On behalf of the Departmental Committee on Energy, Communications and Information, I now have the honour and pleasure to present its report and recommendations relating to the appointment of the Kenya Broadcasting Corporation (KBC) Board of Directors to the House for debate and adoption.

Let me give you the background, Mr. Temporary Deputy Speaker, Sir. On 21st October, 2010, hon. C. Kilonzo asked the following Questions via Private Notice: “ Why did the Minister in appointing the KBC Board fail to comply with the provisions of Section 4 (1) of Kenya Broadcasting Corporation Act, Cap. 221 of the Laws of Kenya?

In part of this response, on 21st October, 2010, the Minister stated as follows: “The constitution of the board had met most of the requirements, in that, there is a member from print; that is, Mr. Ben Gituku, from radio and television; Miriam Kahiga and from administration, we have Debora Lotodo”. Mr. Deputy Speaker, Sir, of the two, one is a prominent lawyer and has some background in financial management; that is, Mr. Charles Mwihi. The other is a University lecturer, Rev. Simon Kiuta Lonyayo. The only specialization lacking is in the areas of radio communication. There, however, exists

a vacancy following the expiry of the term of one of the members early in the year. Once this position is filled, the board will be fully compliant.”

Mr. Temporary Deputy Speaker, Sir, on 26th October, 2010, the Minister tabled the curriculum vitae (CVs) of the following directors: Mr. Ben Gituku, Rev. Simon Kiuta Lonyayo, Mrs. Debora Lotodo, Mr. Charles Musyoki Muoki and Charles Mwiha. The Minister did not table the curriculum vitae of Miriam Kahiga who is now deceased.

During the House sitting on 2nd November, 2010, after increased interest in the matter, the Chair directed that the Committee moves with speed and looks into this matter because of its importance and urgency, in that, the question of law was being broken and to report back to the House in two weeks time. The Committee therefore embarked on the matter as directed. According to the Kenya Broadcasting Corporation Act, Cap. 221, there are 12 directors in the KBC Board, if all vacancies are filled. The KBC Act, Cap 221(401) states that, “There shall be a Board of Directors of the corporation which shall consist of:

- (a) a chairman of the board appointed by the President,
- (b) the managing director of the corporation,
- (c) the permanent Secretary for the time being responsible for information and broadcasting,
- (d) The Permanent Secretary in the Office of the President,
- (e) Not more than three shall be public officers and of whom:-
 - (i) At least one shall have specialization or experience in matters connected with radio communication apparatus.
 - (ii) At least one shall have specialization or experience in radio or television programme production.
 - (iii) At least one shall have specialization or experience in print media.
 - (iv) At least one shall have specialization or experience in financial management and administration”.

Mr. Temporary Deputy Speaker, Sir, the Minister’s appointees are as follows:-

1. Mrs. Deborah Lotodo – appointed on 3rd July, 2009
2. Rev. Simon Kiuta – appointed on 23rd July, 2009
3. Mr. Charles Muhia – appointed on 26th October, 2007
4. Mr. Ben Gituku – appointed on 23rd July, 2009
5. The late Mrs. Miriam Kahiga – appointed on 23rd July, 2009

Mr. Temporary Deputy Speaker, Sir, *modus operandi* on the Committee are:-

Given that the Minister had earlier appeared in the House three times to respond to the above mentioned Question, the last time being 2nd November, 2010 when he tabled the CVs for the directors as evidence that they were all qualified as provided for under Section 4(1) of the Kenya Broadcasting Corporation (KBC) Act, Cap.221 of the Laws of Kenya, the Committee resolved not to invite the Minister in view of the fact that the tabled evidence and proceedings of the House recorded in the HANSARD were sufficient.

Mr. Temporary Deputy Speaker, Sir, in the execution of its mandate, the Committee considered the KBC Act, Cap. 221, the HANSARD recordings of 21st and 26th

October, 2010 and 2nd November, 2010 and the CVs of the five directors that were tabled by the Minister on the Table of the House on 2nd November, 2010.

On the Committee's observations and findings, in its sittings held on 11th and 16th November, 2010, the Committee went through the CVs tabled by the Minister and considered whether they met the mandatory requirements of Section 4(1)(f) of the KBC Act, Cap.221. Before embarking into the inquiry, the Committee was aware of the fact that the Act stipulates that the Minister may appoint seven directors of whom not more than three shall be public officers and four others with specialized qualifications. For that reason, the Committee was limited in investigating whether of the Minister's appointees not more than three directors were public officers and four other directors had mandatory qualifications specified under Section 4(1)(f)(i), (ii) and (iii).

Mr. Temporary Deputy Speaker, Sir, the Minister declared on the Floor of the House that he appointed Rev. Simon Kiuta Lunyayo and Mr. Charles Muhia according to the first limb of Section 4(1)(f) which provides that he can appoint three directors who are public officers. The interpretation and general provisions of the Act defines a public officer as---

(Loud consultations)

Mr. Temporary Deputy Speaker, Sir, could you save me from the loud noise from the Floor of the House because I am being confused?

The Temporary Deputy Speaker (Mr. Ethuro): Order hon. Members! Could you consult in low tones? Eng. Rege, hon. Members do not make noise.

Eng. Rege: Mr. Temporary Deputy Speaker, Sir, the interpretation and general provisions of the Act define a public officer as a person in the service of or holding office under the Government of Kenya whether that service or office is permanent or temporary, paid or unpaid.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Wakoli! You need to maintain peace around that corner!

Eng. Rege: Mr. Temporary Deputy Speaker, Sir, in view of this fact, upon evaluating the CVs of Rev. Simon Kiuta Lunyayo and Mr. Charles Muhia, the Committee established that neither of them was a public officer within the meaning of the law and, therefore, they do not qualify to be directors under Section 4(1)(f) of the KBC Act, Cap.221. The Minister further declared in the House that he appointed Mr. Ben Gituku according to Section 4(1)(f)(iii) which provides that the appointee must have specialization and experience in the print media. Upon our evaluation of Mr. Gituku's CV, the Committee found that he had the necessary experience as provided for under the Act having worked in both the Nation Media Group and the Standard Group where he was the group circulating manager and, therefore, he qualified. It was the Minister's further assertion that Mrs. Deborah Lotodo was appointed under the provisions of Section 4(1)(f) which specifies that the appointee must have specialization or experience in financial management and administration. Upon perusal of the CV, the Committee was of

the opinion that working experience as a head teacher is not equivalent to experience in financial management and administration and, therefore, concluded that Mrs. Deborah Lotodo does not have specialization or experience in financial management and administration. Therefore, she does not qualify. Mrs. Miriam Kahika, who has since passed away was appointed by the Minister under Section 4(1)(f)(ii). However, her CV was not tabled in the House and the Committee was not able to get it even after requesting for the same severally. Although the Committee appreciates that it is difficult to obtain her CV due to her passing on, the Committee drew the conclusion that she does not qualify as there is no evidence to prove otherwise.

Mr. Temporary Deputy Speaker, Sir, given that the appointment of the Chairman of the board is made by the President as provided for under Section (4)(1)(a), and no specific qualifications are stipulated, the Committee did not probe the appointment of Mr. Charles Muoki nor his CV had been submitted by the Minister.

Currently, there are still vacancies in the board of management according to the KBC Act, Cap.221 due to the expired terms and positions which had not been filled. Judging from the findings, the Committee, therefore, concludes that Section 4(1)(a) to (e) of the KBC Act, Cap.221 on appointment of Executive Director was complied with. The Minister did not comply with the first limb of Section 4(1)(f) in the appointment of Mr. Charles Muhia and Rev. Simon Kiuta Lunyayo. The Minister complied with Section 4(1)(f)(iii) in the appointment of Mr. Ben Gituku. The Minister did not comply with mandatory provisions of Section 4(1)(f)(iv) in the appointment of Mrs. Deborah Lotodo, and Mrs. Miriam Kahiga is not qualified as the Committee did not have the benefit of scrutinizing her CV.

In view of the above observations and findings, the Committee recommends that the Minister moves with speed to reconstitute the board to ensure that the appointments comply with the provisions of Section 41(f) of the Kenya Broadcasting Corporation Act, Cap.221.

I wish to thank the Committee members for having scrutinized this issue and made these recommendations.

I humbly ask Prof. Kaloki to second the Motion.

Prof. Kaloki: Mr. Temporary Deputy Speaker, Sir, I wish to second the Motion which is that this House adopts the Report of the Committee on Energy, Communications and Information on the appointment of the KBC Board of Directors, laid on the Table of the House on Thursday, 18th November, 2010.

Further to what the Chairman has said, I would like to dwell on the qualifications of the four appointees that were submitted to this House by the Minister for Information and Communications. According to the investigations, the Committee finds Mr. Ben Gituku to have met the requirements to be appointed to that board. The rest of the appointees did not meet the requirements. With regard to Mrs. Deborah Lotodo, she is a former head teacher. So, as per the Act which specifies the qualifications required for this position, the Committee finds that she did not meet the qualification. The other one is Rev. Simon Kiuta Lonyayo. This person did not meet the minimum requirements because his working experience included being a pastor, a chaplain, a senior chaplain and a lecturer at the School of Theology, Kabarak University. He did not meet the minimum

requirements. We also found Mr. Charles Muihia not to have met the minimum qualifications for the position. He is an advocate in private practice and a board member in various schools in the country. So, out of the four, three did not meet the minimum requirements. With all fairness, the Committee brings this report to the House and recommends that this list be rejected by the House and the Minister moves with speed to reconstitute a board that meets the required qualifications for KBC to carry out the mandate it was established to do.

With those remarks, I second the Motion.

(Question proposed)

The Assistant Minister for Information and Communications (Mr. Khaniri): Thank you for giving me this opportunity to contribute to the debate on this Motion. I rise to give the Official Government position on this issue. In doing so, let me, at the very outset, begin by congratulating my good friend, the Chairman of this Committee, for the very able and eloquent manner in which he moved the Motion. I also want to take this opportunity to congratulate the Committee that worked on this report for the detailed manner in which it did it and for the expeditious manner in which they produced this report.

As the Chairman stated while moving the Motion, the KBC, indeed, is a State corporation which was established by an Act of this Parliament, namely, Cap.221 of the Laws of Kenya. As a corporation, KBC has been given a key mandate to promote the universal access to information for all and contribute to the economic, educational, cultural and social wellbeing of all Kenyans.

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

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

You will agree with me that, that is a key role the corporation plays. Therefore, given the importance of this corporation, it is absolutely important that in constituting the Board of Directors for this corporation, the Ministry has to strictly adhere to the provisions of the Act, namely, Cap.221. I want to admit here on the Floor of the House that when the current board was constituted, there are some omissions that were made. I remember my colleague, hon. Poghio, trying to justify and give explanations as to why those omissions were made.

Notably, there is a requirement that we appoint somebody with specialization or experience in matters connected with radio communication and radio communication apparatus. Clearly, from the CVs that we are looking at, there is no one with these qualifications. Therefore, as the Executive, I want to state here that we accede to the recommendations that have been made by this Committee and I want to thank the Members for the good job that they have done. Without any hesitation, we will move

expeditiously to ensure that we implement the recommendations that have been made by the Committee without any delays.

As the Government, we support the Motion.

Mr. Chanzu: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. I would like to support the Motion that the Minister complies with Section 4(f) of Cap.221. I commend the hon. Member who raised this issue in Parliament the first time. I also commend the Departmental Committee for the work it has done. I also thank the Minister for taking responsibility. This is an eye opener. It is one of the issues that take place in Government corporations or organizations where appointment of directors is vested in a single person, that is, the Minister. I hope that this will be a lesson to the other Ministers who have been vested with this responsibility of appointing board members to such corporations.

As you have heard, this is a very important institution in this country, particularly now. It is very clear in the Act that out of the seven members to be appointed in the board, one must have experience or specialization in radio communication and radio communication apparatus; radio and/or television programme production; print media; and financial management and administration. A brief look at the document the Assistant Minister referred to in this House shows that there will be three of them who will be public officers. However, I find that to be contradictory because we are saying that those who hold public offices should not be members of these boards unless they are in private companies. That is something that needs to be looked at.

One time I had an opportunity to visit an organization in Tanzania which is equivalent to our Communications Commission a few years back. What they do is that they advertise these positions in the newspapers so that people can apply. This is because there is no point of having a law and then we hide these things. When you just go and call people, that is, your supporters and cronies and tell them to bring CVs because you want to appoint them to various positions without telling them what the qualifications are supposed to be, you will not be helping them. We have got highly qualified people in this country today. Kenyans have trained. They have gone to universities and high colleges of technology. We could very easily source these people through open advertisements. We can get young Kenyans who can run these organizations. In fact, that is why the KBC has been making losses and it cannot compete with the FM stations. If you listen to KBC in the morning and the FM stations, you will not feel like listening to KBC anymore and yet it is supposed to be a channel through which the Government and Kenyans communicate with the outside world and locally.

Ministers have been appointing their cronies to positions and it is high time this trend stopped. I saw a qualification in one of the individuals' CV, that the language he can speak is English, Kiswahili and Pokot (fluently)". I do not think that is what we are looking for. We are not looking for someone to run a vernacular station. It is in this document that the Chairman has. I think it is a let-down to us because we are now sourcing people internationally. We have the internet where we can get these qualifications easily. I think it is a disgrace if somebody in the USA reads and compares the qualifications of the people who run our radio stations.

I would like the Minister to move with speed and have this done. I have been in some of these boards. When it comes to contribution, that is where we have problems. Out of the seven members of the board, two positions have not been filled and they are supposed to be occupied by professionals because the others are civil servants who are representatives of Permanent Secretaries. So, the technocrats who should run the Board are the seven members. Out of those seven members, he has not appointed two members. One of them has passed away. In such a board, you will find only one person or two people contributing all the time. This means that there is no variety.

I want to support the Report and urge the Minister to move with speed to have the appointments done properly. In future, they should consider advertising the positions in the Press.

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir for giving me this chance to echo my support to this very important report. Let me start by thanking the Chairman of the Departmental Committee on Energy, Communications and Information for the good job that he has done with the Committee Members. One thing that has excited me is about the far-reaching recommendations that have been made by this Committee on the appointment of these people. I also thank the entire Committee for the diligence they have exhibited in the compilation of this Report.

One critical observation that has come out is the appointment of unqualified people to this very important sector. I am talking about people with no merit and experience. People with dubious qualifications were appointed. They were like strangers to a very important national body. It is high time people who are not qualified rejected some of these appointments which are handed to them by their relatives and friends so that they do not let themselves and Kenyans down. This is a total embarrassment to the families of the appointees because they are now being rejected for not being qualified. It is high time the appointing authorities were guided by the cardinal rule that is laid down in the appointment menu.

Nepotism and sycophancy should not be the guiding criteria in these appointments. Professionalism and Kenyanism should be practised when people are being appointed to these positions. I thank the President for appointing a very highly qualified Kenyan. This person merits a re-appointment because of his credentials, academic background and experience. Concerning the role played by the Minister, this was a total humiliation and embarrassment to his ministerial appointment. He failed to present the best candidate for the membership of the board. It is as a result of the poor appointment that the KBC Board of Directors has failed to give Kenyans credible service. With about 30 per cent of the appointees being unable to meet the basic qualifications, you cannot imagine such people participating effectively in the deliberations of the board.

As a result of this challenge, we hope the Minister will appoint people as per the recommendations of this House. We also note that workers at the KBC are not motivated. We have realised that there has been an exodus of the best broadcasters from the KBC to other young broadcasting stations. We should be able to stem that transfer of very qualified personnel.

Mr. Temporary Deputy Speaker, Sir, with a competent board, the kind of accumulated huge debts at the KBC will be addressed and tamed by appointing qualified

Kenyans. The KBC has debts running into millions of shillings. It would, therefore, be important that the sooner the new board is constituted, the better because it will give KBC a better facelift. The books of account for KBC must also be updated.

Finally, Mr. Temporary Deputy Speaker, Sir, I also concur and support fully the fantastic recommendation of reconstituting this board and the sooner it is done, the better for media communication in this country.

With those few remarks, Mr. Temporary Deputy Speaker, Sir, I fully support.

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, I rise to support this Report by the Committee. I want to thank the Committee for doing a good job by highlighting the weaknesses or the deficiencies on the part of the various appointees to the KBC Board.

Mr. Temporary Deputy Speaker, Sir, KBC, being a parastatal and a corporation that is funded from taxpayers' money, owes it to Kenyans to perform excellently. But this board has not lived up to its expectations purely because of the negligence on the part of the Minister or failure by the Minister to discharge his duty responsibly. I think now it is not in doubt that the Minister has to appoint a new board to take over from the current one, which is basically, to me, illegal because it does not meet the requirements of the Act.

Mr. Temporary Deputy Speaker, Sir, we also urge that the Ministry should act responsibly in this exercise. I want to mention very quickly that because of the failure and incompetence of this board, the KBC has not been making wise decisions or prudent financial decisions. Currently, I would mention that even the digital broadcasting that KBC is pursuing, there is a fear that it was not done competently. How? A Chinese company has been awarded the contract by the board and, purportedly, influenced by the Ministry without following the international tender processes. This is very sad and I would urge the Committee to go even further. I think the Committee owes it to the Kenyan people to go further and investigate more of the activities that are being carried out in the KBC.

Mr. Temporary Deputy Speaker, Sir, I want to also point out that when hon. C. Kilonzo raised the issue of the board, I raised a supplementary question on the actions that the board was just about to take, which are really fundamental, for example, the appointment of the Chief Executive Officer (CEO) of the board. I even tabled the advert for the CEO of the Board. If you look at it, it was clearly tailored to an individual. I have never read an advert where you put an upper ceiling for the age limit of the CEO to 45. I asked at that time: "What is the magic about 45 years old, so that the CEO who is applying should not be beyond 45?" Apparently, this was to favor the then acting CEO, who was 44 years old.

Further, Mr. Temporary Deputy Speaker, Sir, the same corporation is asking for higher qualifications from junior staff; it is asking for masters degrees, but when it comes to the CEO, they only ask for a single degree. That was purposely to protect the then acting MD, who had one degree. They even went further and asked for three years working experience in broadcasting. The acting CEO then had exactly three years, having joined the corporation in 2007. Looking at this, the board was deliberately tailoring their advert to a single individual which, to me, does not amount to competitive recruitment. Even after raising this on the Floor of the House, the Minister still went ahead and

appointed the then acting CEO as the CEO and he is currently the CEO of the KBC. There is even a report done by the Efficiency Monitoring Unit (EMU), which has implicated the CEO who has just been appointed to the position on the World Cup Deal. There were three people who were implicated in this; the then MD, the current MD and another staff. The two were suspended and one was retained and even promoted. What kind of impunity is this?

Mr. Temporary Deputy Speaker, Sir, I remember the Speaker making a ruling that the Committee should go further and investigate the appointment further beyond the board. Now, I expect the Committee to go ahead and even investigate the appointment of the current CEO. Did this appointment follow the laid down procedures? Is he competent enough? Has he met the integrity requirement of this position given that we have heard of these cases of suspicion and allegations of corruption on his person?

Finally, Mr. Temporary Deputy Speaker, Sir, I think this board has been doing a lot of disservice to this corporation, especially on procurement. Remember that, earlier on, there was an issue which the Ministry even ordered some investigation and brought a report implicating the board for having not done the right thing in terms of the contract with K24 and China Radio International. They did not follow the proper procedure.

Mr. Temporary Deputy Speaker, Sir, it is high time that we helped this State corporation. This can only be done if the Committee investigates the allegation of corruption in this State corporation and further, to investigate the very appointment of the CEO. Without a good and credible CEO, no matter what you try to do in this State corporation, you will not help it grow.

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

Mr. Kathuri: Mr. Temporary Deputy Speaker, Sir, I also stand to support this Report. I want to state from the outset that I am a Member of the Energy, Communications and Information Committee. Yes, there are quite a number of anomalies in the composition of KBC Board, but I would want us to separate the two issues; the issue of the CEO and the issue of the board members. The CEO was recruited; yes, they could have set qualifications that are basically meant to suit the current CEO, but we cannot penalize him because he was not the only Kenyan who would have met those qualifications. It is just that, by coincidence, they did it to suit him. But the fact is that there could also have been others who would also have met those very descriptions or qualifications.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to contradict himself? He is confirming that, yes, there could have been problems in the recruitment of the CEO and at the same time, he wants to defend the appointment of the CEO---

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Mbadi! Order! Hon. Kathuri is very clear in his statement that the Committee was not investigating the MD and so, what we have done and what he is contributing on is specifically the board. There were specifics and the Report was already laid in the House. That is what hon. Kathuri is saying.

Proceed, hon. Kathuri!

Mr. Kathuri: Thank you, Mr. Temporary Deputy Speaker, Sir, for assisting me to answer my colleague. For sure, we were investigating the board and I am saying very, very clearly that there are anomalies with the composition of the board and not with the appointment of the CEO. It is just that the CEO happens to be seen as if he was being favoured, yet he was not the only Kenyan who would have met those specified qualifications.

Appointments of parastatal boards are at times very disturbing. Some of them are done very competently while others are done in a very shoddy way. They should be based on merit. In this specific case, we can surely and clearly say that it was not based on merit. If you look at their qualifications, all of them are wanting. There is no other explanation that we can give other than just to say that it was a shoddy job, and it has to be repeated if we want to see KBC on the right path.

Mr. Temporary Deputy Speaker, Sir, the KBC is a very strategic parastatal. It has the best satellite dishes in the country and enjoys very wide coverage. It is accessible by all Kenyans from all corners of this country; so, it should be able to do extremely well. Unfortunately, it cannot because of having a poor composition of the board. In terms of ideas, they cannot assist the CEO to polish up decisions which can be implemented and make this strategic parastatal perform better than it is doing.

Mr. Temporary Deputy Speaker, Sir, look at the opportunities it has, including the right to the exclusive coverage of our proceedings in this Chambers. This gives it a head-start, yet it is not even able to break even. It is very worrying.

It is high time that the Ministry gets committed and ensures that we have the right composition of the board. The CEO, however polished he may be, needs to have a board that can assist him, so that he can roll out better programmes, which will make the corporation become more attractive and make money rather than making losses all the time, as we can see from its records.

Mr. Temporary Deputy Speaker, Sir, there is a lot that we can say but I would want to say, let us be very clear. Even if you have a very good CEO, if the board is not competent, it will be difficult for them to perform. Let us steer clear of mixing the two; the CEO has been recruited and he is in office very legally, as far as the board is concerned. The board is the one that ought to assist him further, so that he can get better results for the parastatal.

With those remarks, I support.

Mr. Ogingo: On a point of order, Mr. Temporary Deputy Speaker, Sir. In view of the fact that all hon. Members seem to be in support of the Motion, would I be in order to ask that the Mover be now called upon to reply?

Mr. Mureithi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the new hon. Member in order to come and cut short the debate when we have been here from the very beginning?

The Temporary Deputy Speaker (Prof. Kaloki): We just need to proceed with the debate.

Proceed, Mr. Mureithi.

Mr. Mureithi: Mr. Temporary Deputy Speaker, Sir, I would like to, first of all, support the Motion as brought by the Committee.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. You heard Mr. Mureithi refer to Mr. Ogindo as a new Member. I want to get clarification because as far as I know, Mr. Mureithi and Mr. Ogindo came to Parliament at the same time.

The Temporary Deputy Speaker (Prof. Kaloki): Order! He was talking about hon. Ogindo's arrival to the House today.

Mr. Mureithi: Mr. Temporary Deputy Speaker, Sir, I have a lot of respect for Mr. Ogindo, because of all the hon. Members, he came to my constituency for peacemaking and addressed my constituents. So, I have no problem with him. He is my friend. We have been listening to Eng. Rege's proposal, and I felt that I needed to give my input.

I would like to support the Motion as has been brought. I would also like to thank the Minister, who had the courage to admit that there were flaws. We have seen in this House that when Motions are brought, the first thing that happens is that the Ministers concerned put up a defence. This particular time, we want to support the Minister because he accepted that there were flaws. I think this country must move a little bit faster than that. A time will come when Ministers will not only accept their mistakes to the House, but will also step aside on their own without being forced to step aside when they make mistakes.

When you appoint somebody whose area of jurisdiction is the pulpit---. I am not saying that pastors are bad, but when an advertisement calls for a specific requirement in terms of academic qualifications and experience, I find it very odd that you can appoint somebody who has never seen the inside of a studio to a board. You then go ahead and appoint people whose field of expertise is the law courts. I think the Committee has done a fair job.

I would like to agree with my colleague that we should separate the two. If you have a chief executive with a very good board, he can always put forward the issues within the area that he has been given. One of the problems that our laws have created from time immemorial is that they have put so much power on the Ministers to appoint chief executives and directors; that power is more often than not misused.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for my colleague to keep on referring to separating the CEO from the board, yet the CEO is part of the board and is the secretary to the board? If the CEO is not competent enough, the entire board also fails. Why should we separate the CEO from the board?

Mr. Mureithi: Mr. Temporary Deputy Speaker, Sir, I have served as a CEO. The document I am holding here is not on the investigation of the CEO. If a document on the CEO is brought here, we shall discuss it.

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

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Mbadi, what is not in order?

Mr. Mbadi: What I find not in order is that my contribution was on how the board appointed the CEO, and I clearly said that the procedure was flawed. My colleagues are attempting to pre-empt what I had asked the Committee to do, that is investigate the CEO further. I am aware that the Committee only investigated the board. But I have asked the Committee, as was directed by the Speaker, to also investigate the

CEO. My colleagues are already pre-empting the matter by defending the CEO; they are saying that his appointment was okay. I find this to be reading too much into something that has not been done.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Mbadi, this report is on the investigation of the board and not the chief executive; that has already been stated very well. The Chairman did present a report here and there is nowhere in the report where it talks of investigating the Managing Director, or the CEO. So, Mr. Mbadi, the contribution by Mr. Mureithi is in support of the report. This is the report---. We are debating the report that has been tabled here. So, you are talking on a totally different area, namely calling for the investigation of the CEO, which is not in this report.

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

The Temporary Deputy Speaker (Prof. Kaloki): Order; I do not want this to be a tug of war between the Chair and Mr. Mbadi.

Eng. Rege: On a point of order, Mr. Temporary Deputy Speaker, Sir. There is nothing that has been said which indicates that the Managing Director is not doing a good job. We have not looked at the performance of the Managing Director. We have simply looked at the board's appointment, and that is all for now.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Mbadi, I want this matter to rest there. We are not investigating the Managing Director. If you want to call for that, that is your right. You can do that as a Member of Parliament. But we are talking about a report that has already been tabled here. I do not want us to continue talking about something else. I want that matter to rest. We need to proceed.

Proceed, Mr. Mureithi.

Mr. Mureithi: Thank you, Mr. Temporary Deputy Speaker, Sir, for protecting me. I would like to say that the Committee is led by an engineer, who himself has got a lot of acumen in digitization. We are very surprised that the KBC, which is a national organisation can be denied access to digital operations by FM stations, whereas they should have been the drivers in terms of digitizing the electronic media.

Therefore, the recommendations made here by this Committee are valid. I would like to request the Executive to move with speed and act. If the Board that comes in finds that the Chief Executive is not working, he should be removed. There should be a Board with very experienced people. However, currently, I see a situation where KBC will remain using the analogue system long after the FM stations are digitized. As a result, we may not be in a position to view the programmes of KBC. So, I am requesting the Government to move with speed, not only in terms of appointing the Board, but also in terms of bringing in people with experience. There should be training in the IT area. That way, instead of the Board sitting once a month, we have a whole team trying to bring KBC up to speed so that, by the time we shift from the analogue system to the digital system, KBC will be in the forefront. But it is a tragedy when we see FM stations saying that they want to deny KBC access to their digital data.

Mr. Temporary Deputy Speaker, Sir, in making recommendations, we want to say that we want Committees, just like this one, to be courageous. They should move away from any connotation of tribe or personalities and look at merits. I think, in this House, we should be looking at the merits of people without asking where they come from. That

is because we want to deliver to Kenyans. I want to urge the Minister for Information and Communications to move with speed and fulfill what was contained in the advertisement. This Parliament must also sit, in future, and change the format of appointing CEOs and Board members. When it comes to hon. Members, according to the new Constitution which we have here, I hope the cancer of knowing where Mureithi comes from will disappear. We should look at the merits of individuals so that this country can move from where we are to a first world country.

I support the Motion.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Temporary Deputy Speaker, Sir, I will take a few minutes to support this Report. I think the issue here is bigger than KBC and the CEO of KBC. The issue is in every Government parastatal where Ministers appoint people with poor qualifications based on ethnic consideration and friendship. At the end of the day, the Boards of various parastatals become the sycophants of the CEO of that organization and the Minister concerned.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Duale, where did you get that information from? You cannot come up with a blanket judgment.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Temporary Deputy Speaker, Sir, I will substantiate and I am heading to do that. You will find that even in this House, where a Committee of Parliament---

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Duale, I would like you to stick to the Report that has been tabled in this House.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Temporary Deputy Speaker, Sir, if you look at the members of the Board of KBC, and whom the Committee confirmed that they are not qualified--- Mrs. Deborah Chepsitit Ochodo, Rev. Simon Lanyonyo---. You do not need to be a rocket scientist to know where these names come from in relation to the said organization. We had the same problem with the Kenya Bureau of Standard (KEBS). The Board is divided. If you look at the division in that Board, those who side with the Minister are people of questionable qualifications. That is the same Board that will recruit the CEO. If you were disputing the criteria of composing the Boards of Directors, you can still question the qualifications of the CEOs who are secretaries to those Boards. I think it is high time that this House enacts a legislation that will give a benchmark on who should be appointed to a Board. That is because, as we sit here, the mandate of appointing a Board of Directors is solely left to the Minister. That has been used for politics. People want to reward their friends and relatives. That is not a secret.

That is why I challenge the Departmental Committee on Equal Opportunities to come up with a policy and table in this House the various Board members of various parastatals in this country. You will see that the Board members of a particular parastatal are, in one way or another, related to the Minister. Under the new Constitution, this country needs to move forward. That is why we have CEOs of questionable character. We have the KEBS where the CEO who is currently in office was the fourth nominee in the recruitment. Seven out of 15 members of the Board are supporting that irregular procedure. That is the same case in the Kenya Medical Training Institute (KMTI). We

also have the same problem in the Kenya Ports Authority (KPA). As leaders here, we do not want to say it. This is a step forward under this Committee. The KBC should play its private sector role. It should be like the Kenya Television Network (KTN) or Citizen. It should not be given a special consideration under the law. It should play its role equitably.

This Report on the Departmental Committee on Energy, Communications and Information is a pointer to the rot that is going on in other parastatals under various Ministries in this country. Under the spirit of the new Constitution, I think legislation should be put in place to set a benchmark on how Board members and CEOs of various Government agencies will be appointed.

With those few remarks, I support.

The Temporary Deputy Speaker (Prof. Kaloki): It is now time to call upon the Mover to reply.

Eng. Rege: Mr. Temporary Deputy Speaker, Sir, I would like to thank my colleagues for supporting this Motion. I would also like to thank the Minister for acceding and accepting to move with speed in reconstituting the KBC Board. The KBC is a very important public broadcasting institution which is expected to set the pace for the other broadcasting houses in this country. Equipped with correct tools and proper management, the KBC should deliver its mandate without any supervision. The KBC is indebted very heavily and our Committee has, in the past, recommended to the Minister for Finance to write off the debt. He should ask the Japanese Government to write off the debt that was incurred in purchasing the medium wave equipment and apparatus. They were purchased at the wrong time. The KBC is indebted to the tune of over Kshs600 million and yet, the equipment is not required. This equipment is lying there gathering dust with over Kshs30 million per month in power consumption. That equipment should be removed and gotten rid of as soon as possible so that the KBC can operate efficiently.

Mr. Temporary Deputy Speaker, Sir, the Committee will also undertake to investigate the digitization of the analogue system which we have right now. This is because the public is crying wolf about its implementation. This is required in the next two years.

I would like to ask the Minister to move with speed to reconstitute a new Board and ensure that the Kenya Broadcasting Corporation (KBC) is run efficiently. I heard from my colleagues that the Managing Director (MD) should be investigated too. There is nothing wrong with that. If we find that the MD is performing perfectly, there is no reason we cannot vet him again.

With those few remarks, I thank you for giving me the opportunity to move.

I beg to move.

(Question put and agreed to)

The Temporary Deputy Speaker (Prof. Kaloki): Next order!

APPROVAL OF REPORT ON DEATH OF DR. OUKO

Mr. Imanyara: Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, this House approves the Report of the Select Committee investigating circumstances leading to the death of the late Dr. the Hon. Robert John Ouko, E.G.H., MP., laid on the Table of the House on Wednesday, 8th December, 2010.

Mr. Temporary Deputy Speaker, Sir, in a little more than two hours, the era of the culture of impunity in Kenya will start crumbling with the events that will be taking place at The Hague. I am one of those who wishes and prays that if the culture of impunity begins its downward trend, this is the first time we will be moving Motions in Parliament calling upon the Government to take steps to investigate deaths, murders and disappearances that ought to be done as a matter of course and with utmost solemnity.

Mr. Temporary Deputy Speaker, Sir, the death of the late Minister for Foreign Affairs, Dr. Robert Ouko, has occupied the minds of Kenyans for very many years. That is the reason why this House established, by a resolution, a Select Committee in the following words:-

“Noting with grave concern that the murder of the late Dr. Robert Ouko in 1990 has never been resolved; being aware that the Judicial inquiry into the death was disbanded before concluding its proceedings, this House resolves to establish a Select Committee to investigate and report on the circumstances leading to the death of the late Minister”.

Mr. Temporary Deputy Speaker, Sir, the Committee was constituted with many Members. The membership changed many times as a result of appointment to the Cabinet or resignations. By the time of writing of the Report that was tabled in this House, the following were the Members of the Select Committee:-

The hon. Erick Gor Sungu, MP
The hon. Dr. Oburu Odinga, MP
The hon. Prof. Christine Mango, MP
The hon. Joseph Khamisi, MP
The hon. Samuel Moroto, MP
The hon. Samuel Leshore, MP
The hon. Raphael Wanjala, MP
The hon. Amina Abdalla, MP
The hon. Kiema Kilonzo, MP
The hon. Peter Munya, MP

A number of these Members are now in the Front Bench and others are no longer in this House.

Owing to the immense work load, the Committee was not able to complete its work within the initial mandate that it was given. On the 16th April 2004, the House extended the mandate to the Committee to enable it continue its work to completion.

Mr. Temporary Deputy Speaker, Sir, the Report that was tabled in this House and that was prepared by the Committee is in three volumes. It contains very many recommendations which I cannot go through in the time frame we are given. However, the Select Committee by its own Report gathered evidence generally from the public and

certain persons who by reason of proximity or relation to the late Minister were deemed to have relevant information.

The Select Committee used two approaches in this regard; general invitation to the public and summoning of witnesses.

Mr. Temporary Deputy Speaker, Sir, by way of background, the late Dr. Robert John Ouko who was the Minister for Foreign Affairs and International Co-operation was a self-made personality. He had a humble start in life as a school teacher rising to become a high ranking civil servant, a seasoned diplomat and a prominent politician.

Dr. Ouko was a cabinet Minister for 20 years continuously since the days of the East African Community (EAC). President Moi at one time described him as the best Foreign Affairs Minister Kenya has had in a statement issued on February 16th when he announced the shocking news about the Minister's death.

President Moi in his statement to the nation on that day said that he had personally lost a loyal and dedicated friend, a brilliant leader, an articulate and courageous spokesman in his country as well as a loyal servant of the people. Dr. Ouko who died at the age 58 years had been the Minister for Foreign Affairs twice; first from 1979 to 1983 and from 1988 to the time of his death.

The late Minister was born on March 31st 1932 in Nyahera Sub-Location, Central Kisumu Location in Kisumu District. After his primary and secondary education, he trained as a teacher at Siriba Teachers Training College, Maseno, joined the Haile Selassie University in Addis Ababa Ethiopia in 1958 and obtained a Bachelor of Arts Degree with distinction in 1962. He later proceeded to Makerere University, Kampala, Uganda, for a post-graduate course in diplomacy and joined Government service in July 1962 as an Assistant Secretary.

After intensive in-service training in diplomacy, he was promoted to the post of Senior Assistant Secretary and subsequently appointed as the first Permanent Secretary for External Affairs when the country attained Independence in December 1963. He served in that capacity until December 1964 when he was transferred to the Ministry of Works, Communication and Power and from May 1966, he was the Permanent Secretary in the Ministry of Works until he was appointed to his first Ministerial post in July 1969.

Mr. Temporary Deputy Speaker, Sir, having been the first Kenyan to receive extensive training in diplomacy, the late Dr. Ouko was instrumental in laying the foundation for this country's future foreign policy in the early days of Independence. The foreign policy which was then in its formative stage, crystallized in the mid 1970s and solidified during the period when the late Dr. Robert Ouko was the Minister for Foreign Affairs.

In 1981, while still the Minister for Foreign Affairs, Dr. Ouko was the Chairperson of the OAU Ministerial Committee which laid the basis for the successful OAU Summit in Nairobi at which the former President Moi was elected Chairperson of the continental body, a position he held for the unprecedented period of two consecutive terms. During that period, Dr. Ouko had a very challenging role of shuttle diplomacy at a time when the OAU was sharply divided over a number of unresolved issues. Dr. Ouko represented Kenya on many successfully missions and he served with great distinction for the entire period that he was alive.

The death of Dr. Robert Ouko was not the first time that Kenya faced such circumstances. Before the death of Dr. Ouko and in a period of less than 40 years, we had several politically connected deaths including that of Dr. Pio Gama Pinto in 1965, Mr. Thomas Joseph Mboya on 5th July, 1969 and Mr. J.M. Kariuki on 3rd March, 1975. That is before Dr. Ouko's death on 13th February, 1990 and also that of Dr. Antony Wambua Ndilinge on 2nd August, 2001 which was also subject to another investigation by a Committee of this House. Mr. Pio da Gama Pinto who was a specially elected Member for the First Parliament between 1963 to 1969 was of Asian origin and was reportedly killed by a lone gunman in the Parklands area within Nairobi. Frantic police investigations zeroed in on a Mr. Kisilu Munyao who was expeditiously arraigned in court and sentenced to life imprisonment. Mr. Kisilu was released under the Presidential prerogative of mercy on 12th December, 2003. At the time of Mr. Pinto's death, his colleagues, hon. Members, went no further than raise a number of questions demanding explanations. Mr. T.J. Mboya who was a Member of Parliament for Kamukunji Constituency and an accomplished trade unionist died at the hands of an assassin on 5th July, 1969 resulting in prolonged bitter and ugly mass action in many parts of the country. At the time of T.J. Mboya's death, there was little doubt that he was an accomplished nationalist and internationally recognized leader. Mr. J.M. Kariuki, whose death occurred in, perhaps, one of the most mysterious circumstances, came at a time when he was at the peak of his political career. Mr. J.M. Kariuki was serving his third straight stint as the Parliament for Nyandarua Constituency. A Report of this House implicated a number of senior Government officials including the then Commandant of the GSU. But, despite the recommendations of this House, nothing resulted. The same is so in relation to Dr. Ouko's death. That is why I opened with the observation that the events that are taking place in just over two hours at the Hague ought to be a pointer to this country that we are doing away with the culture of impunity that has been the characteristic hallmark of Kenya's political history.

Dr. Ouko's death was initially investigated by the police in Kenya, by the New Scotland Yard at the request of the Government of Kenya, by a Judicial Commission of Inquiry headed by Justice Gicheru and by a further police investigation headed by one, Crispo Willis Ongoro, a Deputy Commissioner of Police. I do not wish to go into the whole details because the circumstances are public knowledge. But it is important to remind Kenyans that on the night of his disappearance, the evidence indicated that Dr. Ouko spent the whole of Monday 12th February, 1990 at his home in Koru and that there was failure of electricity. According to those who were at the scene initially, including Mr. Zablon Agallo Obonyo, an AP assigned to guard the home, he had warned the employees from venturing out of the houses when they heard any strange noises at night. So, it is like he had a premonition and following his death, there were searches and the Government eventually announced the death and thus, precipitating the crisis that we all know about. Judging from the massive evidence presented to the Select Committee by various witnesses, it is clear that the death of Dr. Ouko had far reaching effect on a cross section of Kenyans and the international community. That was illustrated by the many messages of condolences that were sent.

Mr. Temporary Deputy Speaker, Sir, during the hearing of the Committee, a number of witnesses were adversely mentioned; I do not wish to go into all of them and they included Mr. Nicholas Biwott, Mr. George Oraro, Mr. James Onyango K'Oyoo, Mr. Paul Gondi, Mr. Eric Onyango, Mr. Hezekiah Oyugi, Mr. John Anguka and Mr. Daniel Toroitich arap Moi. Messrs. Hezekiah Oyugi and Eric Onyango are deceased. Mr. John Anguka fled the country to the USA after his acquittal in Dr. Ouko's murder case and the Committee was unable to trace him. Messrs. George Oraro, James K'Oyoo and Paul Gondi were adversely mentioned by a number of witnesses who appeared before the Committee; and the former President, Mr. Daniel arap Moi, declined an opportunity to rebut adverse evidence against him, despite valid and binding summons being issued on him through his advocates. As a result of that, the Committee, having carefully considered the evidence of Messrs. Daniel Mukhwana, Harrison Owuor, Angir and Barak Mbajja, is of the view that George Oraro and James Onyango K'Oyoo were at the scene of the abduction of Dr. Ouko from his Koru home on the night of 12th and 13th February, 1990. The Committee has considered carefully the adverse evidence against Mr. Biwott and finds that he was involved either directly or indirectly in the disappearance and subsequent murder of Dr. Ouko. The logical inference that the Committee drew from the statement issued by the Government was non-availability of vital documents anywhere. That shows that the investigation of the murder of Dr. Ouko was interfered with to conceal the truth. The Committee carefully perused the documents available and came to the conclusion that they had been interfered with and there was a deliberate attempt to cover up.

There are many recommendations that are made in the Report and all I need with the time that is left is to go to the main recommendations which would be found from page 128 which recommends that the Government investigates the withdrawal of Dr. Ouko's passport, bodyguards, official transport and the staff of the Ministry of Foreign Affairs, especially, Mr. Bethwel Kiplagat and Mr. Malachi Odenyo, and the circumstances of the accident near Awassi and the interference with the telephone and electricity supply at Dr. Ouko's home. The Committee recommends that the roles or activities of among others all the persons who were at State House Nakuru on the night of 12th and 13th February, 1990, and the role or activities of among others, Messrs. K.N.K Biwott, James Onyango K'Oyoo, George Oraro, Timothy Maloba, Julius Kobia, Owino Ogondi, Washington Aduoga, Wilson Kareithi, Hezekiah Oyugi, Eric Onyango, Osano Omwenga, Paul Gondi, Michael Owiti, Philip Rodi Ogutu, Zablong Agallo, Eliud William Ndalo and others be investigated. Those persons should be investigated further for their role, including the storekeeper and also all the other witnesses whom the Troon Report found were directly involved.

Mr. Temporary Deputy Speaker, Sir, the end result is that there be a fresh investigation into the circumstances, disappearance and death of Dr. Ouko. The Committee finally makes the following recommendations. Firstly, the Government should:-

(a) Institute fresh investigations into the circumstances of the disappearance and death of Dr. Robert Ouko.

(b) Exhume the bodies of Messrs. Hezekiah Oyugi, Philip Kilonzo, Julius Kobia, Nehemiah Ombati, Sergeant Ochanda, Corporal Nzomo, Joseph Yogo, Corporal Ndiema, Chief Inspector Midianga and Mohamed Aslam to ascertain the real causes of their deaths.

(c) The Government should institute fresh inquiries into the evidence of Mr. William Waku Nangabo.

(d) The Government should investigate the activities of Mr. Timothy Maloba, Francis Omwenga and Solomon Ochieng to establish whether they committed the offence of destroying exhibits which were in the two brief cases carried away from the bedroom of the Koru Home of the Minister by special branch officers.

(e) The Government should investigate the activities of among others, Timothy Maloba, Johnstone Ndaka Kaviti, Noah Arap Too, Clevers Okoko, James Kanyotu, William Kivuvani, Washington Ajwoga, Wilson Karithi, Owino Ogendi, Humphrey Kariuki and P.K. Chesire to ascertain whether they committed acts of commission or omission which interfered with the investigations.

Finally, in view of the evidence presented by Messrs. Silando Katwenge and another witness to the effect that Dr. R.J. Ouko was allegedly killed at State House Nakuru, the Government should institute investigations to ascertain whether among others Messrs. KNK Biwott, Hezekiah Oyugi, Julius Kobia, John Anguka and their accomplices participated in the commission of the offence of murder.

Mr. Temporary Deputy Speaker, Sir, as I indicated at the beginning, we are in a new transition. The new Constitution does not have any effect on key people in Government. My plea to them is that they recognise and acknowledge that the Kenya we are living in today is not the Kenya of yesterday. Under the new Constitution, the culture of impunity will be followed up. Those who commit acts of murder or atrocities, those who are guilty of gross human rights violations must do so, knowing that there is no person so high above that he cannot be caught by the long arm of the law. It is my prayer that this House adopts this report.

With those few remarks, I beg to move. I ask my colleague, hon. Mbadi, to second me.

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, I want to start by thanking hon. Imanyara who saw it fit to bring this Report to the House, a report whose presentation to this House was delayed.

Mr. Temporary Deputy Speaker, Sir, this country will recall that we have so many cases of unresolved murders. The Mover has mentioned Pio Gama Pinto, 1965, who was killed in cold blood. Tom Joseph Mboya, 1969, died as a result of a bullet. Up to now, it has not been resolved. J.M. Kariuki was murdered brutally in 1975. The list is long. More recently, we have the case of Odhiambo Mbai who was also murdered in his House in day time. Up to today, this case has not been resolved.

Mr. Temporary Deputy Speaker, Sir, I believe that the Committee did a thorough investigation. They compiled their report from earlier investigations into the same matter. I will mention the Troon Report. They have also looked at the report by the CID, the Special Branch and other investigations into the matter to help unravel this very unfortunate event.

Mr. Temporary Deputy Speaker, Sir, I want to acknowledge and realize that we will not bring Ouko back to life. However, it is important to unravel the mystery of this death so that the culture of impunity is stopped in this country.

Mr. Temporary Deputy Speaker, Sir, if you look at the circumstances, just before the murder of this intelligent Kenyan whose only crime was to be very efficient in his job, you will realize that it started way back in 1988. There was even an attempt to block him from coming to Parliament. During that time, it is on record and this report has elaborately covered it, that hon. Biwott and others like Hezekiah Oyugi financed his opponent, so that he could lose. Why was this being done? It is because Dr. Ouko was fighting corruption. In his efforts to rid this country of the vice, he earned many enemies in the corridors of power. The report mentions many of the former Ministers: Biwott, Saitoti, Mwangale and Dalmas Otieno. It has also mentioned other civil servants who wanted to take kick backs from some company which was to revive the Molasses Plant. This culminated into what we can only describe as the murder of the late Ouko.

Mr. Temporary Deputy Speaker, Sir, If you look at the Report the dangerous precedence that set into motion the murder of this great son of Kenya started in early January, 1990. When they went to the United States of America, the late Ouko even helped to secure an appointment between the then President of the USA, President George Bush Senior and President Moi. During that meeting, it came out that the late Dr. Ouko did very well and earned some respect from the international community. This infuriated other Ministers and the state machinery. More particularly, it is reported that the hon. Biwott even cracked a joke and called hon. Ouko "Mr. President", which did not please hon. Ouko then.

Mr. Temporary Deputy Speaker, Sir, upon returning we realise that hon. Ouko was not even allowed to take the same plane with the President and the rest of the team. His passport was confiscated when arrived at the airport.

Mr. Temporary Deputy Speaker, Sir, on 4th February, 1990, Mr. Ouko was disturbed and even went to see the President with his two children to earn sympathy from the President and explain his circumstances. Unfortunately, the former President Moi did not give hon. Ouko any audience.

On 5th February, 1990, hon. Ouko, through Mr. Oyugi, managed to secure an appointment with the President. He tried to explain himself, but instead he was ordered to go to his Koru home. At that time, the Government saw it fit to withdraw the official car and his security. At that time, it is coming out clearly from the evidence as given to the Committee that Ouko at the time he left for his Koru Home was not a Minister.

I want to take this House through 11th and 12 of February, 1990. Mr. William Nangabo who was a house help in Oyugi's house in Westland's witnessed a meeting between the former President Moi, former Minister Biwott, Mr. Oyugi himself and the former DC of Nakuru, Mr. Anguka. He overheard the former President saying that Ouko should be done away with since he has become a thorn in the Government's flesh. The former President even went ahead and asked: "How do we do away with him?" The answer from Biwott was that they will get him. The President said he did not want to see Ouko alive. This was a very chilling moment. That was the night preceding the night on which the late Dr. Ouko disappeared.

Mr. Temporary Deputy Speaker, Sir, I want to take this House to the Committee's report on what happened on the night of 13th. The following people were in the late Dr. Ouko's home: Hon. Biwott, Mr. Oyugi, Provincial Commissioner (PC) Kobia, Onyango Koyoo, Mr. Oraro, Mr. Anguka, Onyango Erick, Maloba Timothy, Owino Gendi, Paul Gondi, Francis Osano, Michael Owiti and 20 General Service Unit (GSU) officers from Molo. What was this crowd doing in the home of the late Dr. Ouko on the night of 13th, on which he disappeared? It is even reported in this report that the late Dr. Ouko was forced into the Mercedes Benz car of the then Nyanza PC, Mr. Kobia, and driven to State House, Nakuru.

At the State House, Nakuru, the late Dr. Ouko was taken into a room, where he was killed in the presence of Mr. Biwott, according to the Report. These were chilling moments, and it is high time that this country resolved at least one of these murders. If we do not unearth the people who committed this crime, this country cannot change. This case can be used as an example. Whoever is still alive and is mentioned, and evidence is produced showing that he could have participated in the murder of this Kenyan, he or she needs to take responsibility.

Mr. Temporary Deputy Speaker, Sir, when Mr. Philip Rodi was being interviewed by the former Special Branch officers, and the Criminal Investigations Department (CID) officers, he said that he saw Messrs. Anguka and Oyugi walking stealthily in the late Minister's Koru home. I am aware that many hon. Members know the meaning of the word "stealthily". Mr. Anguka, who was a very senior Government official, and Mr. Oyugi, who was a whole PS, were walking stealthily in somebody's compound late at night.

These people decided to terminate the life of a very important Kenyan. Therefore, the House needs to adopt this report, so that the Government can institute investigations on some of those people who are still alive. It is even reported that the PC then, Mr. Kobia, carried some three unknown people in his Mercedes Benz vehicle when heading to the late Dr. Ouko's home. Who were these three unknown people? Were they the ones who murdered the former Minister for Foreign Affairs? My guess is as good as yours.

Mr. Temporary Deputy Speaker, Sir, I fully support the recommendation of the Committee, that this matter needs to be resolved quickly, and that those suspected people who are still alive, and against whom allegations have been made by many witnesses, need to be held accountable.

I also want to add that the evidence of Barrack Mbaja is very interesting. Mr. Barrack Mbaja was asked by the then President that he should address the local and international media and confirm that the late Dr. Ouko, who was his brother, had committed suicide. He was promised a parliamentary seat. Besides that, he was promised that he would be named into the Cabinet. Fortunately, he declined the request. Unfortunately, his declining led to his tribulations, which led to his leaving this country to the United States of America.

Mr. Temporary Deputy Speaker, Sir, from my contribution, this House will automatically deduce the circumstances which, probably, led to the loss of this very important life.

With those remarks, I beg to second.

(Question proposed)

The Minister for Agriculture (Dr. Kosgei): Mr. Temporary Deputy Speaker, Sir, in this House, I am one of those people who worked with the late Dr. Ouko for some time. Dr. Ouko was an efficient, effective and thoroughly nice Minister to work with. Most of us learnt diplomacy from Dr. Ouko because, as said by hon. Imanyara, he was a trained diplomat, having worked in the British system. Most of us who knew the late Dr. Ouko have always wished that we could know who robbed Kenya of such a bright man.

Mr. Temporary Deputy Speaker, Sir, having said that, I have a few observations to make on three paragraphs only, because I have not read the whole report.

The first observation is with regard to Paragraph 103. It says that someone had suggested - I think her name is Ogembo and this was reported in this report as a gospel truth - that the hon. Robert Ouko was summoned by the Kenya High Commissioner in London, that was myself. If you know anything about diplomacy, there is no way an ambassador or a high commissioner would be summoning a Minister. So that is thoroughly inaccurate. It also said that when Dr. Ouko was summoned to come and make appointments for the President with the British Prime Minister, that was also not true because those appointments would have been done by myself or the British High Commissioner in Nairobi. In any case, it did not happen. It is not true.

It goes on to say that the British Prime Minister insisted that Dr. Ouko be asked to attend a meeting with the Prime Minister's counterpart; the President of Kenya. That is also not true because there is nowhere in the way nations deal with each other that the host country can insist to the principal of another country on who to bring to a meeting. In any event, in such meetings, the conversations are usually between the two principals and they can choose to invite somebody else to talk or not. So this is inaccurate. It is not true.

If you look at the other paragraph 104, it goes on to talk of an event, and I hope I have enough time to say this. The report is referring to a period in early 1988 when Dr. Ouko came to London to address the Confederation of British Industry. But this Report says that he was invited by Mrs. Margaret Thatcher. That is thoroughly untrue. That arrangement was done by the Confederation of British Industry together with the Kenya High Commission and I was the one who notified Dr. Ouko that he should come to this Conference. This is linked unfortunately somehow to the visit to check on us, as if Dr. Ouko was coming to London to check on us. No, the British Prime Minister was in this country in the first week of January as a guest of the State. If I recall correctly, it may have been 4th January, 1988. We, the desk officers, suggested that to our bosses that we should invite the Minister for Industry, Dr. Ouko, to escort Dennis Thatcher because the Foreign Minister, Dr. Onyonka would be otherwise engaged. We noticed that they got along famously. On their departure, I was at the airport and Dennis Thatcher called me aside and told me: "When this gentleman comes through London for any reason, please, give me notification of just two days because I would like to return the hospitality." When the CDI Conference presented itself, I called Dr. Ouko and he told me: "I will be happy to come but it is a very hard time because we are going towards elections." I

spoke to him, he came and I notified Whitehall before he arrived and Whitehall notified Downing Street and I was asked to extend an invitation for lunch. That invitation was extended, it was accepted, I notified Whitehall.

The day we finished the CDI Conference, we knew that the lunch was the following day. I went with him in the High Commissioner's car. We sat at the lunch together and there were less than ten people there. There was no hint of his being there because of any other reason except because Dennis Thatcher wanted to say thank you to him. The British Prime Minister attended just because it was her house but the host was Dennis Thatcher.

I find it very strange, therefore, that on Paragraph 105, it is suggested that he was there and that the President of Kenya was unhappy about that and therefore wanted to get rid of him. Actually, he was appointed the Minister for Foreign Affairs after that. At that time, he was the Minister for Industry. I could say more because what I see here is inaccurate. We need to have proper and accurate information because if we are to use those two incidents which are the only incidents used here to show that Dr. Ouko had support from the foreign countries which is only in paragraphs 102, 103 and 105 and both of them are about events that I participated in and I know that this is grossly inaccurate. If I wanted to be unkind, I would say it is purely fictional, but it is inaccurate because it seems somebody had something from someone else and I was still alive---

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Kosgei, you will have additional five minutes to continue with your contribution.

Hon. Members, it is now time for the interruption of business. The House, therefore, stands adjourned until this afternoon Wednesday, 15th December, 2010, at 2.30 p.m.

The House rose at 12.30. p.m.