

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Tuesday, 5th October, 2010**

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

PAPER LAID

Report of the House Broadcasting Committee on a study tour of the United States of America from May 11<sup>th</sup> 2010 to May 20<sup>th</sup>, 2010.

*(By Eng. Gumbo)*

NOTICE OF MOTION

CLEARANCE OF OUTSTANDING SHORTFALL OF CDF  
REMITTANCES BY FINANCE MINISTRY

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

THAT, being deeply concerned that the disbursement to Constituencies Development Fund (CDF) had been below the stipulated rate thus accumulating arrears of up to Kshs1.6 billion, further concerned by the failure of the responsive Minister to honour invitations to appear before the CDF Fund Committee to deliberate on the same, aware that the Minister has persistently allocated less than the statutory Kshs2.5 per cent of all Government ordinary revenue collected in every financial year to the CDF in contravention of Section 4(2)(a) of the CDF Act of 2003, and as amended in 2007, conscious that failure to make full remittances has in some cases contributed to delayed implementation of CDF projects at grassroots level and impacted negatively on the Fund's core objective of poverty alleviation; this House resolves that the Ministry of Finance remits all the outstanding shortfalls related to the CDF with immediate effect.

QUESTIONS BY PRIVATE NOTICE

NUMBER OF DEATHS CAUSED BY ILLICIT  
ALCOHOLIC BREWS SINCE 1999

**Mr. Mututho:** Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Could he provide the number of deaths caused by illicit alcoholic brews from 1999 to date?

(b) Could he provide the names of manufacturers and brand names of all alcoholic drinks and beverages sold in the country and details of chemical analysis of such drinks, indicating whether the respective drinks are acceptable (fit) for human consumption or not?

(c) Could the Minister also indicate the number of those prosecuted for brewing and distributing such illicit drinks and when will the Government close down all the businesses manufacturing, distributing and selling alcoholic beverages that do not meet World Health Organization (WHO) standards?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I request the Chair to give us one more month to respond to this Question. That is because of what hon. Mututho requires. We have very many manufacturing firms. It will take us about a month to know who are manufacturing legitimate brews and illicit brews. Therefore, I beg the indulgence of the Chair to allow me to answer this Question after one month.

**Mr. Speaker:** Member for Naivasha, the Assistant Minister requires one month.

**Mr. Mututho:** Thank you Mr. Speaker, Sir. The hon. Assistant Minister has already had over one month from the time this Question was first raised. There was a big discrepancy in the figures that he gave here, prompting you to give further directions that the Question be brought again. He now requires another four weeks. Could he do that within five days because this matter is of utmost urgency? People have died and this matter needs to come to a close.

**Mr. Speaker:** The point is made, Member for Naivasha! Mr. Assistant Minister, could you do it in a shorter time?

**Mr. Ojode:** Mr. Speaker, Sir, if you look at part “c” of the Question, you will see that it requires the Minister to indicate the number of those who have been prosecuted for brewing and distributing such illicit drinks and when the Government will close down all the businesses manufacturing, distributing and selling alcoholic beverages that do not meet the WHO standards.

I have to send my team to look at each and every manufacturing industry. That will take some time. Five days will not be enough. If you want me to do a good job, at least, let the Chair give me a month to finalize the exercise.

**Mr. Speaker:** Mr. Assistant Minister, knowing your level of efficiency and the amount of resources at your disposal, I am inclined to give you 14 days from tomorrow. It is so directed.

**Mr. Ojode:** Mr. Speaker, Sir, I plead with the Chair to agree with me because even the officers I will use from NACADA, their names are yet to be gazetted. So, I am pleading with the Chair that, for me to do a good job, please, give me three to four weeks.

**Mr. Speaker:** Order, Mr. Assistant Minister! I have taken all that into account. So, it will be 14 days from tomorrow. Go and expedite the process.

**Mr. Ojode:** Mr. Speaker, Sir, much obliged!

*(Question deferred)*

GOVERNMENT POLICY ON POSTGRADUATE  
TRAINING FOR DOCTORS

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

(a) Is he aware that 94 doctors who have been admitted for postgraduate training commencing on 12th October, 2010 risk missing the training programme due to a directive issued by the Ministry?

(b) What is the Ministry doing to avert the crisis which has far-reaching adverse consequences in the health sector?

(c) What is the Government policy on postgraduate training for doctors?

Mr. Speaker, Sir, I would like to inform you that this is the second time that the matter is coming up. When it was here last week, I laid on the Table documents showing that the Kenya Medical Association had written to those doctors about ongoing consultations between the association, the ministry and the universities. You ruled that the Minister should come today to clarify the issues.

**The Assistant Minister for Medical Services (Mr. Kambi):** Thank you Mr. Speaker, Sir. I beg the indulgence of the Chair because this morning, we had a high consultative meeting with my Permanent Secretary and, as I am talking here, they are still in a meeting. We have agreed that we are going to reallocate funds from the Development Vote to that programme. Therefore, I beg to be given one week so that I can issue the necessary notice to the doctors and the relevant authorities.

**Mr. Speaker:** Member for Ikolomani, that is, perhaps, not asking for too much. He has asked for seven days to give you a satisfactory answer.

**Dr. Khalwale:** Mr. Speaker, Sir, I concur and hope that since they are now moving from place to place, whatever communications they make to the doctors and the universities, should also be given to Parliament.

**Mr. Speaker:** Yes, indeed, the Ministry is under duty to report to the House. So, this Question is deferred to seven days from today.

**Mr. Kambi:** Mr. Speaker, Sir, I am most obliged.

*(Question deferred)*

REDUCTION OF PAYMENT FOR TARDA  
CASUAL WORKERS

**Mr. Mungatana:** Mr. Speaker, Sir, I beg to ask the Minister for Regional Development Authorities the following Question by Private Notice.

(a) Could the Minister confirm that pay for casual workers at the TARDA in Tana Delta has been reduced from Kshs250 per day to Kshs150 per day?

(b) Could the Minister explain by how much the salaries of the Managing Director and other Managers have been reduced?

(c) Could the Minister revert to the old rates with immediate effect and also pay the due arrears?

**The Minister for Regional Development Authorities (Mr. Gumo):** Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the rates for the casual workers were reduced from Kshs250 to Kshs150 per day when the Emergency Food Programme was implemented under the Economic Stimulus Programme (ESP). The project was paying the stated amount of Kshs250 which was the approved rate for the *Kazi kwa Vijana* Programme. In June, 2010, the Emergency Food Programme Phase 1 came to an end and, therefore, TARDA reverted to the daily gazetted rates for the area, rounded to Kshs150 per day. The gazetted wages are contained in the Kenya Gazette dated 29<sup>th</sup> May, 2009.

(b) The pay of the Managing Director and other managers was not affected by the directive.

(c) I wish to conclude by stating that it will be difficult to revert to the rate of Kshs250 and pay any arrears since the project was advised by the auditors to adhere to the gazette wages as per the Gazette Notice No.36 of 29<sup>th</sup> May, 2009.

**Mr. Mungatana:** Mr. Speaker, Sir, is the Minister aware that there are, in fact, three categories of workers who are employed in TARDA? There were casual workers who were earning Kshs300 per day and it was reduced to Kshs150. Watchmen were earning Kshs250 per day and it was reduced to Kshs150. Water controllers were earning Kshsd300 per day and it was reduced to Kshs150 per day. These people do different jobs and are engaged daily in their work. What is the logic of reducing their pay, which was in different rates per day to a flat rate?

**Mr. Gumo:** Mr. Speaker, Sir, as long as they were employed under the *Kazi kwa Vijana* Programme, their wages were a bit higher. When the *Kazi kwa Vijana* Programme ended, they reverted to the usual wage which is Kshs150 per day. So, it depends. If there is anybody who had been employed before this programme started and his salary was reduced, I will make sure that they earn what they were earning earlier.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, we are dealing with a Government which is quite insensitive to the plight of the unemployed in this country. These people did the same work and were paid Kshs250 per day. By the time that project was over, the cost of living had also gone up, yet the Government decided to pay them at a lower rate. Could the Minister demonstrate that this Government is concerned about *Kazi kwa Vijana* Programme and the young people who are not employed by increasing this rate as opposed to reducing it?

**Mr. Gumo:** Mr. Speaker, Sir, in fact, it should be appreciated that instead of these people being laid off and sent home where they would earn nothing, the rate was reduced. The *Kazi kwa Vijana* Programme is completely different and under different terms of engagement. Instead of the workers being told to go home when the *Kazi kwa Vijana* Programme ended, I asked TARDA to take them on and let them continue with the work even at a lower pay. As I said, if there is anybody was being paid more before the *Kazi kwa Vijana* Programme began and his salary has been reduced, I will definitely make sure that he is paid the same amount that he was being paid with arrears.

**Mr. Mututho:** Mr. Speaker, Sir, looking at the rate of Kshs250 per day and assuming that the worker works for about 20 days in a month, that brings the salary to around Kshs3,000, which is slightly less than what the Minister may need to have lunch in a five star hotel. Is the Minister planning to improve these salaries, so that the workers can afford *ugali* and *sukuma wiki*?

**Mr. Gumo:** Mr. Speaker, Sir, I agree with the hon. Member that the benefits are very low, but that was the gazetted salary. At the moment, we are restructuring. The moment the restructuring is over, we will make sure that the salaries go up. I agree with the Member that---

**Mr. Mututho:** On a point of order, Mr. Speaker, Sir. You have heard the Minister say that, that is what was gazetted. Which authority does he require to gazette the right salary?

**Mr. Speaker:** Say that again!

**Mr. Mututho:** Mr. Speaker, Sir, is the Minister in order to mislead this House that, that was the gazetted salary, yet he is the gazetting authority? What stops him from gazetting the right salary, so that these people can earn over Kshs250 per day?

**Mr. Gumo:** Mr. Speaker, Sir, that is the gazetted salary for that area. All over the country, there are gazetted salaries for casuals. At the moment, this is the gazetted salary. As I said earlier, we are restructuring and the salaries will be reviewed very soon. I will be in a better position to gazette a rate higher than what they are earning now.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. The issue raised by hon. Mututho is whether it is in order for the Minister not to gazette the proper salaries. He has said that he will do so. Is it in order for him to say that he will gazette salaries when it is not his responsibility? It is the Minister for Labour who does that.

**Mr. Gumo:** Mr. Speaker, Sir, these are casuals with the regional authorities. I have said that we are now restructuring. These people would have been laid off, but because of my good heart, I said that they should not go. I have a very good heart. In fact, they should have gone home. The Member should be thanking me.

**Mr. Mungatana:** Mr. Speaker, Sir, on a more serious note, is the Minister aware that these people spend the entire day out in the fields doing very hard work from 6.00 a.m. to 6.00 p.m. for seven straight days? They are not even allowed to go to church. The salaries of the managers, who sit in the office and work from 8.00 a.m. to 5.00 p.m. and do not work on Saturdays and Sundays, were not affected. Why the discrepancy between ordinary Kenyans and the management? Could the Minister consider, first of all, improving the working conditions of the casuals, and secondly, re-gazetting some fair compensation for the work that these casuals in the different categories do?

**Mr. Gumo:** Mr. Speaker, Sir, I am not aware that they work.

**Mr. Speaker:** Order, Mr. Minister! It is a simple Question. Part "a" of the Question says; can you consider regazetting?

**Mr. Gumo:** Mr. Speaker, Sir, I will consider that.

**Mr. Speaker:** That is a good answer.

**Mr. Mungatana:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to give an undefined undertaking because it is not time limited? That is just an undertaking. Could the Minister give proper information on that?

**Mr. Speaker:** Order, the hon. Member for Garsen! You asked the Minister whether he is prepared to reconsider regazetting the salary scales and he has said that he will consider.

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

**Mr. Speaker:** Order, the hon. Member for Garsen! I am afraid you cannot have a second bite at the cherry.

Let us move on to Eng. Gumbo's Question!

## ORAL ANSWERS TO QUESTIONS

*Question No.406*

REPORT ON ABUSE OF OFFICE BY  
FORMER POSTMASTER-GENERAL

**Eng. Gumbo** asked the Minister for Information and Communications:-

(a) whether he could state to the House the circumstances that led to the investigations for abuse of office of the immediate former Postmaster-General, Mr. Fred Odhiambo; and,

(b) whether the investigations have now been concluded and, if so, whether he could provide the report to the House.

**The Assistant Minister for Information and Communications** (Mr. Dhadho):  
Mr. Speaker, Sir, I beg to reply.

On 8<sup>th</sup> June, 2009 the Chairman of the Postal Corporation of Kenya received a letter from members of staff on serious irregularities in Nyanza region. The letter alleged that the then Postmaster-General, Mr. Fred Odhiambo was constructing a private house in his rural home using vehicles belonging to the Postal Corporation of Kenya. The driver of the vehicle and the foreman were both claiming *per diem* and night allowances to do the illegal construction work. The Postal Corporation of Kenya's Audit and Investigations Department was tasked to investigate the matter. Investigations confirmed that Mr. Fred Odhiambo was using Postal Corporation of Kenya's vehicle and staff for the construction of his private house. By the time the investigations had been completed, Mr. Fred Odhiambo had been removed from the Postal Corporation of Kenya and relieved of his duties as the Chief Executive Officer. The investigations were conducted by the Postal Corporation of Kenya internal investigations branch who forwarded their recommendations to the Criminal Investigation Department (CID) for necessary action. The CID later wrote to the Postal Corporation of Kenya informing the corporation that the Attorney-General advised that the matter be handled administratively.

**Eng. Gumbo:** Mr. Speaker, Sir, the matter that the Assistant Minister has raised leading to the termination of service of Mr. Fred Odhiambo is fairly serious. The Assistant Minister stated that he was constructing a private home using vehicles belonging to the Postal Corporation of Kenya. In the answer that I have been given, there is absolutely no evidence to show that Mr. Odhiambo was using vehicles belonging to the Postal Corporation of Kenya nor is there evidence to show that the driver of the vehicle and the foreman were both claiming *per diem*. In view of these facts, could I ask the Assistant Minister to provide me with this information so that I can be able to interrogate the Question properly?

**Mr. Speaker:** Could you be specific on what information you want because you are allowed to ask a supplementary question? You have an answer and if you are not satisfied with it, then interrogate it.

**Eng. Gumbo:** Mr. Speaker, Sir, in the answer that the Assistant Minister has given, there is absolutely no evidence that Mr. Odhiambo---

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

**Eng. Gumbo:** Could the Assistant Minister table or provide evidence that Mr. Odhiambo was constructing a private house and the foreman and the driver were claiming *per diem* from the corporation?

**Mr. Speaker:** Very well! You have done well.

**Mr. Dhadho:** Mr. Speaker, Sir, I would like to table this supplementary report on the investigations done by the CID and submitted to the Postal Corporation of Kenya Board. The report shows the recommendation by the various investigators as regards the matter.

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

**Mr. Olago:** Mr. Speaker, Sir, you have heard the Assistant Minister say that before investigations by the Postal Corporation of Kenya Audit and Investigations Department were completed, Mr. Odhiambo had been removed from his job. That means that this officer was removed from office before completion of investigations and charged in court. Is that not double jeopardy?

**Mr. Speaker:** Hon. Members, the documents tabled are admissible by our rules. Eng. Gumbo, you can have a look at them.

**Mr. Dhadho:** Mr. Speaker, Sir, it is not true that the officer was dismissed before investigations were completed. Indeed, investigations were completed by Deloitte and Touché which recommended---

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to deny what is clearly in his answer? The answer reads:-  
“By the time the investigations had been completed, Mr. Fred Odhiambo had been removed from the Postal Corporation of Kenya.”

What does that mean?

**Mr. Dhadho:** Mr. Speaker, Sir, what I have tabled here is based on what the hon. Member requested to know but Mr. Odhiambo had mountable mistakes in the Postal Corporation of Kenya. This was not the only matter he was being investigated on. Before this matter was completed, other investigations had been completed by Doillette and Touché. That is what necessitated his dismissal.

**Mrs. Shebesh:** Mr. Speaker, Sir, I urge the Assistant Minister to take this matter seriously because this is an issue concerning a person's integrity. When we debated this issue last time, as my colleague has said, the HANSARD clearly also stated that investigations had not been completed. Could the Assistant Minister tell us why he has not tabled a copy of the report that cleared Mr. Odhiambo of any wrong doing? The report says that Mr. Odhiambo was cleared by the CID on the issues that the Ministry had purported to raise.

**Mr. Dhadho:** Mr. Speaker, Sir, Mr. Odhiambo was not cleared by the CID. I have said in my reply that the Attorney-General recommended that the matter should be handled administratively. It is on that recommendation that the board removed Mr. Odhiambo from office.

**Mr. Ochieng:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House? If at all Mr. Odhiambo was “found” with fraudulent cases, I believe that the Attorney-General would have recommended that he be charged in court

and not that the matter be handled administratively. Is the Assistant Minister in order to mislead the House?

**Mr. Speaker:** Order, the hon. Member for Nyakach! What do you mean by “if he was found with fraudulent cases?”

**Mr. Ochieng:** Mr. Speaker, Sir, that is what I heard the Assistant Minister advance on the Floor of the House.

**Mr. Speaker:** But that cannot be correct English or even law for that matter. Rephrase your point of order, otherwise it does not make sense.

**Mr. Ochieng:** Mr. Speaker, Sir, if Mr. Odhiambo was engaged in a fraudulent act, why has he not been taken to court? That is what I am trying to understand from the Assistant Minister.

**Mr. Dhadho:** Mr. Speaker, Sir, this is a recommendation from the Attorney-General because, initially, we wanted Mr. Odhiambo to be charged for abuse of office but after taking the matter for review by the Attorney-General, he recommended to the PCK that the matter should be handled administratively. Part of the documents I have just tabled in the House is the recommendation of the Board and the letter of the Assistant Minister that Mr. Odhiambo could no longer be entrusted with the stewardship of the organization. That is what I think is administrative and that is the reason why he went home.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, if I heard the Assistant Minister correctly, he did say that there were other cases apart from this one of using the PCK vehicles and staff to construct the houses. Which are these other cases? Could he table them here?

**Mr. Dhadho:** Mr. Speaker, Sir, the rest of the issues are contained in the report I have just tabled.

**Mr. Mbadi:** Mr. Speaker, Sir, the Question by Eng. Gumbo was: “What circumstances led to the investigation for abuse of office for the immediate former Postmaster-General, Mr. Fred Odhiambo?” I expected the Assistant Minister to clearly tell us why Mr. Fred Odhiambo was relieved of his duty. Is it because of misuse of the corporation’s vehicles or something else? What is this something else? Could he categorically tell this House why Mr. Fred Odhiambo is today not the Postmaster-General?

**Mr. Dhadho:** Mr. Speaker, Sir, Mr. Odhiambo is not the Postmaster-General now because he could not be entrusted with the stewardship of the corporation. That is the reason!

**Hon. Members:** How? Why?

**Mr. Dhadho:** Mr. Speaker, Sir, in my view, this is justified by the report and the answer I have given to this House.

**Eng. Gumbo:** Mr. Speaker, Sir, in view of the Assistant Minister’s answers and the papers that he has just given me, would I be in order to request that I get more time to look at these papers so that we can interrogate the Question further? I am not satisfied with the Assistant Minister’s line of answering.

**Mr. Speaker:** Not being satisfied is a different matter, but if you need time to peruse those documents, yes! How much time do you need?

**Eng. Gumbo:** Mr. Speaker, Sir, I need only about two days; I will be ready by Thursday so that we can interrogate this Question further.

**Mr. Speaker:** I defer the Question to Thursday!



*(Question deferred)*

Member for Ol Kalou!

*Question No.407*

SUBSTANDARD WORK ON NYAHURURU-GILGIL ROAD

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

(a) whether he is aware that the contractor re-carpeting Nyahururu-Gilgil Road (C77) has used red soil excavated by the roadside as the base material for re-carpeting; and

(b) what steps the Minister is taking to correct the situation before the contractor goes too far with the works.

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

(a) I am aware that the shoulders of the road failed during construction on some sections of Nyahururu-Gilgil Road due to usage of mixed nitrate gravel and not because of the red soil excavated from the side of the road.

(b) The contractor has been stopped from using the gravel and was instructed to remedy the defected areas and, at the same time, use materials with the specifications as allowed by the Ministry.

Mr. Speaker, Sir, the scope of the works in the contract indicated as follows: That the contractor would do site clearance and top soil stepping, earthworks; removal and reinstatement of all the failed road pavements to the inserted depth; repair of base using stabilized gravel material; repair of potholes, regulation and resurfacing using asphalt concrete; overlay and application of double sealing using size 14, 20 and 6:10 millimeter pilocated chippings; installation of new drainage structures and the cleaning of existing drainage structures, and: the repair of the shoulders that is the subject of this Question.

The sum contract for the entire construction was Kshs931, 216,000.

**Mr. Mureithi:** Mr. Speaker, Sir, I have listened and heard from the Assistant Minister for Roads. But if one was to travel between the Nyandarua County and the Nakuru county, along that road, what is very clear is the very big excavated holes where the contractor removed the top soil, started working on the shoulders and even the main road and put tarmac. As we speak, the part that has been done is already having potholes.

I want the Assistant Minister to confirm to this House that he is going to instruct the contractor to redo most of the roads he has done since that road was done ten years ago and is once again in bad condition. We expect the same to happen after the re-carpeting is done.

**Mr. Kinyanjui:** Mr. Speaker, Sir, I appreciate the concerns by the hon. Member and wish to assure this House that no payments will be made before work is certified to be of the right quality and as per the specifications of the contract.

**Mr. James Maina Kamau:** Mr. Speaker, Sir, could the Assistant Minister inform this House how much time has been spent on this road, how much time is left before the work is finished, and how much money has been paid to the contractor so far?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I can confirm to this House that eleven months have already elapsed out of the 18 months that were allowed, and only 16 per cent of the work has actually been done. In effect, the contractor is behind schedule and as far as my Ministry is concerned, we have not had a convincing reason why this is so.

Therefore, I want to assure this House that we will not extend the time for the contractor and that we are expecting to complete the works at the specified time. On the second part of the question; on the amounts already paid, I would require time to be able to furnish this House with that information because it was not part of this Question.

**Mr. Mungatana:** Mr. Speaker, Sir, ordinarily when we have financial misappropriation, we are always told about a forensic audit on the financials. In this particular case, the hon. Member has asserted here clearly that it is red soil excavated from the side of the road that is being utilized for the construction, contrary to the agreement according to the scope of works. Could the Assistant Minister order a forensic engineering report so that we can know the truth, because there is an assertion here by a hon. Member who uses that road?

Mr. Assistant Minister, you do not use that road. Could you order a forensic engineering report so that we can know the truth about this and surcharge that contractor if he is not keeping to the scope of work?

Mr. Speaker, Sir, if you look at some roads, like the one connecting Garsen and Malindi, we have the same problem. A road which is basically new and then you have potholes all over.

Could the Assistant Minister undertake before this House to find what the truth is and take corrective measures?

**Mr. Speaker:** Order, Mr. Assistant Minister! Just answer the part that he has questioned.

**Mr. Kinyanjui:** Mr. Speaker, Sir, I want to confirm to the hon. Member that the contract did not specify the types of materials to be used in the shoulders because the question is about the shoulders. However, I also want to assure this House that all the big excavations that are there besides the road will be filled before the end of the contract and therefore, the issue of the forensic audit may not be relevant.

**Mr. Mwangi:** Thank you, Mr. Speaker, Sir. If you listened carefully to the answer, the Assistant Minister said the contractor is behind schedule and yet the Member is complaining of badly done job like it has been done elsewhere. Although the contractor is behind schedule and he has done a shoddy job, up to now, the Assistant Minister cannot confirm how much money they have not paid. Could he assure this House that, that road will not be given to somebody else before this contractor has done what he was supposed to have done?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I agree with the hon. Member that the contractor is behind schedule, but I have also informed this House that there is still time before the lapse of the 18 months contract that has been given to him. We have actually written to the contractor and instructed him to mobilize equipment and all the resources to ensure that the contract is finished in good time. Until the time has elapsed, it would be inappropriate to term the contractor as shoddy or the work done as being shoddy.

**Dr. Otichilo:** Thank you, Mr. Speaker, Sir. I raised this same problem for the Stand Kisa Ithiru-Musalaba Road and the Assistant Minister assured me that he would instruct the contractor not to excavate red soil from the road, but the contractor has

continued to do so to date. What is the Assistant Minister doing because he promised to reprimand the contractor and up to date, he has not done it?

**Mr. Kinyanjui:** Mr. Speaker, Sir, it is unfortunate if the contractor continues to do what we have clearly, as a Ministry, instructed him to stop doing. If that is indeed found to be the case, my Ministry will take appropriate action immediately.

**Mr. Mureithi:** Mr. Speaker, Sir, I am very shocked by the way the road network is being done and being a user of that road, I feel very bad about it. But as we speak now, the contractor has seven months to go, having done only 16 percent and the assurance we have heard from the Assistant Minister. Since every road has a Government resident engineer, why would the Ministry allow substandard material to be used when a Government resident engineer is stationed there and he is supposed to certify the quality of the materials?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I want to agree with the hon. Member that the question raised is indeed valid and we want to go to what I had said earlier; that, the contract did not specify the materials to be used in the shoulders. However, my Ministry will take appropriate action to ensure that Government funds are not used in useless projects.

**Mr. Mututho:** On a point of order, Mr. Speaker, Sir. We have heard the emphasis from the Assistant Minister that they did a contract without specifying the type of materials to be used. Is he in order to have confirmed that this Government signed a bogus contract?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I am not sure the Member got my point but what I said is that the specific materials to be used for the shoulders were not specified in the contract and therefore, the resident engineer had a whole range upon which he would actually pick from. I have also said that we will take appropriate action if it is found that the resident engineer did not do his work as specified.

#### *Question No.420*

#### STATISTICS ON IDPS IN CAMPS

**Ms. Karua** asked the Minister, Ministry of State for Special Programmes –

- (a) what the number and location of Internally Displaced Persons (IDPs) still in the camps is; and,
- (b) what the Minister is doing about their resettlement.

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

(a) At the height of post election violence, there were 350,000 persons who sought refuge in 118 camps countrywide. When peace was restored in the country, the Government initiated the Operation Rudi Nyumbani Programme, which saw the closure of the Internally Displaced Persons (IDP) camps. However, some of the IDPs returnees whose houses were destroyed settled in transitional camps near their farms to make it easy for them to access their farms while they await construction of shelter on their farms. Of the initial 43 transitional camps which consisted of 7,746 households, only 13 comprising 475 households are remaining in Kuresoi and Wareng districts. The locations

of the transit camps are as follows: In Kuresoi District, we have Boron, Geticha, Casino, Kamara DO's Office, Mosque Total, Kamara Centre, Kamuri, Mwahe, Langwenda, Karirikania Farm, Keringet DC's Office, Motto and Ya Mumbi in Wareng District. These transit camps will be faced out once the ongoing construction of houses for the IDPs is complete. Already, 108 houses are set to be ready in the next two weeks in Wareng District.

(b) Through my Ministry, the Government has made the following efforts towards the resettlement of IDPs: The Government is in the process of purchasing two-and-a quarter acres of land for each of the remaining 6,328 IDP households. So far, the Government has purchased 3,159.7 acres of land and settled 1,090 IDP households as follows; Rongai (Giwa), 444, San Marco in Rongai,70, Managu,56, Baraka Summit, 141, Nyandarua/Kaimbaga, 49, Rwang'onde, 37, Gakonya, 95, Nakuru/Kejokety, 30, Asanyo,100, Wang'onde, 31 and Maranet, 37. In addition, the Government intends to construct 9,921 houses for the IDPs which will include 2,593 for IDPs in Turkana. The Government under the African Development Bank funded project is constructing 19,000 houses for the IDPs who have returned to their farms in the larger Molo, Njoro and Uasin Gishu districts. Currently, 3,712 of these houses have been completed and another 6,000 houses will be completed by the end of December, 2010. The IDPs will also be issued with farm inputs under the same project. The Government has also partnered with humanitarian organizations to rebuild IDP houses. Under this partnership, we expect to build approximately 20,235 houses.

**Ms. Karua:** Mr. Speaker, Sir, I find the answer to be full of inaccuracies. It states that only 475 families are yet to be settled. Mawingu Camp in Ol Kalou alone had over 3,389 families. The Minister has said only 1,090 families have been settled from Mawingu Camp. Where has the balance of the IDPs families gone and I know for a fact they are still in Mawingu? If this answer is correct, where has the balance gone because only 1,000 has been settled?

**Ms. Mathenge:** I am referring to them in addition to the 9,951; that is where the ones in Nakuru and Turkana are included.

**Mr. Speaker:** Member for Juja!

**The Member for Juja** (Mr. William Kabogo Gitau): Mr. Speaker, Sir, is it not a shame that three years later, people are still living in camps? Could the Minister confirm that all the Internally Displaced Persons (IDPs) will be resettled? Recently, the Government spent Kshs350 million to promulgate the Constitution while we still have Kenyans living in camps. Could the Government confirm that by a certain time they will have settled all the IDPs?

**Ms. Mathenge:** Mr. Speaker, Sir, it is indeed a shame. I agree with the hon. Member that it is a shame. We have given a deadline of end of this year to ensure that they are all settled. We are pushing the Ministry of Lands to ensure that they purchase the land as quickly as possible.

**Mr. Ruto:** Mr. Speaker, Sir, could the Minister confirm whether the Government Displaced Persons (GDPs) in Kuresoi are in the list of resettlement by December or do they intend to do the resettlement in a skewed manner?

**Ms. Mathenge:** Mr. Speaker, Sir, these are all the persons we registered as IDPs by December 2009. I think I have mentioned Kuresoi.

**Mr. Wamalwa:** Mr. Speaker, Sir, I am surprised from the Minister's answer that supposedly, there are no IDPs still in Trans Nzoia yet we have IDPs in areas like Muroki, Gituamba and others. There is no land, from her list, that has been purchased in Trans Nzoia for the settlement of IDPs. Could the Minister confirm that there are still IDPs in Trans Nzoia and there is enough land to be purchased for settlement of IDPs?

**Ms. Mathenge:** Mr. Speaker, Sir, I am working on the list that is in the data bank as at December 2009. If they are there, they will be considered.

**Mr. Gunda:** Mr. Speaker, Sir, the Minister mentioned that they have asked the Ministry of Lands to purchase land for settlement of IDPs. I am wondering from which fund the Ministry will get money to purchase this land and yet in the Printed Estimates which we reviewed, there was no money set aside for purchase of land.

**Ms. Mathenge:** Mr. Speaker, Sir, my understanding is that these funds were given in the last financial year and they have not been fully utilized. So, we are still waiting to utilize them fully.

**Eng. Maina:** Mr. Speaker, Sir, from the very beginning, it was known that Kshs32 billion was required to settle the IDPs. When this country is seeking for justice for the victims of the Post-Election Violence (PEV), what justice are we seeking when we are subjecting our people to this inhuman treatment? Again, we are only being told about buying land but what happens with some people who came from their houses but have not been able to go back? Could the Minister confirm whether these people will ever be able to go back to their houses rather than buying them alternative land?

Secondly, Mr. Speaker, Sir---

**Mr. Speaker:** Order, Member for Mathira! It is Question Time and you are allowed to ask one supplementary question.

Minister, please, proceed!

**Ms. Mathenge:** Mr. Speaker, Sir, *Operation Rudi Nyumbani* is about people going back to their land. We are already constructing the houses which were burnt. I, therefore, think we are taking care of that.

**Mr. Akula:** Mr. Speaker, Sir, I think the Minister is misleading the House by saying that the Government can carry forward funds and spend in the next financial year. She is saying that the funds that were provided for in the last Budget are going to be utilized in the current financial year to purchase land. Is she not misleading the House?

**Mr. Speaker:** Order, Member for Khwisero! What is your question? You caught my eye to ask a question!

**Mr. Akula:** Mr. Speaker, Sir, the Minister is saying that the money was not in the Budget but they will use the money from the previous year's Budget. However, the money from the previous financial year can never be carried forward. The Minister, is therefore, misleading the House that---

**Mr. Speaker:** Okay! Minister, please, proceed!

(Laughter)

**Ms. Mathenge:** Mr. Speaker, Sir, I am not misleading the House. The facts are there and they are available.

**Mr. Mureithi:** Mr. Speaker, Sir, I took the Minister of State for Special Programmes around and she saw the deplorable conditions in which people are living. A

day before, a lady gave birth and she was given the name Murugi. So, one of the IDPs is named after her. I am surprised to hear the number of IDPs she is saying--- What is she doing to make sure that these people are resettled? It is three years down the road and they are still living under the conditions you witnessed yourself.

**Ms. Mathenge:** Mr. Speaker, Sir, I have already said we have given ourselves a time line which is December this year. I think it is only fair you give us that time to work out the modalities.

**Dr. Eseli:** On a point of order, Mr. Speaker, Sir. It has taken two years, since 2008, to resettle these IDPs and the Minister is trying to tell us that they have a time line of only two months and a few days. Is the Minister in order to mislead this House that what they have failed to do in several years, they are going to do in two months and a few days?

**Ms. Mathenge:** Mr. Speaker, Sir, it can be done and we shall do it.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. The rules of this House require that a Member is responsible for the accuracy of the information given in the House. When we look at the answer the Minister has given, the list she has given deliberately leaves out thousands of refugees who were integrated with their families. If she is accurate about wanting to resettle these people, why has she not included the integrated refugees, especially the IDPs from Khamisi District who have repeatedly written to this Ministry and who were cheated and given Kshs5,000 and told: "Go to your families, we will settle you together." Could I request that she comes back to the House with a comprehensive list of IDPs reflecting not only the ones she has stated but also the integrated IDPs who also deserve to be settled?

**Mr. Speaker:** Order, Member for Ikolomani! I do not consider that to be a point of order. As I have endeavored to follow you very carefully, you have made an argument against the presentation by the Minister. If you were inclined to challenge the answer by the Minister, then you should have come with evidence to vindicate that the Minister has not covered the full scope and you have fallen short of doing that. Therefore, it does not pass the test of a point of order. It is a matter of argument, at best!

**Ms. Karua:** Mr. Speaker, Sir, the Minister has admitted that the list was not comprehensive. When she admitted that the balance of the IDPs at Mawingu were included further down in the answer, I want to pose to the Minister that there are still IDPs at Mawingu, Kasuku in Ol Kalou, Maela and Kikopey in Naivasha, Integrated IDPs in Western, Central, Nyanza, Kisii, Uasin-Gishu, Burnt Forest and other areas that I have not covered. Is the Minister going to prepare a comprehensive list to table before this House to ensure that all those people are settled? How much money does she have for this exercise which she has undertaken to complete by December?

*(Applause)*

**Ms. Mathenge:** Mr. Speaker, Sir, like I said, I was asked about the IDPs in the camps. Those are the ones I am talking about! If the hon. Member wants me to deal with the integrated IDPs, I shall give you what is in the data bank as of December 2009. We are dealing with the people who were registered as at that time!

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to refer only to the IDPs in camps, when the Question was encompassing all the IDPs, including the integrated IDPs because that is her responsibility?

**Ms. Mathenge:** Mr. Speaker, Sir, if I read the Question properly, it asked:- What is the number and location of IDPs still in camps?

**Mr. Mwangi:** On a point of order, Mr. Speaker, Sir. The Minister was very clear; can she define what she knows as IDPs, if the integrated IDPs are not Kenyans? Is she in order to mislead the House that integrated IDPs are not IDPs?

*(Applause)*

**Mr. Speaker:** Order, Mr. Mwangi! That is not valid because the Minister has endeavored to be relevant. She has read out the Question as captured on the Order Paper and I am afraid she is, on this one, right.

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. My last question was very clear. I started with a list of those in the camps, and I ended up with a question on integrated. I clearly said that in the camps, there are still IDPs at Kikopey, Maela, Ol Kalou, Mawingu, Kasuku, Burnt Forest and then I went to the integrated.

*(Ms. Karua remained standing in her place)*

**Mr. Speaker:** Let us go systematically Ms. Karua. Please, resume your seat for a moment! According to your facts, how many IDPs camps still exist and contrast that with the number that the Minister has given?

**Ms. Karua:** Mr. Speaker, Sir, that is the question I posed to the Minister who is responsible. But I know for a fact that the camp at Mawingu - and the Member for Ol Kalou is here - Kikopey and Maai Mahiu. The reason I am asking for how many more is because as we pass those places, we are able to see there are more IDP camps than the Minister is saying here. It is her responsibility to take a tour and give us the numbers. I cannot, as a Member, have that responsibility.

*(Applause)*

**Mr. Speaker:** Order! So, Ms. Karua, as we speak now, the Minister has left out certain camps that hon. Members are aware of, and which they have, in fact, named in this House?

**Hon. Members:** Yes!

**Mr. Speaker:** Madam Minister, why have you left out those camps?

**Ms. Mathenge:** Mr. Speaker, Sir, I have made a tour of most of the camps in this country. I will do another tour but again, if they were not captured by December 2009, I am sorry. We shall not be able to include them in this current exercise. I have to look for funding for the---

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

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

**Mr. Speaker:** Order, Mr. Mututho! Madam Minister, this is a very important matter and you, yourself, have owned up. You have said so and it is on record that it is a shame. Those were your words speaking as the Minister in charge of special programmes. It is a matter of national importance and the House has to be satisfied that it is properly addressed. So, I will want to defer this matter and give you four weeks from today to come with a comprehensive list on the number of IDPs camps that still exist in the country, and what you are doing to ensure that they cease to exist by December.

*(Applause)*

It is a matter of national importance and you, yourself, have acknowledged as much. We want to give you four weeks to come and satisfy the House that you are actually addressing this matter.

**Ms. Mathenge:** Mr. Speaker, Sir, that is fine. I hope that Kenyans are not going to form camps between now and the four weeks.

**Hon. Members:** Ah!

**Mr. Speaker:** Order! Madam Minister, that obviously, is not a reasonable thing to say, with you being in the Government. You have the requisite resources to ensure, check and monitor the movement of Kenyans. You must be able to stop illegal activities! That is your duty! So, please, we will not hear those excuses!

**Mr. Ruto:** On a point of order, Mr. Speaker, Sir. Would I be in order then to also ask the Minister not to use the exercise to specifically populate Rongai Constituency as if that is the only place with land? She should also consider buying land all over the Republic. It should not just be in Nakuru, unless it is meant to right-size populations in specific areas.

*(Applause)*

*(Laughter)*

**Mr. Speaker:** Order, Mr. Ruto! I am certain that the Minister will do what she ought to do as the Minister in the Government of Kenya.

*(Question deferred)*

*Question No.059*

#### CRITERIA FOR IDENTIFYING PROJECTS IN ASAL AREAS

**Mr. Speaker:** Mr. Lekuton is away on Parliamentary business, and the Question is deferred to Tuesday next week!

*(Question deferred)*

*Question No.315*



CRITERIA FOR RECRUITMENT OF PRIMARY  
SCHOOL TEACHERS

**Mr. Speaker:** Where is the Member for North Horr? Question is dropped!

*(Question dropped)*

*Question No.348*

NUMBER OF TEACHERS WHO HAVE LEFT  
SERVICE IN BAHARI

**Mr. Gunda** asked the Minister for Education:-

(a) whether he could provide the names of teachers from Bahari Constituency in both primary and secondary schools who have left the service by reason of retirement, death or other reasons from 1st January 2005 to 30th June 2010; and,

(b) whether he could provide the names of teachers who were employed into the service and posted to the primary and secondary schools in Bahari Constituency.

**The Assistant Minister for Education** (Prof. Olweny): Mr. Speaker, Sir, I beg to reply.

(a) A total of 167 primary and secondary school teachers left the Service through natural attrition between 1<sup>st</sup> January, 2005 and 30<sup>th</sup> June, 2010 as per the list that I am going to table here.

(b) A total of 891 primary and secondary school teachers were employed and posted to Kilifi District which includes Bahari Constituency from 2005 to 2010 as in the list here.

*(Prof. Olweny laid the document on the Table)*

**Mr. Gunda:** Mr. Speaker, Sir, I want to thank the Assistant Minister for giving the answer and the list. I wish to request the Chair to defer the Question so that I can go and re-phrase my Question. That is because the list is not satisfactory to the Question I had wanted to ask.

**Mr. Speaker:** Mr. Gunda, to the Question you asked or had wanted to ask?

**Mr. Gunda:** Mr. Speaker, Sir, the answer I have received is not what I had anticipated because I had not phrased the Question the way it should have been answered. That is why I am saying: Let us leave matters as they are. I am going to rephrase another Question.

**Mr. Speaker:** Very well. That is to say that you are satisfied with the answer, as things stand now?

**Mr. Gunda:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Very well. The matter will rest there.

Next Question.

*Question No.340*

NON-ALLOCATION OF PROJECT FUNDING TO TIGANIA EAST

**Mr. Ruteere** asked the Minister for Water and Irrigation:-

- (a) whether she is aware that Tigania East Constituency has never received any project funding from the Ministry for the last eight financial years ; and,
- (b) whether she could consider allocating enough funds this financial year to complete Marega Irrigation Projects started by the CDF in the year 2003 but are incomplete due to lack of funds.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Mr. Speaker, Sir, I beg to reply.

1. Tigania East Constituency has actually been allocated funds during the last eight years to the tune of Kshs43.9 million. Out of the total, Kshs37.5 million has been allocated to water supply projects and Kshs6.4 million was allocated for irrigation projects.
2. My Ministry is allocating enough funds amounting to Kshs25 million this financial year, necessary to complete Marega Irrigation Projects and this will be done as follows:
  - i. My Ministry has allocated Kshs4 million through the Development budget;
  - ii. There is another allocation of Kshs21 million through the Economic Stimulus Package.

**Mr. Ruteere:** Mr. Speaker, Sir, I appreciate the answer that the Assistant Minister has tried to give to this Question. But there is not a single project that has received irrigation money from the Ministry. Could the Assistant Minister table a list of all the projects that he purports have received money for irrigation in that constituency?

**Mr. Kiunjuri:** Mr. Speaker, Sir, you do agree with me that what the Member of Parliament is asking is a very different Question. We should be alerted early enough to it. However, I will table the list of projects that have benefited for the last eight years as he requested.

**Mr. Ruteere:** Mr. Speaker, Sir, the Assistant Minister has said he will give an allocation of Kshs21 million through the Economic Stimulus Package. Could he consider splitting this to the two projects, Marega and Kunati Water projects, so that it does not go to one project so as to benefit many members?

**Mr. Kiunjuri:** Mr. Speaker, Sir, the farmers of Marega and Kunati are really hardworking. They have been allocated another Kshs2.5 million through the CDF; this was done two years ago. It will be the considered decision of the Member of Parliament and the water committees to float the proposal. If it will be possible for the Ministry to do so, then he can come and discuss it. We will also look at other legal implications. If it is doable, we will do it without hesitation.

**Mr. Ruteere:** What are the legal implications in splitting the money?

**Mr. Speaker:** Order, Member for Imenti North. The Assistant Minister has actually concurred with you, and he is prepared to consider splitting the money if it is the

wish of the area residents, and he will discuss this matter with you and the area residents. So, you can do better than that, Mr. Ruteere.

*Question No.363*

DOUBLE ALLOCATION OF LR. NO.1005C  
IN TSAVO EAST NATIONAL PARK

**Mr. Speaker:** Hon. Members, this Question No.363 is deferred to Thursday next week at 2.30 p.m., because the Member for Wundanyi is away on parliamentary business.

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Speaker, Sir. You have just deferred the Question. I hope it was Question No.363 by Mr. Mwadeghu.

**Mr. Speaker:** Yes, it was.

**The Minister for Lands** (Mr. Orengo): Could I seek your indulgence that I answer this Question on Tuesday next week?

**Mr. Speaker:** Very well, the Question is deferred to Tuesday next week.

*(Question deferred)*

Member for Bura!

*Question No.398*

LIST OF KPRS PARTICIPANTS IN 2009 CENSUS

**Dr. Nuh** asked the Minister of State for Planning, National Development and Vision 2030:-

- (a) to provide the number per district, list of Kenya Police Reservists (KPRs) who participated in providing security during last year's census exercise;
- (b) whether he can confirm that all security personnel except Kenya Police Reservists who participated in the said exercise were paid their dues; and,
- (c) why the reservists have not been paid and when they will be paid.

Mr. Speaker, Sir, I wish to state that I do not have a written answer.

**Mr. Speaker:** As a matter of fact, both the Minister and Assistant Minister are not able to be in the House this afternoon. The Minister has matters pertaining to his welfare that have emerged beyond his control. The Assistant Minister is out of the country on official Government business. So, both of them are not able to be here. But we have information that one or the other of them will be available next week. So, I want to defer this Question to Wednesday next week in the afternoon. Is that convenient to you?

**Dr. Nuh:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Very well. It is so directed.

*(Question deferred)*

That brings us to the end of Question Time.  
Next order.

## MINISTERIAL STATEMENT

### ISSUANCE OF OPERATING LICENCE TO BUTALI SUGAR COMPANY

**The Minister for Agriculture** (Dr. Kosgei): Mr. Speaker, Sir, I wish to make a Statement. On Tuesday last week, a request was made to the Speaker that the Minister for Agriculture makes a Statement in this House on the matter of issuance or not of an operating licence to Butali Sugar Company.

Mr. Speaker, Sir, the Member of Parliament for Ikolomani made two observations. One, that when he made a similar request earlier, I had invoked Standing Order No. 80(2) and (3) (c). He also implied that my reason for invoking this Standing Order was to “run away from making the Statement”, to use his words.

He also informed the House that the matter I had said was in court had been determined. I stood in this House and informed the House that there were two cases in court on this matter as follows: Nairobi Milimani Courts Civil Suit No.206 of 2010, West Kenya Sugar Company Limited Versus Kenya Sugar Board and Butali Sugar Mills Limited. At Kisumu is Kisumu Miscellaneous Civil Case No.17 of 2010, Butali Sugar Mills Limited versus Kenya Sugar Board. Both of these cases are seeking various orders against the Kenya Sugar Board. Both cases have similar, if not identical, facts. At the heart of each is the licensing of Butali Sugar Mills Limited. All the parties are represented by the same set of lawyers in both cases. The hearing of the Kisumu case has now commenced in Kisumu; it is ongoing. There was a hearing last Friday. I did table the contents of that suit in the House.

The second case was filed by yet another sugar company; that is West Kenya Company in April. The gist of this case is to restrain the Kenya Sugar Board from issuing a licence to Butali Sugar Mills to operate. On Friday 17<sup>th</sup> September, the court determined that the injunction obtained by West Kenya be set aside. This was a minor case seeking interim protection from the court against Kenya Sugar Board issuance of any licence. However, its main case, that is to restrain the Kenya Sugar Board from issuing a licence to Butali still stands. The case is pending.

I also table the contents of this case in the House.

*(Dr. Kosgei laid documents on the Table)*

The hon. Member for Ikolomani wanted a Statement to explain why the Ministry of Agriculture had refused to issue a licence. He also wished to be informed of the regulations governing issuance and past practice. When he repeated the request last week, he said that he wanted to know why his factory was being denied a license. In my view, the statement sought by the hon. Khalwale is *sub judice*. I tabled the two copies of the cases pending in court at the time and are still pending now.

Mr. Speaker, Sir, I could answer hon. Khalwale and put to rest his constant insinuations and personal threats that, for some reason, I am afraid of him or someone else. I am constrained by the need to note and accept that there are rules of procedure between the legislature and the Judiciary in addressing matters before the court on the

Floor of this House. I expect I would be cited for contempt of court, if I simply went ahead.

Mr. Speaker, Sir, may I request you to consider issuing a ruling on whether I can make that statement in this House or not. These, as I said, are two cases which are still alive and pending in court and they are being heard as I speak.

Thank you.

**Mr. Olago:** Mr. Speaker, Sir, in view of the statement by the hon. Minister, would it not be in order for hon. Khalwale to be asked to produce proof that, indeed, this matter is now settled? Last time we were here, Dr. Khalwale said that the matter was no longer in court.

**Mr. Speaker:** Well, Dr. Khalwale is supposed to be in the House. If he is not here, the House will obviously have to continue with business, because we do not know why he is not here.

*(Mr. Wentangula spoke while seated)*

Order, Minister for Foreign Affairs! That is not the way to do it. Hon. Members, that is a claim for *sub judice* applying to that request or question, and hon. Members, I will make that finding and deliver a ruling in the next ten days from today.

Dr. Khalwale will be at liberty to furnish Mr. Speaker with any information that he deems suitable, even as I address my mind to that claim. The matter will rest there, I am afraid. Dr. Khalwale, the House does not wait for you.

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

Order, please, resume your seat!

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

What is it, Member for Saboti?

## **POINTS OF ORDER**

### **TERMINATION OF DR. SAMMY KUBASUS'S SERVICES BY MASINDE MULIRO UNIVERSITY**

**Mr. Wamalwa:** Mr. Speaker, Sir, I wish to request for a Ministerial Statement from the Minister for Higher Education, Science and Technology on the circumstances under which Professor Sammy Kubasus's services were terminated at Masinde Muliro University on 28<sup>th</sup> September, 2010.

Mr. Speaker, Sir, I would like the Minister, in his statement, to clarify whether or not this is not an attempt to return the country to the dark days, when lecturers or university staff were intimidated against joining or leading the University Academic Staff Union (UASU) or other Associations, in total violation of their constitutional rights of freedom of association, expression and choice. Could he also clarify whether or not this is an attempt to paralyse and weaken and frustrate the operations of UASU, a union with a

membership of about 7,000 university staff, by targeting Professor Kubasu, who is the National Chairman of this union?

I would also like him to tell the House what intervention, if any, he has made or intends to make in this highhanded, arbitrary, illegal and unconstitutional action on the part of this university.

**Mr. Speaker:** Very well, when will that statement be available? Which Minister are you addressing, Member for Saboti?

**Mr. Wamalwa:** Mr. Speaker, Sir, the Minister for Higher Education, Science and Technology.

**The Assistant Minister for Higher Education, Science and Technology** (Mr. Kamama): Mr. Speaker, Sir, I undertake to bring this statement two weeks from today.

**Mr. Speaker:** Two weeks is too long. The longest you can have is a week.

**The Assistant Minister for Higher Education, Science and Technology** (Mr. Kamama): Okay, Mr. Speaker, Sir, Thursday, next week.

**Mr. Speaker:** Tuesday, next week. One week is enough!

**The Assistant Minister for Higher Education, Science and Technology** (Mr. Kamama): Mr. Speaker, Sir, much obliged.

#### COMMITMENT OF GOVERNMENT TO ICC

**Mr. Mungatana:** Mr. Speaker, Sir, I had sought a Ministerial Statement on various matters touching on the International Criminal Court (ICC). Hon. Minister, Dr. Kosgei undertook that today, Tuesday, that the Minister for Justice, National Cohesion and Constitutional Affairs will be here to answer the various issues surrounding the ICC.

**Mr. Speaker:** Minister for Justice, National Cohesion and Constitutional Affairs, is your statement ready?

Leader of Government business when will the Minister for Justice, National Cohesion and Constitutional Affairs bring the statement?

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, I am informed that every effort is being made to ensure that a statement comes before the House Thursday, next week, because there is a consultative process that is taking place.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Given that Cabinet positions are actually public positions, I think it is the right of Kenyans to know where Ministers are, especially when they are called to duty in this House.

Mr. Speaker, Sir, this Minister is busy making a lot of statements outside, statements that he should be making on the Floor of this House. Is it not in order for this House to get explanation from the Leader of Government business, where this Minister is, when he is very visible outside making statements, which he should be making on the Floor of the House?

**Mr. Speaker:** Order, hon. Members! Indeed, that maybe a legitimate concern as to where the Minister is. But if the correct position is that, indication was made that this statement should be issued on Thursday, next week, and there is no wrong doing on the part of the Minister. So, it will stand that the statement is made, Thursday, next week.

**Mr. Mungatana:** Mr. Speaker, Sir, apart from the fact that there is a Leader of Government of business, who can actually act on this matter----

*(Mr. M. Kilonzo entered the Chamber)*

**Mr. Speaker:** Proceed!

**Mr. Mungatana:** Mr. Speaker, Sir, apart from the fact that there is a Leader of Government business who can actually act on this matter, I am aware and it is public knowledge that there is a Cabinet Sub-Committee, in which hon. Orengo is a member. They could be privy to the same information that this House needs to be informed of, so that the business of this House is not kept at bay.

Mr. Speaker, Sir, I would request that you revisit this matter of national public concern. If it is possible, the statement can come either tomorrow or on Thursday.

**Mr. Speaker:** Fair enough! The Minister for Justice, National Cohesion and Constitutional Affairs is now here. So, maybe he can give us indication as to when he will be ready to deliver this statement.

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Mr. Speaker, Sir, I thank you and I am sorry I was a little delayed.

This matter is very important. The hon. Dr. Kosgei who was in the House drew my attention to the request by my learned friend, hon. Mungatana. I then followed up the same, through the HANSARD. I collected the HANSARD. It is clear to me that and I have written a letter to you, as well as to the Leader of Government Business and I have sent copies to hon. Mungatana that the line Minister for international crimes under the International Crimes Act is hon. Prof. Saitoti. The only other Minister mentioned is the hon. Attorney-General.

I drew the attention of the Cabinet Sub-Committee to this matter and it has been agreed that we ask this hon. House to give us indulgence that a statement be read by hon. Prof. Saitoti on Thursday, next week, so that the matter can be put in its correct perspective. I so beg.

I am sorry for going so much in detail, but I have an obligation to be forthright. I have even given a copy to hon. Mungatana. If he has not seen it, I undertake to make sure that he gets these correspondences, including the statement of my Ministry to the United Nations Human Right Commission on this particular issue because I also raised it. So, I beg the indulgence of the House. The ICC will not go away. But we, as a Committee, decided that we are clear, forthright and, above all, accurate. So, the statement will be read by hon. Prof. Saitoti on Thursday, next week.

**Mr. Ruto:** Mr. Speaker, Sir, now that the Minister has come and made such a Statement, and now that he is aware that it is Prof. Saitoti who should handle the matter, could he confirm to this House that he will no longer make contradictory and completely misleading statements to the Kenyan public and the whole world? Could we get a guarantee that he will be gagged from now until Prof. Saitoti speaks and that, henceforth, he will keep his peace?

*(Laughter)*

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Mr. Speaker, Sir, I am not aware that I require to be gagged with regard to my docket which is the Ministry of Justice, National Cohesion and Constitutional Affairs.

I speak on the International Criminal Court (ICC) from the perspective of justice. When the House requires that perspective, I will give it. I do not think I ought to be gagged because the suspects, witnesses and victims of the post-election violence are Kenyans and are entitled to hear from me, once in a while, on what the justice of the matter is.

**Mr. Speaker:** Order, hon. Members! On account of the explanation given by the Minister for Justice, National Cohesion and Constitutional Affairs, I will direct that the Statement be delivered by the Minister in charge of Provincial Administration and Internal Security on Thursday, next week, at 2.30 p.m.

Hon. Members, before we move to the next order, I am afraid that I will have to revisit the matter pertaining to Butali Sugar Factory because it has been drawn to my attention that there are certain sensitivities to it, particularly with respect to integrity. So, I will allow the Member for Ikolomani to, perhaps, respond to some extent to the Minister's claim for *sub judice*. If he has any documents that I should bear in mind as I put my thoughts together to give a ruling, then he should table them.

ISSUANCE OF OPERATING LICENCE  
TO BUTALI SUGAR COMPANY

**Dr. Khalwale:** Thank you, Mr. Speaker, Sir. I brought this Question because the registered Butali Sugar Company, which is complete, was requesting the Government to allow it to have an operating licence. When the Minister appeared before the House, she said that she could not do so because the matter was pending in court. The matter pending in court was that the competitor, that is, West Kenya Sugar Company, was asking the court not to allow Butali Sugar Company to be issued with an operating licence because it purported that the new company was within a radius of 24 kilometres.

Mr. Speaker, Sir, I wish to table now a copy of a court ruling by the said judge who has ruled that both Butali Sugar Company and West Kenya Sugar Company should be allowed to compete within that radius of 24 kilometres. The judge also ruled that they should be allowed equitable access to the resources.

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

**Mr. Speaker:** Fair enough. I will take that into account unless you want to react to that, Madam Minister.

**The Minister for Agriculture** (Dr. Kosgei): Mr. Speaker, Sir, I was very careful to say that what was determined on 17<sup>th</sup> September, 2010 was a minor case which was an injunction. The main case is still pending in the same court for hearing. I had tabled documents showing both cases, one of which is in Kisumu and the other in Milimani. The case in Kisumu started last Friday. It is the case in Milimani which was determined. The competitor was seeking protection from the court. However, the main case that was filed by Butali Sugar Company is yet to be heard and determined. Those documents are before the House. You could, maybe, look at them. You are a lawyer but I am not. So you will determine them. I absolutely have no reason for not wanting to answer this question that relates to a matter that has gone on since 2004. I have no personal interest. I will answer



the Question, but I need the Chair to assure me that I can do so without being accused of contempt of court for addressing those issues on the Floor of the House.

*(Messrs. Wamalwa and Koech stood up in their places)*

**Mr. Speaker:** Order, the hon. Member for Saboti and Member for Mosop! This matter has really to rest where it is. Be assured that the Chair will take into account all the averments as made by both the Minister and the Member for Ikolomani. I will deal with this matter holistically and without fear or favour, as always.

*(Applause)*

Let us move on to the next Order!

## MOTION

### APPOINTMENT OF MEMBERS TO CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

THAT, pursuant to provision of Section 4 of the Sixth Schedule of the Constitution, the following are appointed as Members of the Constitutional Implementation Oversight Committee:-

1. Hon. Hussein Mohammed Abdikadir, M.P.
2. Hon. (Prof.) Phillip Kaloki, M.P.
3. Hon. Martha Wangari Karua, E.G.H., M.P.
4. Hon. Chirau Ali Mwakwere, E.G.H., M.P.
5. Hon. (Dr.) Kilemi Mwiria, M.P.
6. Hon. Charles Kilonzo, M.P.
7. Hon. Beth Mugo, M.P.
8. Hon. Ekwee Ethuro, M.P.
9. Hon. Cecily Mbarire, M.P.
10. Hon. Wavinya Ndeti, M.P.
11. Hon. Moriasi Ombui, M.P.
12. Hon. Amina Abdallah, M.P.
13. Hon. David M. Ngugi, M.P.
14. Hon. Ababu Namwamba, M.P.
15. Hon. Danson Mwazo Mwakulegwa, M.P.
16. Hon. Mohammed Maalim Mohamud, M.P.
17. Hon. (Dr.) Joyce Laboso, M.P.
18. Hon. Joseph Kasaine Nkaiserry, M.P.
19. Hon. Charles Onyancha, M.P.
20. Hon. Alfred Khang'ati, M.P.
21. Hon. John Mbadi, M.P.
22. Hon. Elizabeth Ongoro, M.P.
23. Hon. Rev. Julius Murgor, M.P.
24. Hon. Millie Odhiambo-Mabona, M.P.

25. Hon. Lucas K. Chepkitony, M.P.
26. Hon. Benedict Fondo Gunda, M.P.
27. Hon. Rachel Shebesh, M.P.

*(The Vice-President and Minister for  
Home Affairs (Mr. Musyoka) on 30.9.2010)*

*(Resumption of Debate interrupted  
on 30.9.2010)*

**Mr. Speaker:** Order, the Leader of Government Business! On this Motion, each hon. Member is allowed a maximum of 20 minutes. Before we adjourned last time, Mr. Githae had the Floor and he had done five minutes. So, he still has 15 minutes and we want to know if he wants to proceed before we allow a point of order.

Is Mr. Githae here? He is not here. So, we can proceed.

**The Vice-President and Minister for Home Affairs (Mr. Musyoka):** Mr. Speaker, Sir, I thank Mr. Githae for not being in the House at this time. That is on a light note.

Mr. Speaker, Sir, the House will recall that a Motion for Adjournment of Debate was moved by the Member for Sirisia, Mr. Moses Wetangula, in order to allow for consultations. Further, I am sure all of us are aware that the Motion having been moved, seconded and proposed, we can only proceed in terms of the provisions of Standing Order No.57. I am standing on this point of order to seek the Chair's and the House's indulgence that the Leader of Government Business be allowed to withdraw the earlier list as presented. That can only happen with the permission of the Speaker and the understanding of the House so that I can substitute the same with a new list.

I beg to propose.

**Mr. Speaker:** Very well. Hon. Members, the Motion as captured under Order No.8 stands withdrawn with the leave of the House.

*(Motion withdrawn)*

Hon. Members, a Supplementary Order Paper will now be circulated because I have approved the Motion contained thereat. From now on, therefore, you will stand guided by the Supplementary Order Paper which is now being distributed.

*(The Supplementary Order Paper was distributed to hon. Members)*

**Mr. Speaker:** I want to presume that all hon. Members have a copy of the Supplementary Order Paper in their possession.

We will now move to Order No.8.

## **MOTION**

APPOINTMENT OF MEMBERS TO CONSTITUTIONAL  
IMPLEMENTATION OVERSIGHT COMMITTEE

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Thank you Mr. Speaker, Sir. I beg to move the following Motion.

THAT, pursuant to provisions of Section 4 of the Sixth Schedule of the Constitution, the following are appointed as Members of the Constitutional Implementation Oversight Committee:-

1. Hon. Hussein Mohammed Abdikadir, MP.
2. Hon. (Prof.) Philip Kaloki, MP.
3. Hon. Martha Wangari Karua, E.G.H. MP.
4. Hon. Chirau Ali Mwakwere, E.G.H. MP.
5. Hon. (Dr.) Kilemi Mwiria, MP.
6. Hon. Charles Kilonzo, MP.
7. Hon. Beth Mugo, MP.
8. Hon. Ekwee Ethuro, MP.
9. Hon. Cecily Mbarire, MP.
10. Hon. (Dr.) Eseli Simiyu, MP.
11. Hon. Moriasi Ombui, MP.
12. Hon. Amina Abdallah, MP.
13. Hon. David M. Ngugi, MP.
14. Hon. Ababu Namwamba, MP.
15. Hon. Danson Mwazo Mwakulegwa, MP.
16. Hon. Sophia Abdi Noor, MP.
17. Hon. (Dr.) Joyce Laboso, MP.
18. Hon. Joseph Kasaine Nkaiserry, MP.
19. Hon. Charles Onyancha, MP.
20. Hon. Alfred Khang'ati, MP.
21. Hon. John Mbadi, MP.
22. Hon. Elizabeth Ongoro, MP.
23. Hon. Rev. Julius Murgor, MP.
24. Hon. Millie Odhiambo-Mabona, MP.
25. Hon. Lucas K. Chepkitony, MP.
26. Hon. Benedict Fondo Gunda, MP.
27. Hon. Rachel Shebesh, MP.

Mr. Speaker, Sir, in moving this Motion, I take cognisance of the fact that there was debate on the earlier Motion which is now history, and subsequent to the Motion of Adjournment, there was a beehive of activities as political parties consulted on the new list. I think it is also important that in trying to formulate this list, the House Business Committee took a very firm position with regard to applying vigorously, the provisions of the new Constitution. We did not want to begin on the wrong foot. That is why a lot of effort has gone into ensuring that, out of 27 Members, there is gender consideration to the extent that nine out of the 27 Members are women hon. Members of this House. This is a matter that we feel very proud about because we said that we must begin by giving and setting the right mood in the country. I think it will be well with every Kenyan to take note, not just of this fact in the House, but right across all public appointments. I think we have to be serious about gender equity in the country. This is a matter that I thought I could point out as I prepare to invite hon. Orenge to second this Motion.

The other thing that we have taken into account is the provisions of the Standing Orders regarding political parties consultations. Because, unfortunately, as I move this Motion, I am aware that there are some amongst us who still feel wounded by the decision to get on with this list. I would like to urge them to rise up to the occasion and show leadership. The country has been waiting, almost with bated breath, for the last few days, to see what this House is going to do. I do not think we can afford further prevarication over this matter because the most important thing is to prepare the way to get on with the constitutional commissions that have to be expeditiously put in place. Time began running on 27<sup>th</sup> August, upon the promulgation of the new Constitution. I do not think that the country will take us kindly if we are seen to debate forever, this matter of setting up the Oversight Committee which is so eagerly awaited. That is because upon the formation of this Committee, the next thing is to make sure that we get on with the vetting of judges and the Judicial Service Commission. It is so elaborated in the Constitution, including the all important Implementation Commission. Therefore, the Standing Orders provide that political parties consult.

I know that the Whips have tried against some great difficulties to harmonize the feelings and emotions of some of our hon. Members. I want to urge that since we are going to have other opportunities, those who have been left out--- As I said last week, every Member of this House is adequately prepared and qualified to serve in this Committee. This should be seen as the first lot among equals. There will be other opportunities and we will be very fair, from the point of view of the House Business Committee. We will ensure that those who are not serving as Members of this Oversight Committee will be given priority as we move ahead in the implementation of the new Constitution. Due to the calculations that have to accompany the determination as to how many slots ODM, PNU, ODM(K), NARC(K) or any other party gets, we will have to go through those great calculations.

I am satisfied that this is a list that we can live with. I want to urge the House to do the necessary important thing, and that is to pass this Motion and set in place the Parliamentary Oversight Committee. That is because I know this matter of implementation of the Constitution is not just within the province of Parliament. As I said, we have a date with destiny, as the 10<sup>th</sup> Parliament. I also know that every Kenyan has a right to feel that they can relate to the new Constitutional dispensation.

With those few remarks, I beg to move and to ask Mr. Orengo to, kindly, second this Motion.

*(Applause)*

**The Minister for Lands** (Mr. Orengo): Thank you. Mr. Speaker, Sir. I would like to second this Motion. In seconding this Motion, I would like to say that more than any other Parliament; this Tenth Parliament has a historical duty for which, so far, we have measured up to the occasion. We have rose to the occasion.

The First Parliament was dealing with the transformation of Kenya from a colonial state to an independent State. If you look at the annals of this House, the debate that took place in this House in the first year after Independence, you will see that there were Bills to ensure that Kenya was changing from a colonial order to an order of a new

democratic republic. I think the first Parliament acquitted itself. However, this Parliament is doing more than ever, what the First Parliament did; to move from one constitutional order to a new constitutional order. There may be criticisms about this Tenth Parliament. However, if you look at the history of each Parliament, let me say this: Each Parliament will not be judged by the persons that were in that Parliament; not even on the basis of parties that were in that Parliament. It will be judged by the results of the business that we will have transacted as a Parliament. This Parliament has a historical duty which is found within the new Constitution.

I am so happy that in view of Article No.10 which talks about National Values, Members raised some issues about the first list. There are values there that we must, all the time, take into account, including issues of participation and representation. Indeed, the crucial thing that was missing at the beginning was the idea of participation and consultation.

Mr. Speaker, Sir, I want to plead with the House that once Parliament has decided that there is a Committee of the House which has been appointed and agreed upon, I should be able to defend it as a Member of this House. I should be able to defend every Member of that Committee. I dare say that the names of Hon. Hussein Mohammed Abdikadir and hon. Namwamba, appearing on this list is a sign that we have come of age. I can say this with due respect, because when the two gentlemen speak normally on these constitutional issues, I have the idea of the Kenya that we should strive to be. It is not the Kenya that we are fighting away from. I plead that in this whole arrangement, it will be very difficult to satisfy everybody. We are 42 communities in Kenya. When we talk about participation, not every single individual will participate in one way or another, but indirectly, we will all participate.

The large constitutional questions that face us and the basis upon which we are going to be judged in the terms of the current Constitution, this list takes care of it. If you look at Article 10, because that is the constitutional test that we should put to this list, it passes that constitutional test. This is a Committee that will represent the House on the issue of the constitutional making.

The last point that I want to make is that if you look at the arrangement of the consultation, Parliament is the main organ of review at the moment. It is not the Executive, or the Attorney-General. Parliament is the main organ. If we start on a note when we can speak with one voice, we will deliver all the consequential legislation. I can rise up one day and say that I am truly a Kenyan. I will look at the face of hon. Mureithi and not ask where he comes from, but look at him as a brother who can defend me in any situation. The problem is that sometimes when issues arise and we go into our little cocoons, then we begin to have doubts about each other. We begin to see weaknesses in each other. But our best moment is when a person, whom you do not agree with on many issues, you can sit with him as a brother in this House and say: "This is the moment to be Kenyan and make Kenya great".

With those few remarks, I beg to support.

*(Question proposed)*

**Dr. Machage:** Mr. Speaker, Sir, once again, the country is looking at the Members of Parliament to make a wise move. We have had enough bickering about the

Members of this Committee. That was time well spent, but wasted. We have a list of Members of this House which makes a good representation of all of us.

In the history of this House, I do not remember when anybody from my constituency was ever appointed to any Committee, but I have never raised a voice. I beseech and persuade those of us who feel that they should have, for one reason or another, been included in this list, to accept and concede that the Members on this list are representative enough.

I want to congratulate the Members from the Luo Community. None of them is in this list and nobody has complained. Hon. Mbadi and hon. Millie Odhiambo are from the Suba Community.

With those remarks, I beg to support.

**Mr. Speaker:** Order, hon. Members! I want to give directions that even as we debate this matter, important as it is, let us bear in mind that as the law stands today, we are Members of the National Assembly of Kenya. We are not Members of the Tribal Assembly of Kenya! Please, bear that in mind!

**Ms. Karua:** Mr. Speaker, Sir, I rise in support of the Motion. I want to say that the consultation and the four steps that we made have proved that Parliament can no longer be taken for granted. In line with the new Constitution, we better learn to consult and consult early, to avoid aggravating Members the way it happened this time.

It is our duty now to move with speed and start implementing the Constitution to ensure that Kenyans reap benefits.

With those remarks, I beg to support.

**The Minister of State for Development of Northern Kenya and Other Arid Lands** (Mr. Elmi): Mr. Speaker, Sir, I beg to support. We have come of age. Our democracy is getting stronger by the day. I believe every Member in this House can serve in this Committee. The ones who are in this list are as good as any other in this House.

Therefore, I beg to support.

**Mr. Nyambati:** Thank you, Mr. Speaker, Sir. I also want to join my colleagues, first of all, to congratulate all those who have been appointed to this Committee. It is important for this House to support them, so that they can deliver.

As has been said by the Vice-President and Minister for Home Affairs and supported by hon. Orengo, any Member in this House is capable of delivering. We must now leave all these issues aside and support this Committee for it to do the very important job that we have given it to do. Parliament is the engine of the nation. It is our responsibility to ensure that it works. I am very proud to be a Member of this Tenth Parliament which is making history.

I strongly support the Motion because I believe this Committee will deliver.

**Ms. Ndeti:** Mr. Speaker, Sir, I would like to take this opportunity to congratulate hon. Members who have been chosen to be Members of this Committee. I would also like to take this opportunity to congratulate the Orange Democratic Movement (ODM). Why am I congratulating the ODM? The ODM has given enough slots for women as required. The Party of National Unity (PNU) had its own issues but it is my party and I do not want to go into details. Kenya is greater than Ms. Wavinya Ndeti or Mrs. Lina Jebii Kilimo. I rise here to support the Motion because I want this Constitution to be implemented immediately. This is because I want our children to have free education like yesterday. I also want the elderly to be taken care of like yesterday. I want the disabled to be taken

care of like yesterday. If Wavinya Ndeti or Mrs. Kilimo will stop that, they will not. I support this Motion and let it be debated. Kenya is greater than both of us but this is a lesson for everybody to know that Members of Parliament, especially women, will not be taken for granted again. You have said that we should not talk about communities but there are those from my community who are scared of me.

*(Laughter)*

That is true! They want me removed from any opportunity that I should get. However, I am a leader in my own right. The people of Kathiani are aggrieved but I would like to tell them that Kenya is greater than Kathiani. So, let us support this Motion. Many more things are coming. We want a better Kenya and that is what we will get. That also applies to the people of Machakos County who made a statement. I urge them not to be aggrieved. I am a leader and my people have chosen me. I want to assure them that anything that I have to do for my country is greater than me. I love my country, I give in and support this Motion.

**Mr. Kutuny:** Mr. Speaker, Sir, the expectations of the people in this country with the passage of the Constitution were rated to be highest in terms of optimism. However, we are experiencing now misunderstanding from political parties and leaders in this country. Those of us who opposed the passage of the Constitution want to say that we join the rest of Kenyans to implement the Constitution for the betterment of every person in this country. Many people expect a lot. We expect many things in this Constitution. On the issue of land, we expect the Committee to work round the clock to ensure that the criteria and the modalities of identifying the acreages, that is, the maximum and the minimum acres of land is put in place so that it does not cause unnecessary squabbles in this country.

At the moment, the fate of the Provincial Administrators hangs in the balance. The implementation of this Constitution will assure those people of their jobs. At the moment, we are talking about the councilors who do not know their fate in this Constitution. Implementation of this Constitution is wanting. All these things should be brought to order.

I support this Motion.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Mr. Speaker, Sir, I rise to support this Motion, first of all, because I have looked at the list of the Members of Parliament, and in realization that all Members of Parliament are equal. They have the same capacity and are equal to any task. Therefore, they can be appointed to any Committee of this House. Therefore, on the issue whether all Members of Parliament are qualified or not, I would like to say that they are all qualified.

Mr. Speaker, Sir, I am also encouraged when I see young faces like my sister, hon. Mbarire, hon. C. Kilonzo and hon. Abdikadir. I respect all those Members in that list.

We must support this Motion because we have fought to have the new Constitution for a long time. We went through the referendum and now Kenyans are anxiously waiting to see how it will be implemented. Some Kenyans want to know how the counties will be run and what will be the functions of the Governors and the Senators. The councilors are equally anxious because they do not know whether they exist in this

Constitution. They need to see this legislation so that they are comfortable. We have 49 Bills and if we continue arguing over who is in this list and who is not, it means that the House will not rise to the occasion and start doing its work seriously. Any one week we lose is a loss to Kenyans. Kenyans are still wondering when we shall come of age. I am only disappointed by the way, we, as leaders behave and especially the party leaders. I am very happy that with the implementation of this Constitution, the dark days are over. Political dictatorship will be behind us.

I am disappointed at the way we manage our party politics. I would say that I am ashamed when I talk of any political party in this country. This is because they are only vehicles to elections. They are constituted very quickly for purposes of elections and I would like to be challenged on this aspect. In developed democracies, we have parties that have been in existence for over 200 years. If you go to South Africa, you will find the African National Congress (ANC), which we should be competing with has structures. We even do not know who is the chairperson of the Republican Party, the Democratic Party or the Labour Party in the UK or even the ANC. We do not see politicians masquerading to be chairpersons. That is why democracy is prevalent in those countries. If we continue the way we do things in this country, I assure you that we are doomed because this country must develop. The first people to develop are the leaders of parties. I am also a leader of one of the parties. We must give space and allow structures of parties---

**The Minister of State for Immigration and Registration of Persons (Mr. Kajwang):** On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member who is speaking to address us on matters affecting management of parties when he himself is a leader of a party and he has not shown us any good example?

**The Assistant Minister for Water and Irrigation (Mr. Kiunjuri):** Mr. Speaker, Sir, I am lucky because I have been heading one and Mr. Kajwang should come and learn a few lessons from me now that I am more experienced in that field than him. However, he is also a senior Member of Parliament and I respect him for that.

Mr. Speaker, Sir, our party is only three years old. I have also testified here that most of the parties have not existed for even eight years. They were formed the other day. Look at their history. I do not want to mention them. The only party that can pretend that it has been there is very sick and it is almost---

**Ms. A. Abdalla:** On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member who is a leader of a party that is not represented in the House to insinuate that some of the parliamentary parties are dead?

**The Assistant Minister for Water and Irrigation (Mr. Kiunjuri):** Mr. Speaker, Sir, I did not mention any party. There are 48 parties in this country. When I talk of sickness of the party, it is not that sickness that you get admitted in the hospital. You know how they become sick. I was trying to say that---

**Mr. Mututho:** On a point of order, Mr. Speaker, Sir. Could the hon. Member name the sickness, and if he is referring to KANU, I am here on a KANU ticket.

**Mr. Speaker:** Order, the hon. Member for Naivasha!

**The Assistant Minister for Water and Irrigation (Mr. Kiunjuri):** Mr. Speaker, Sir, I have not mentioned any party.

**Mr. Speaker:** You have not!



**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Mr. Speaker, Sir, the guilty are always afraid.

Mr. Speaker, Sir, what I wanted to bring out is that it is high time that we made these parties viable. As leaders, we should not behave like we are in a market where the auctioneers go for the highest bidder by the fall of the hammer. This Constitution will enable us to respect the minority, the majority, equality, equity and observe the Bill of Rights which is very clear on how we should move forward. If this was observed, we could not have had that kind of debate that we had last week. Hon. Members should be satisfied whenever the names are tabled in this House. I am very sure that the list was not opposed because hon. Members were incapable of performing their duties but because we were trying to express our displeasure. That is why we must speak on these things.

Lastly, Mr. Speaker, Sir, we have a country and I am impressed by your ruling that we should no longer be mentioning tribes in this country. Likewise, we should have respect even within parties; that we exist as Kenyans. Therefore, it is my sincere hope that from today henceforth, we shall learn how to respect each other. The concept of “use and dump” should come to an end so that people, really, can know when you ask me to come and play together as a teammate, that we are really genuine friends.

I hope that those considerations will be there and that now with the new Constitution, we are going to adhere to that.

With those few remarks, I beg to support.

**The Attorney-General** (Mr. Wako): Thank you, Mr. Speaker, Sir, for giving me this opportunity to speak on this very important Motion.

Mr. Speaker, Sir, I am one of the people who have been calling for a quick establishment and constitution of this Committee. In fact, I said that the Attorney-General is ready and rearing to go, but we cannot go too fast because this Committee and the Commission have to be put in place. That is because regulation 4(b) of the Transitional and Consequential Provisions, Sixth Schedule of the new Constitution reads:-

“Co-ordinate with the Attorney-General---“

One of the major purposes and aims of this Committee is to co-ordinate with the Attorney-General, the commission on the implementation of the Constitution and relevant parliamentary committees, to ensure the timely introduction and passing of key legislation required by this Constitution.

Mr. Speaker, Sir, I want first of all to assure this House, that the Attorney-General will play his part with this Committee being established today to ensure the timely passage of the Bills by this House.

In fact, I can see great impatience in the country and, whereas, the time schedules have been set out for the passage of the various legislations, it does appear to me that the people of Kenya want that to be accelerated. For example, the issue of the Provincial Administration and so on under the new Constitution, they have been given five years to readjust themselves. But already, the public is engaged in a very heated and robust debate on the issue of the Provincial Administration. In other words, they have not said that because the new Constitution is giving us five years, they can take two years to now begin looking at the issue of the Provincial Administration.

If you look at the issue of police reforms and legislation under the Schedule, it is two years. But, already, the public is engaged on those issues.

Mr. Speaker, Sir, although the Constitution says “a timely passage of the Bills,” it is my hope that this Committee, the Commission on the Implementation of the Constitution and the Attorney-General of the Republic, will not only ensure timely but will, in fact, accelerate the passage of the Bills in this particular House and, in that regard, I will be there in the middle.

**Mr. Ogindo:** Mr. Speaker, Sir, I want to support the Motion by taking cognizance of the fact that I represent the people of Rangwe, and as I represent the people of Rangwe, I know there are many, many deserving people there. On the issue of representation, we cannot all be there. As an hon. Member of this Parliament, I feel adequately represented in the Committee.

I want to say that this Committee is a true representation of the House and the fact that we are in the second Republic is, indeed, a pride to every hon. Member of this House.

Mr. Speaker, Sir, I want to take this early opportunity to congratulate hon. Members of the Committee. But I want to urge them to ensure that they are guided by utmost patriotism when they are doing their job. The days when we used to be guided by parochial issues are over. We are looking forward to this Committee on behalf of the House to ensure that the implementation of this new Constitution is true to the letter and the spirit. We want to ensure that the joy and the happiness that was promised in this new Constitution is realized soonest possible.

Mr. Speaker, Sir, I know we have had it revised before, but it is against that background---

**Mr. Mureithi:** On a point of order, Mr. Speaker, Sir. Going by the mood of the House, may the Mover be called upon to reply because people have started to become repetitive?

*(Applause)*

**Mr. Speaker:** Order! Order! Order, hon. Members! Let the hon. Member for Rangwe complete his contribution.

**Mr. Ogindo:** Thank you, Mr. Speaker, Sir, for that opportunity to enable me complete my submission. As I was saying before I was rightfully interrupted, I want to conclude by saying that this is a time that the country needs patriotism. This is the time that parochial interests are put aside.

Mr. Speaker, Sir, the people of Rangwe alongside the people of this Republic are anxious to start enjoying the benefits of this Constitution.

With those few remarks, I beg to support.

**The Minister for Regional Development Authorities (Mr. Gumo):** Mr. Speaker, Sir, I also rise to support the Motion.

Mr. Speaker, Sir, this Constitution was voted for overwhelmingly by the people of Kenya, and they have all been waiting to see that it is implemented as quickly as possible. The longer we take in implementing it, the worse it is for the people of Kenya because they start getting wrong interpretations. So, I would urge the Committee of this House to move with speed and work, if possible, for not less than 12 hours so that this Constitution is implemented.

With those few remarks, I beg to support.

**Mr. Koech:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Motion.

Kenyans are expectant and we must make progress, as the honorable august House. The implementation of the Constitution is now and we must make progress. We must move as a team. While I empathize with those hon. Members whose names were there earlier, I want to urge the political leadership of parties to be consulting before any lists are brought to the House. I do understand how it feels to find your name somewhere and then the next day, it is not there.

As we make progress, I want to encourage the Committee - as I congratulate them - that there is a lot of work ahead of them. I consider that this membership of this Committee will require a lot of exposure to ensure that we fully implement the Constitution and implement it the right way.

Mr. Speaker, Sir, I want to encourage the Committee that the structures that are going to be put in place in terms of Committees and Commissions will ensure that the lists that come to this honorable House are well balanced lists. That they are well informed lists so that we do not have squabbles on the Floor of the House. Instead, we should be united so that we can move forward.

I urge hon. Members of this House that we should make progress and that we should move as a team.

I beg to support.

**Mr. Speaker:** Very well!

**The Assistant Minister for Higher Education, Science and Technology** (Mr. Kamama): Mr. Speaker, Sir, I wish to support this Motion very reluctantly. I am saying reluctantly because our sub-region was totally obliterated by our side of the coalition, the PNU, but because we have to give and take, I agreed with my colleagues and our party chiefs that we support this list. If you look at this list, the entire Kalenjin nation is not featuring anywhere from the PNU side but it is featuring from the ODM side. So I wish to support reluctantly and wish to inform those who were in this Committee to make sure that when it comes to the selection or appointment of commissioners, the Rift Valley sub region---

**The Minister of State for Immigration and Registration of Persons** (Mr. Kajwang): On a point of order Mr. Speaker, Sir. Is it in order for the Member to suggest that there is something in this Constitution or even in this House called the Kalenjin nation? If we encourage this kind of talk, we are going to destroy political parties, and this is the best vehicle for democracy and engagement in this House. We should stick to political parties and political parties can do their business in their Parliamentary Group meetings but when we come in here and talk about the Kalenjin nation, the Suba nation, the Kuria nation; it is very embarrassing.

**Mr. Speaker:** That is a valid point of order indeed. I had given guidelines to Members that we must, as we debate this matter, bear in mind that we are the National Assembly of Kenya not a tribal assembly of Kenya. As far as I know, there is nothing such as the "Kalenjin nation" in the Kenyan nation.

**The Assistant Minister for Higher Education, Science and Technology** (Mr. Kamama): Mr. Speaker, Sir, I do not doubt your command of English but to say that there is the "Kalenjin nation", I think that is not bad English! It is good English!

**Mr. Speaker:** Order, the Member for Baringo East! You will have to withdraw and apologise or tender evidence in this House that there is an entity known as the “Kalenjin nation”. If you are unable to tender evidence, you must withdraw and apologise.

**The Assistant Minister for Higher Education, Science and Technology** (Mr. Kamama): Mr. Speaker, Sir, in the Spirit of give and take, I wish to withdraw.

So as I conclude, I just want to appeal to the Committee members to ensure that all provinces or all regions of this country are fully represented when it comes to the appointment of commissioners.

With those few remarks, I beg to support.

**Mr. Affey:** On a point of order, Mr. Speaker, Sir. Given the mood in the House, it is very clear that this matter has been ventilated thoroughly. Will I be in order to request the Leader of Government Business to respond?

**Mr. Shakeel:** No!

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

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Thank you, Mr. Speaker, Sir. I must congratulate the Member for Kisumu East because he is very audible. I am almost tempted to allow him a minute of my time with your permission so that we can carry everybody along with us. I do not mind donating a minute to hon. Shakeel, after all he is a fellow scout.

**Mr. Speaker:** You have the prerogative and you can indeed donate one of your minutes.

**Mr. Shakeel:** Thank you, Mr. Speaker, Sir. I also wish to thank the Leader of Government Business.

I think one of the main principles was that we did not want Cabinet Ministers in this committee because they sit in the Cabinet, and as much as they are very capable as Members of Parliament, I feel that their duties as Ministers will suffer or the performance of this Committee will suffer. However, I had objections to hon. Mwakwere and Mrs. Mugo being members of this Committee. I had nothing against them as they are very capable people but I think they should not be there.

I therefore, on that basis, oppose that list.

*(Laughter)*

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Thank you, Mr. Speaker, Sir. I sincerely respect the opinion of the hon. Member for Kisumu. I am also sure that he appreciates that he is in a very serious minority. But having said that, I want to thank the hon. Members for whole-heartedly supporting this Motion. I also want to congratulate you, Mr. Speaker, Sir, because I think we have to get into the new Kenya; this new Constitution has brought with it the yearning for real change. I think we have to change and demonstrate that change from the Floor of this House so that anybody who makes tribal utterances, and I have noticed the Chair’s impatience with those tribal remarks - I want to urge that you persevere in reminding all of us that it does not pay any

more to think in terms of our tribes. Therefore, on that basis, it is really unfortunate that even the media tried to look at provinces after the first attempt which was ably seconded by my friend hon. Kosgey. They tried to say Eastern Province was represented and now we hear the complaints by some of the Members. I mean you can never win in a game like this. Just like I said, everybody is eminently qualified; the Member for Kathiani herself is eminently qualified and I want to thank even people like Ms. Karua who, initially, were insisting on two slots, but later they settled for one. I think this is the spirit of give and take. We have nothing personal in these matters. I want to assure the august House that we will, from the point of view of the House Business Committee, take the matter of consultation with all the seriousness it deserves.

Mr. Speaker, Sir, therefore, I do not think there will be any need for anybody to cast aspersions. I had a very useful luncheon meeting with the Member for Kathiani and I tried to calm her down. I think she understands. I think this is the way to go that we have opportunities lying ahead. The problem seems to have been with the smaller parties within the PNU coalition. But the fact that we had to respect the allotment, the allocation of each political party, if it was PNU entitled to five, they got their five slots. If it was ODM-Kenya entitled to two slots, they got their two, if it was NARC-Kenya entitlement and ODM were entitled to 14 positions. I think we all have to congratulate each other and recognize that the Committee that we have set in place is not an ODM, PNU or whatever other party committee. This is the Committee of the Tenth Parliament. Therefore, I want to urge Members to serve in that spirit and that they will now be able to liaise with the Law Reform Committee, the Attorney-General and make sure that we beat those deadlines. Because by 27<sup>th</sup> October, 2010, we are supposed to have come up with the Judicial Service Commission Bill, for instance. We do not have time on our side. I do not need to remind all of us that in the event the country sees that this Parliament is not moving with the speed that is expected of us, they can actually invoke what the hon. Member for Ikolomani likes to remind me. I think there is a sanction that comes. The sanction is that Kenyans can actually demand dissolution of this House if we are not moving with speed to implement this Constitution.

Therefore, there are no Luo members of this Committee, there are no Kikuyu members, there are no Kamba members and there are no other members. All we have is a Committee of the Tenth Parliament.

I beg to move.

*(Question put and agreed to)*

**Mr. Speaker:** Hon. Members, I wish to direct that now that that Motion has been carried, those who have been appointed by the House to serve on the Committee prepare to attend a meeting tomorrow at 10.00 a.m. at County Hall.

Hon. Members, this is pursuant to Standing Order No.163 which says that the Clerk of the National Assembly shall arrange the time for the first meeting so that those who are in the Committee can elect their Chairman and Vice-Chairman and immediately embark on the responsibility that has been conferred upon them which we all agree is urgent. I want to remind that Committee, once again, to bear in mind the provisions of Section 261 of the Constitution. You have a responsibility to keep this House alive or terminate its life earlier than otherwise provided in the law.

## COMMUNICATION FROM THE CHAIR

### DEFERMENT OF ORDER NOS.9, 10 AND 11

Hon. Members, I wish to communicate as follows.

That orders No.9, 10 and 11 are deferred to the earliest opportunity when they can come. This is because there is need for consultation to take place as I have received information from the House Business Committee (HBC), so as to be certain as to the constitutionality or otherwise of transacting that business. So, invoking the powers vested in me by the Standing Orders, particularly Standing Order No.1 and Standing Order No.36, I defer this business until it is opportune for it to appear on the Order Paper.

Next Order!

## BILL

*(Second Reading)*

### THE TEA (AMENDMENT) BILL

**The Minister for Agriculture** (Dr. Kosgei): Mr. Speaker, Sir, I wish to move the Tea (Amendment) Bill. The purpose and objectives of this Tea (Amendment) Bill is to seek amendments to the Tea Act Cap.343 to introduce the necessary reforms in the tea sub-sector to harmonise the act with the current---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! We will have to hear the Minister for Agriculture.

Minister, note that you have to move the Bill as it appears in the Order Paper. Are you able to do that?

Please, proceed!

**The Minister for Agriculture** (Dr. Kosgei): Mr. Speaker, Sir, I wish to move the Tea (Amendment) Bill (No.2) (2010) ---

**Mr. Speaker:** Order, Minister! Just resume your seat. The way to proceed is this way:-

I beg to move that the Tea (Amendment) Bill (No.12) be read a second time and then you proceed.

**The Minister for Agriculture** (Dr. Kosgei): Mr. Speaker, Sir, I beg to move that the Tea (Amendment) Bill (No.12) be read a second time.

Mr. Speaker, Sir, the objectives and purpose of the Tea (Amendment) Bill (2010) is to seek amendments to the Tea Act, Cap.343 to introduce necessary reform in the tea sub-sector to harmonise the Act with the current policy changes in order to create a vibrant and competitive and prosperous tea industry. The legal and institutional constraints that necessitate the review of the existing regulatory framework are as follows:

One is the institutional mandate, size and composition of the Tea Board of Kenya (TBK). The new functions for the Board include regulating all aspects of the tea trade, registration of persons dealing in tea, promoting tea in the domestic and external market, issuing and reviewing of licenses and registration certificates under the Act and taking necessary measures to ensure compliance to the Tea Act.

Mr. Speaker, Sir, the current Act does not give the Board explicit mandate to regulate tea trade matters nor the promotion of tea in the domestic and external market. The amendment will reduce the membership of the Tea Board from the current 16 members to 11 members in line with the State Corporations Act, Cap.343. The change in composition of the Board will provide for a balance of stakeholders interest and spins mix needed to strengthen the Board's regulatory mandate.

The second is the promotion and regulation of tea trade. There is no clear provision under the current Tea Act to enable TBK to regulate tea leading to unfair trade practices. These practices include poaching of tea which is pre-financed by different factories and companies thus jeopardizing future financing of tea growing for the benefit of farmers. The amendment Act provides for regulation of green tea leaf supply and creates an offence for non-compliance as a deterrent measure.

Mr. Temporary Deputy Speaker, Sir, the current Tea Act provides for only one time licensing of factories and there are no provisions for registration of persons dealing in tea trade and sanctions for non-compliance.

The Amendment Act will require that any persons dealing in tea register annually and have renewal from the Board. This will ensure that the Board has the information and dates it requires to regulate the industry.

Mr. Temporary Deputy Speaker, Sir, we also need to regulate the funding for the development of the industry. Currently, the activities are underfunded and, therefore, we need to bring it in line with institutions like tourism and horticulture. That is because although we produce a lot of tea, our marketing is poor and we need to improve that around the world and here at home.

We also seek to amend the Act to provide for a value based financing system from volume based model for Tea Board by removing the manufacture sales as the source of funds and introducing an *ad valorem* levy on all tea to be charged at the point of export. The amendment will increase the financial resource to the Board and the Tea Research Foundation of Kenya (TRFK) so as to enhance capacity to promote tea and implement value-addition.

The conversion of the current cess charged on all manufactured tea will have the following consequences:- Widening the funding base for the tea industry regulation and research, thus reducing dependence on the Exchequer. It will also broaden responsibility of funding to the tea industry and, therefore, also to the producers. It will base taxation on tea value rather than volume thus making taxation sensitive to price fluctuations and protection of the industry. This is a far reaching amendment to the tea industry which has been almost at a standstill for very many years. It is what the farmers of smallholder tea are requesting. We, therefore, seek the support of the House to improve on this sector to move it forward.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to move and request Mr. Kosgey to second.

**The Minister for Industrialization** (Mr. Kosgey): Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to second this Bill. I wish, therefore, to second the Tea (Amendment) Bill. At the moment, tea is a very important crop in Kenya. I wish, at the start, to congratulate Kenya Tea Development Agency (KTDA) which has just released results showing that this particular year, farmers are going to make – not record profits but – substantial amounts of money that can sustain their livelihoods.

We have come a long way from the days when tea and coffee were reserved for what were then the colonial masters. You will also recall, if you are aware of the history of agriculture in this country, there was the Sunoton Plan that allowed Africans or indigenous Kenyans to grow coffee. Later on, they were allowed to grow tea. Ever since, after 1963, when the Kenya Tea Development Authority was formed - which we later made an agency - there has been tremendous progress in the tea sector. The returns to the farmers are encouraging. I am not suggesting that, at any one time, farmers are satisfied with the returns which currently, stand at about 80 per cent of the total earnings. I believe that KTDA could still improve and come up to even just 10 per cent and give the farmer 90 per cent.

Nevertheless, this Bill seeks to amend certain sections of the Tea Act, Cap.343 of the Laws of Kenya. One area is to strengthen the Tea Board. The Tea Board serves as the regulatory and marketing agency with respect to tea in Kenya. There is one area which we wanted to see Tea Board being more active in marketing and promotion of tea in Kenya. It should not rely purely on traditional markets of UK, Pakistan, Sudan and Egypt. There are other areas where tea is consumed, particularly in Russia and East European countries. We should conduct tea promotions in all those areas. We need to cover a wider area. This Bill also seeks to strengthen the Tea Board by giving it more resources. At the moment, they have been relying on a cess which is about Kshs0.46 per kilogramme of tea or green leaf. By introducing an *ad valorem* duty on the sales means that the producer and the consumer will also pay. Maybe, Kenyans are not aware that Kenya imports tea. We import certain special types of tea like herbal or tea with additives for the taste of some people. They need to pay so that we can promote our tea.

Mr. Temporary Deputy Speaker, Sir, at the moment, we sell our tea mainly through the Mombasa Auction. We need to strengthen the Mombasa Auction so that it becomes a very strong auction. We have heard that there are some people who wanted to introduce an auction in Dubai. We do not want that because it could kill our Mombasa Auction and transfer business elsewhere. So, the amendment to Clause 3 expands what the Tea Board can do. It should not just be a broker. Its functions should include auction organizer, transit tea and warehousing. So, they all need to be recognized.

Mr. Temporary Deputy Speaker, Sir, one very important aspect that I need to touch on--- Because I am not going to touch on every aspect. There are other hon. Members who will make their contribution. I would like to talk about Clause 10, which seeks to amend Section 13(a) of the principal Act by providing the regulation of green leaf supply, and creates an offence for non-compliance of the same. This amendment is very important! The success of KTDA has been because the market is more or less regulated. It might look a bit awkward since it is my tea and I can sell it anywhere. If we allow that to happen, we will be treading on very dangerous grounds. We will go the way the coffee went. You will remember that in the 1980s and late 1970s, coffee brokers were



allowed to buy coffee directly from the farmers and sell it to KPCU. So, even the people who did not have coffee were coffee suppliers. This particular Clause is very important. We should retain and maintain this Clause because if we do not do that--- At the moment, there are people who do not even have tea, but they supply it to the factories. We must guard against that. Otherwise, the farmer will be exploited. KTDA factories will start suffering. The big plantations will be receiving tea which they have not taken care of. That will kill the tea industry and encourage pirates. In Kericho and Nandi, there is a new variety called Mung'orito which is – I cannot translate it. But it is tea which is hawked around and it is, sometimes, of low quality. It is being sold. Somebody can just go and pluck tea, including other peoples' tea at night and sell it as their own. So, we need this Clause. It is very important so that we can guard against malpractices in the market.

Otherwise, this Bill seeks to revamp the Tea Board of Kenya. I am happy to hear that the number of directors will be reduced from a very large group of 15 to a manageable group of 11; this is in conformity with the State Corporations Act.

With those few remarks, I beg to second and support this Bill.

*(Question proposed)*

**Dr. Kones:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to the debate on the Tea (Amendment) Bill. As we know tea is the second foreign exchange earner in this country. It is a source of employment for a majority of Kenyans. There are so many players that are involved in the tea business. These are the farmers, marketers and the consumers.

One of the problems that we have had in this industry, which I thought this Bill was meant to address, is the low returns to stakeholder number one, that is the farmer. The small scale farmers in this country process their tea through their individual factories, which are managed by the KTDA. I want to correct a statement made by the Minister who has just seconded the debate on the Bill, that the factories are owned by the KTDA. That is not the case. All factories are owned by the farmers, but only managed by the KTDA.

Over the time the KTDA has deviated from its initial mandate. Its initial core mandate was to source for markets and sell tea on behalf of the farmers at competitive prices. However, if you look at it currently, the KTDA has moved away from that core mandate to be in business on its own, running an insurance firm and a bank on its own. Now the KTDA wants to compete with the KPLC in power generation. It is performing a very different mandate from what it was meant to do.

In doing so, it has forgotten the farmer. I hear a lot of stories every now and then; there was this huge profit made by KTDA that went to the Government. I think that is not the issue we want to address here, that is how much tax the KTDA pays to the Government. It is how much returns go to the farmer that we ought to be more interested in at this time.

Mr. Temporary Deputy Speaker, Sir, I have been keen on the statistics of our tea sales. In the year, 2009/10 the average price of tea ranged between US\$3 to US\$4 a kilogramme. This translated to roughly Kshs240 to Kshs300 per kilogramme. In essence, that should translate to between Kshs80 and Kshs120 per kilogramme of green tea. But

you will realize that our farmers are paid peanuts. They are paid an average of Kshs40, which is half what tea fetches in the market.

I have seen some efforts in this Bill that have been made to address some of the issues like reducing the number of directors in the Tea Board of Kenya, which is a regulator in the sector; but the Bill has not really addressed the core issue of what we should do to improve the returns to the farmers.

Clause 13(2) talks about an ad valorem levy, and has proposed that 50 percent of it will go to the Tea Board of Kenya and 50 percent of it will go to Tea Research Foundation. I find this not a very good idea; the cess that used to be collected, though it was poorly managed, was used to maintain feeder roads in the tea growing areas. Now by apportioning everything just to Tea Board of Kenya and Tea Research Foundation, nothing will go back to the tea growing areas.

Mr. Temporary Deputy Speaker, Sir, I know the thinking behind Clause 12 on registration of dealers. It is being proposed that anybody found dealing in tea in contravention of this provision shall be fined up to Kshs1 million. This has been because of talk that has been misinterpreted that when a farmer is able to find a factory that can give a better price then he contravenes a law which says he must register with a certain factory. That made sense a long time ago when factories could only be owned by the people. Currently, young farmers, like me, do not have to own a factory, yet they want to grow tea. This is the case despite the fact that there are private factories which are coming up. Why should I not be allowed to take my tea a place, however far it is, as long as I can fetch a better price from that area?

This notion of tying farmers to just one place and giving the monopoly to the KTDA to be the sole managing agent--- I thought this Bill would address that, and allow other marketing agents to apply to be allowed to manage factories; what we are seeking to do will not help the farmers at the end of the day.

Those of us from tea growing areas know the problems our farmers face. As we speak, I can tell you that there could be tea that has not been collected for the last two days. Our farmers are still waiting in the tea buying centres. This law is telling you that you can never take your tea elsewhere, even if there is a factory five kilometers away from where your tea is; this is just because you registered in another factory. I think that is enslavement.

Mr. Temporary Deputy Speaker, Sir, KTDA has done its best, but has also faced some challenges. I have just been looking at the management of KTDA. I come from the western region, where we produce very nice tea. I am sure no one in this House can deny that tea from Kericho zone is a better quality. Go to any supermarket here and ask for tea. You will be told KETEPA or Kericho Gold. But look at the pricing which we get compared to what other factories get. I know they talk about issues of quality. I have looked at the top management of KTDA. They are about seven who the so called top management of KTDA. None come from Kericho County, Bomet County or Nandi County. Yet we produce about 40 per cent of the tea managed by the KTDA.

What am I trying to say here? It is time we thought outside the box. We must rethink of how we enable our factories to be able to sell their tea at competitive prices. One of the ways is for factories to be able to source for their markets, if they are able to get those markets directly. What I understand is that there so many who call themselves brokers at the tea auction in Mombasa, whom I am aware of. Of course, they lobbied a lot

to make sure that this Bill comes through. I have brought another Bill which has is stuck with the House Business Committee for whatever reasons in the same area. But that is not the subject of today. There are people who are making more profits from tea business stationed in Mombasa, calling themselves brokers and yet, the real people who own tea farms are the poorest in this country. If you do not believe me, look at the statistics. Let us get poverty indexes. My constituency is covered 65 per cent by tea. But you will be surprised that poverty index is 51 per cent. No much difference with Turkana or drier areas, which we imagine could be hardship areas. This is because of what I am trying to explain. It is not that tea does not give us good prices, but whatever money is generated from tea disappears along marketing chain. A Bill like this should have been able to address those issues, so that farmers at that level are able to sell at the shortest marketing chain and at better prices.

Mr. Temporary Deputy Speaker, Sir, factories owned by farmers are run by Board of Directors who should be able to be making decisions, which are made by a similar Board of Directors at KTDA. Then one wonders why? Why must farmers pay Directors who are stationed at factories? Why should they be paid for staying without making any decision and pay other Directors seated here in Nairobi, calling them, KTDA making decisions and pay themselves handsomely? These are some of the challenges which I think are policy issues. I think the Minister is also supposed to address these issues. Maybe, the Bill was not meant to address those issues. But there are other policy issues which need to be addressed, so that the farmer benefits from the tea business.

I do not want to oppose this Bill, but I want to request the Minister, if it is possible, we still relook at it, so that some of the issues are incorporated and then we pass one Bill, which is acceptable to both sides.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**The Assistant Minister for East African Community** (Mr. Munya): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to say a few words about this Bill which is intended to amend the Tea Act and improve the regulatory framework in the management of the tea industry.

Mr. Temporary Deputy Speaker, Sir, I have a lot of sympathy and, in fact, I share not just sympathy, but most of the sentiments that have been expressed by the hon. Dr. Kones in relation to this Bill. The Bill mainly deals with the Tea Board and the Tea Research Foundation and brokers who broke the sale of the tea. Clearly, you can see the intention is to give the Board more teeth in regulating the industry. But the real problem of the tea industry is not even the tea board because the tea board has been quite irrelevant and I do not see even this Bill making it that relevant. The real challenge is the small scale grower of tea, who has very little say in the tea industry. The theory is that the KTDA is a marketing company that has entered freely into an agreement with the farmers and factories are run by farmers. That is the general theory. But if you look at the way KTDA and directors at the factory work, you realise that the directors who are elected by the farmers have very little say over what happens. They have very little to say, not only the marketing of the tea which they have grown, but even the processing of the tea and its investment. So, these are some of the issues that need to be addressed, so that the small scale tea farmer can have more say in the management of his sweat. It is his sweat. He is the one who grows the tea. It is not KTDA that grows the tea. So, it is this imbalance we are saying should be addressed. How can we address this imbalance where

we have this big animal called KTDA? This small farmer who owns two, three, four acres? How do we bring that balance so that the farmer has some say because decisions are made there at Nairobi and then are sent down to the farmers? They are adults and they should be informed: This is what we want to do. This is what must happen. So, those are the issues.

The other key issue is the issue of cutting cost. We should reduce bureaucracy at KTDA. I am not even going the whole hog of saying let us dismantle KTDA and allow other agents. But we are saying KTDA has been growing over the years, adding staff, adding all sorts of regulation, spending all money and it is that small scale farmer who has to pay for those cost incurred at KTDA level? How can we restructure KTDA to be able to reduce the bureaucracy and unnecessary employees who do not have any particular work, to leave only the necessary staff that can do the core business that they have been put by farmers to do.

The earnings of the farmer have been reducing over the years. If you look at how they are structured, there is this and that level. There is someone called a zonal manager who is paid a lot of money. If you ask me what a tea manager is, I cannot tell. The factory has a quality manager, a factory manager and others.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Munya! Address the Chair. Speak to the microphone!

*(Laughter)*

**The Assistant Minister for East African Community** (Mr. Munya): Mr. Temporary Deputy Speaker, Sir, I was carried away by passion because I like demonstrating what I want to say. I was asking what are all these layers of managers at the top who really do not add value for? What do the zonal managers manage? At the factory level all the areas that require management have people, but there is a guy who hangs around called a zonal manager whose work you cannot explain but he earns the most. Could the Ministry become more imaginative and come up with a way of restructuring the KTDA? That way, the percentage of the money the farmer earns can be increased.

The other key issue I would like the Ministry to note is that the tea sub-sector earned the country most of the foreign exchange compared to the other big sectors even when Kenya was experiencing serious problems in the 1990s. However, if you look at the reinvestment of Government when it has collected taxes to the tea sub-sector, you will find that it is zero. This is what we should correct but we should not correct it by putting more money in the Tea Board of Kenya and research. That is not where we need to correct it. We need to correct it by putting money directly to where the farmer needs it, for instance, doing the roads which are always a challenge. If it rains as it is doing now most of the tea will rot in the farms because the factories do not have the capacity to collect it. Can we put money there? We should not put money in some institutions up there that will not be doing much. We have seen that over the years. Can we allocate more money towards increasing the capacity of processing of tea in the factories?

We have only one tea factory where I come from. In every rainy season, we waste 30 per cent of the tea we grow because the capacity in the factory is low. Farmers want

the factory expanded but they do not have enough money to get loans from banks to increase the factory's capacity.

*(Mr. Munya spoke while looking at Dr. Kosgei)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Munya. Address the Chair.

**The Assistant Minister for East African Community** (Mr. Munya): Mr. Temporary Deputy Speaker, Sir, I was addressing you, but *Waziri* said something behind my back.

Mr. Temporary Deputy Speaker, Sir, we need to increase the capacity of the tea factories. I want to give an example of where I come from because that is where I am sure of. One has to cover very many kilometers to reach the factory. That is one problem. The roads are very poor. Assessment has been done and there is need for an extra factory. Every day farmers ask for another factory to cater for other farmers because the one we have is not enough. We have gone to the KTDA which told us that we cannot afford to service a loan for that factory because we are already paying a loan for the expansion of the other factory. This is the case and yet every year we lose 30 per cent of the tea which we would have sold in order to finance another factory. Why can the Government not come in to solve that problem? Can the Government not give us a loan? Since the Government cannot invest in tea, but it can invest in other areas and tea farmers must always pay loans, why can it not guarantee us a loan in Muchimukuru so that we build another factory? That way, the 30 per cent of the tea that is lost will be processed and sold and we will be able to repay that loan. That is what this Bill does not address.

There is even another rule that has been brought by the KTDA whereby the bigger you are in terms of the tea you grow, the more votes you have. In some factories we have only one farmer who can out-vote everybody else because what is being considered is the amount of tea he can bring to the factory. So, what has happened is that the tea farmers who own two acres or three acres are completely irrelevant in the KTDA system. Three farmers will determine who is elected. That is what happens where I come from. It may not be the same in some places. Where I come from some farmers have between 100 acres and 400 acres under tea. Since his influence in the voting in the factory is great, those directors listen only to him. So, his tea will never rot in his farm because the director knows that if he does not collect all his tea and take it to the factory he is finished. This is because he is the guy who votes for him anyway. The other farmers, the poorest of them all who have few acres under tea, will have it rot in the farm while the single farmer is taken care of. I am simply saying that there is apartheid in the tea industry.

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

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

In the small scale factories, it is the bigger fish running them while the small farmers continue to suffer. Why can we not address that through legislation? That is one

of the proposals we thought this Bill would address to give some say to the farmers who used to have a say until the rules were changed recently. These are the challenges we want addressed in this Bill. We support this Bill, but it does not address the teething problems that affect the tea farmer at the factory level and in the general, at the KTDA management level. We implore the Minister to work together with Dr. Kones to come up with ways of improving this Bill which is positive for the benefit of the tea farmers in this country.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I rise in support of this Bill, but subject to some amendments which I will be proposing.

I think the overhaul of the tea industry is long overdue. I want to congratulate the Minister for tabling this Bill. Once it is in the House, it is the property of the House and it is up to us, and I am glad hon. Members are already doing that, to make suggestions on how we can strengthen this Bill so that it carries the aspirations of the farmers.

The speaker who was before me has properly diagnosed the problem. The frustration of the tea farmer is in the KTDA. We know that the KTDA is formed under the Companies Act as a marketing agency wholly owned by the farmers. However, somewhere down the line, the Government's intrusive hand went into the KTDA and started interfering by choosing who is to head the KTDA *et cetera*. Even when the Government stopped doing that after the country started undergoing reforms, the KTDA's governance had been affected to the extent that I can say without fear of contradiction that it has not fully recovered. That is why, as Dr. Kones noted the farmers are not really getting value for money. I saw my farmers demonstrating because the bonus they got was not what they expected. The problem is not wholly with the directors because they do not determine the bonus. The directors will be able to determine the quality because they are supposed to supervise the operations of the factory but what comes back to the farmer after the tea is sold of whatever quality is determined by the KTDA.

I think the Companies Act is not sufficient to guide an entity that is working for thousands of small-scale farmers and some large-scale farmers.

Mr. Temporary Deputy Speaker, Sir, we need to find a mechanism that will take care of the majority of farmers who are very small compared to the big ones. When you put them together, you will see that majority of the tea that is produced in Kenya is produced by the small scale farmers. We need to find a balance. We need to find out what role the Co-operatives Societies Act will play and what sort of a regulator we need. The Tea Board of Kenya will never be that kind of regulator even as envisaged under this Act. The Tea Board proposed here will never carry out that duty. However, if we need the Tea Board to be a true regulator, we will need to assign it more duties so as to act as a guardian angel of farmers who are currently not getting value for money. They are not getting enough returns for their sweat.

I am a bit concerned about the proposed membership and directors of the Tea Board because it is heavily weighted for the Government. The tea is owned by the farmers. Therefore, we must have a combination that gives farmers a say, but puts higher qualifications to the people who get elected to the Board. Yes, we will need Government participation. However, the Government cannot take over the regulator almost wholly as it is being proposed under this Act. We need to strike a balance there in favour of the

farmers, remembering that the Constitution states that there shall be participation of the people. This is participation of a crop where the farmers have the interest as the primary producers of the commodity. So, these are some of the areas we need to look at.

When one looks at the issues proposed by the Act, one of the very good things is that it is putting penalties to anybody who trades in tea without a licence. This is very important. If you look at the small scale growers from the East of the Rift Valley and West of the Rift Valley, you will see a world of difference. To the East of the Rift Valley, although the farms are very small, the farmers, even with bad governance in the industry, gets higher returns than the small scale farmers to the West of the Rift Valley. That is because of a phenomenon known as hawking. That is on an average. What has been happening is that farmers West of the Rift Valley are being preyed upon by large scale farmers who accept tea hawked to them by people who are desperate to make ends meet on a daily basis. So, they buy the tea and get the bonus instead of the farmers getting the bonus. The difference between those two farmers is that one farmer is getting the monthly payments as well as the yearly bonus. Another farmer gets peanuts for the tea harvested which cannot give him returns for the fertilizer, labour, it cannot allow such farmers to improve their lives. We need such a clause to protect the farmers from those who prey on them. It is the interest of all Kenyans and any Government that is interested in its citizens to ensure that small-scale farmers get value for their money. Protection can only come through a regulator.

I think we have not struck the right balance on the role of the regulator vis-a-vis KTDA and all the other ills plaguing the industry. The governance in the factories themselves--- The phenomenon of each factory being able to manage itself came about in the early 1990s. At that time, we had only 42 tea factories in Kenya. Now, there are about 54. They were all turned into companies under the Companies Act and the directors are sourced locally. Many tea factories are managed well. However, we also know that there are some tea factories that are not managed well. There is nobody who is checking on how that is going on. I will say again that, since we are dealing with thousands of small scale farmers, the regulation that allows inspection of how the companies are being run is important. Otherwise, the farmers will not have a say on the day to day management. That is where they are losing their money.

Most factories are now trying to get their own source of energy because these are capital intensive projects. They do it solely on the advice of the KTDA. The farmers are told in a meeting without much explanation and it is passed through acclamation. At the end of the day, they only realize when they get less money at the end of the year. I think all those interested in the tea sector need to sit down together. I am urging the Minister, while this Bill is still not concluded, at the Second Reading, to urgently convene a meeting with the Agricultural, Livestock and Cooperative Committee, so that we strengthen the Bill. We can come up with amendments that will satisfy our requirements under this Bill and we move forward together. I want to say that all in all that the Minister is moving in the right direction. However, we need to do slightly more than we have been doing.

Madam Minister, we would also like to see the issue of value addition captured in the Bill. Once again, I want to repeat that unless Government comes in and helps the small scale farmers to value-add so that they can get the true value of their produce, then we shall be forever be selling our tea to blend other teas in the world and somebody else

will get all the riches from our tea while our farmers continue wallowing in poverty. The more the farmer gets, the more the Government of Kenya gets by way of taxes and the more returns our people get from the tea industry. It is, therefore, in the interest of the country, not just of the farmers, that we streamline this industry.

When factories are buying supplies like fertilizers and other things farmers are again missing money. That is why I am saying we need to have a regulator who can oversee standards. That will only be achieved if we think together, so that we protect our farmers, our hard work, eradicate or fight poverty and uplift the many Kenyans whom we represent.

With those many words, I beg to support.

**Mr. Oyongo Nyamweya:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me time to talk about this Bill. This is a very good Bill, Madam Minister. However, there are some shortcomings which need to be addressed. The first point I want to raise is that for no reasons of the farmers, price fluctuation takes place. Currently, most farmers are happy because the shilling has been depreciating. It is now exchanging to a dollar at Kshs80. The farmer is benefitting from that situation. The tea sector is very critical in this country. It helps us to meet our balance of payment and also helps our shilling to strengthen. This sector has created many job opportunities for our people and reduced rural-urban migration. This Bill will be ideal if we can factor a mechanism or an insurance which will cushion them against exchange fluctuation. I am not asking for any increment in the price, but let us compensate them for exchange rate fluctuation, so that they earn their anticipated income.

The other point I want to talk about is that we are talking about each factory standing on its own. I have no problem with that. However, let us leave it to the market to decide the prices. One time, we tell farmers that they are free to sell their tea wherever they want and at the price of their choice. Other times we restrict them from moving their products from one factory to another. Those are double standards. We need to come up with a mechanism that will help them benefit from their produce. Our biggest challenge is to help farmers benefit from their sweat. The way I look at it, the factory should be run efficiently. However, when we restrict farmers from taking their produce where they can earn more money, we are killing them. Sometimes, farmers do not have shares in those factories and we want them to sell their tea there. They have their shambas which they take care of. The factory does not give any inputs to them for free. If it is fertilizer, for example, they pay for it. Let us come up with a mechanism which can benefit the farmer. For example, how do we compensate the farmer when the price of fertilizers is high? As far as I am concerned, this sector is critical to this nation and we want to benefit it.

As far as I am concerned, the tea sub-sector is critical for this nation but we need to look at the best way in which it can benefit the Government in earning foreign exchange and also benefit the farmer.

Mr. Temporary Deputy Speaker, Sir, another point that I want to address is that we need to have by-products from tea. We can have tea juice which we can buy. We can sell it here and elsewhere. I believe that there is a market for juice and it can compete with other soft drinks like *soda*. The factories should be more proactive and create a market where we can sell our tea.

Mr. Temporary Deputy Speaker, Sir, the way this Act is, if it is not amended, is very harsh to the farmer. If it is not amended to incorporate the interest of the farmer, it



will be very difficult for the farmer to continue growing tea. The points here are very basic. Every month, the farmer has to pick tea and take it to the factory. The amount of money paid is not enough to pay the casuals. If it happens continuously throughout the year, the farmer will stop producing tea. This Bill should be framed in such a way that it takes care of the interest of the farmer and we will fully support it. This is because our concern is; how does the farmer benefit from the low returns and currency fluctuation? Sometimes the management of the Kenya Tea Development Authority (KTDA) does not look at how they can assist the farmer.

The other issue is the levy which my colleague has talked about here. The 2 per cent charged from the income of a farmer is very high. It should be 1 per cent or even less. This money goes to tea research and the Board. What happens with the farmer on the ground. There are roads to be maintained. If the Act is not amended, who will maintain the roads? This means that the KTDA will have to impose some levy on the farmer so that it can maintain the roads. If that is done, then the total levy will be high. Another point is the taxation of tea for export. That should be scrapped. Let us take this opportunity to scrap that tax. Let us consult the Office of the Deputy Prime Minister and Ministry of Finance so that that tax is scrapped because it eats into the income of the farmer. If it is scrapped, it will increase the benefit to the farmer. But above all, look at the fluctuation of foreign exchange which is the biggest hindrance to the tea sub-sector. It should be addressed. Sometimes one US Dollar is exchanged at Kshs80 or Kshs65. That is a difference of Kshs15 to the US Dollar. This is a huge amount of money. I am not saying that the Government should give farmers free money but it should cover them from this effect so that they can grow tea. If the farmers continue growing tea, the nation will continue earning foreign exchange and the Kenya shilling will be stable. Our balance of payment will also not be bad and the shilling will not depreciate much. The only way forward is to support this Bill but we request that it is amended as my colleagues have proposed. We should meet to give our input so that the Bill is passed in order for the farmer and the Government to benefit.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**Mr. Njuguna:** Thank you, Mr. Temporary Deputy Speaker, Sir, for this opportunity to also join my colleagues make some contribution to this Motion. First of all, let me support the Motion as presented by the Minister and indicate that the Minister very ably presented the Motion.

One critical observation that I have noted on the new Bill concerns the control or the impediment that is being created by the new powers enshrined in the new Bill. This one hinges on the hawking of tea in the country. Hawking of tea has really affected many homes. Tea is stolen from the farms and taken to those processors who are able to buy from these brokers. This tea hawking has affected a big region in my area, for example, Githunguri, Kiambaa, Limuru and even Lari constituencies are affected. This is where this vice has continued. It has even compromised security in this area because those people hawking tea are fully armed and prepared for any eventuality. This does not augur well to the small farmers.

Mr. Temporary Deputy Speaker, Sir, the small farmers who have decided to take their tea to these processors have created some home insecurity because their wives have been beaten by their husbands and even income which could sustain the families is not there. Even these small farmers, at the end of the day or at the end of the whole operation,

do not get bonuses. Employment in the homesteads has also been compromised as workers have been sacked. Some of the big factories which have been the main takers of this tea are collapsing. They are almost stopping operations because they are not receiving this crop. Where these factories have already taken loans from banks or facilities for that matter, they are not able to sustain its operations. Even workers in these established factories already started by the Kenya Tea Development Authority (KTDA) are also going under. This does not augur well for this country.

Therefore, when tea is stolen by these people, again we are not certain of the quality of that tea and this will also affect the image of the quality of our tea in the international market. So, if we are not careful to stick to this Bill, the tea industry and the growth that has been associated with this country for a long time is going to go down the drain. We must, therefore, guard the quality of tea in this market.

Concerning the constitution of the new Board, I would urge the Minister that those who will be appointed to these very high positions, must be people of high integrity. They must be people who are competent, patriotic, who can care for the small farmers. Time and again, we have seen the interference by the Government in terms of giving appointments. This, really, will destabilize the entire sector. Therefore, credible people must be appointed and given leeway to serve. We should have academic giants in this country serving on this Board, the way we have seen it being done by big companies and banks, where they have employed people like Martin Oduor and others to serve.

The incoming board should offer better prices that the farmers can also start benefitting and get better prices for their fertilizers. The new board should also be in a position to consider higher corporate responsibility. Other than making of the roads, they should also think of putting up health centres in partnership with the CDF and any other agencies to assist the education sector.

Therefore, if this Bill is enhanced and supported, the tea industry is going to be vibrant and assist the entire farming community in this nation.

With those few remarks, I fully support this Bill.

**Mr. Koech:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill. Allow me to sincerely thank the Minister for introducing this Bill on the Floor of the House. If there is something that needs reforms this moment, it is the amendment of the Tea Act to ensure that we protect the farmer and all that it takes with the tea.

Mr. Temporary Deputy Speaker, Sir, being aware that tea is the second foreign exchange earner in our country, and further aware that this country has the highest potential of many, many farmers growing tea, we must all agree that the Tea Act needs to be amended. We must ask ourselves one question: Why are we seeking for these amendments? We must seek for amendments and have a Bill that is going to promote tea production and ensure that the areas without tea were able to expand and encourage the farmers to grow tea in those areas. In my constituency, we have the highest potential of actually the farmers growing tea but very, very few grow tea. Therefore, we must ask ourselves why they are not growing tea today.

Mr. Temporary Deputy Speaker, Sir, this Bill must also address the issue of ensuring the protection of the areas that are growing tea already and that farmers do not get frustrated and start uprooting tea. It is on record that last year, some farmers in parts of this country tried to uproot the tea. We must address issues that surround that.

Mr. Temporary Deputy Speaker, Sir, this Bill must address the protection of the farmer. So it must seek to protect the farmer at all cost from exploitation and in particular, we must be more concerned about the small-scale farmer. So the question we must ask ourselves today is: Does this Bill address these issues? As we debate this Bill, we must ask ourselves what frustrations the farmers are facing today. One of them is the voice. As we move forward as a country, or as a Government and the leadership, we must try to listen to all the voices as much as possible. So, is the voice of the farmer taken care of or is it felt from bottom up?

I want to draw the attention of the Minister to the representation in the board. As proposed in this Bill, there will be two persons nominated by factory organizations to represent small-holders of the tea producers. In the Act that we have today and which we are seeking to amend, it actually states that there will be six persons nominated to represent the small-holders instead of the two proposed by this Bill. I would really have expected the Minister to increase the voice of the small-scale farmer by maybe two to make it eight. That is an issue that seriously needs to be addressed.

The other issue is that of brokers. What is almost killing the farming industry in this country is the issue of brokers. As we speak, in many parts of this country, many farmers are frustrated, because we are not able to absorb the maize that they grow and in many instances, we buy the same maize from them at a throwaway price while we import at very high prices.

The reason for this is the importers, who in this case I want to term as brokers. They have almost taken up the decision to do this. We must, therefore, ensure that we allow the farmer to sell his produce directly and not through brokers. This will protect him or her at all costs.

Mr. Temporary Deputy Speaker, Sir, the other major issue that arises is the production cost. Most farmers in this country do not grow tea because one, the roads are impassable. This Bill should seek to ensure that in those areas where tea is grown, money reverts back there to maintain the roads. In areas where tea is grown, as I speak today, there is a lot of road maintenance by factories courtesy of CESS.

I want to draw the attention of the Minister to Article 13 where it is stated that an *ad valorem* levy shall be imposed. This levy replaces the CESS. One thing I am not fully sure of is why the change of the name. As the name is changed, when we look at the functions and the uses of the said money, I note that 50 per cent shall be applied by the Board in the manner provided in Section 19. When you look at Section 19, it talks about salaries, the Board, the management, the tea foundation and so forth. There is nothing to do with road maintenance. I would really want to know where the CESS will appear here. We must ensure that we take care of those roads.

Mr. Temporary Deputy Speaker, Sir, I would expect the Bill to address the issue of management in our factories. Where I come from, and the Minister is fully aware because we come from the same place, we have one factory known as Chebut Factory. It has never given rise to even one single factory in the area while other factories, because of efficiency, have resulted into up to ten other factories, bringing the factories closer to farmers. We must address the issue of management to ensure efficiency so that the factories are moved closer to the people.

The other issue is the collection of tea. This again zeros down to inefficiency as regards the collection of tea. In most tea factories the collection of tea is done very late

thus the tea reaps very low values. This means that the bonuses in most cases are very low.

Mr. Temporary Deputy Speaker, Sir, I want to state here that in this country we can really revamp this industry through the Bill that has been introduced by the Minister in addressing the issues raised by my colleagues. One hon. Member had proposed a Bill and looking at it, it addressed some of the issues we have raised. Some have already been addressed in the said Bill. I besiege the Minister to harmonize this so that all of us can give an input so that together we can fully protect the farmer and make him or her, after the passage of this Bill, smile. We should make the rest of the farmers in areas potential for growing tea be able to move to start planting tea.

Thank you.

**Mr. Kathuri:** Mr. Temporary Deputy Speaker, Sir, I also want to start by thanking the Minister for introducing this Bill which is very timely and long overdue. Farmers have been subjected to a lot of problems. I think the only way is to address their problems by introducing a Bill that will take care of their issues. While I appreciate the intention of this Bill, I still find that it has so many shortcomings. From the word go, the composition of the Board looks extremely skewed because the farmer is not represented. We may say that the farmers have two slots out of 11 but, surely, they are better off without having the two slots because they will just be there to rubber-stamp what the nine will have endorsed. A realistic composition should be the three Government PSs responsible for agriculture, finance and trade. That is in order! But from there, all the other eight should all come from farmers bodies and completely exclude the brokers. There is no reason why a tea auctioneer should sit where he is the agenda. It will not serve the interest of the farmer at all. If you look at the scenario as we talk, they are the ones who go home with money. The farmer is left as a scavenger. I think it is very important for that issue to be addressed so that the slot for the auctioneer and the packer should both go to the farmer. Even the two slots which are meant for nomination by the Minister, should all be left to the farmer. Where we say the Minister will appoint to try and address the discrepancy in terms of capacity, she should take the minimum requirements so that those farmers' representatives should be people who merit to hold those big offices. Otherwise, there is no need for the Government to try and come through backdoor and introduce an accountant, when it should have, from the word go, given the minimum requirement. That way, one can see that the Board's composition is not deficient.

When I came to this House in 2008, my first encounter was to try and address a strike in one of the tea factories in Embu. I tried to dodge that strike, but it was inevitable. It was caused by KTDA. That is when the then Minister for Agriculture, Mr. Samoei, came and addressed the farmers. He told them that he is going to address their problems. How? By making sure that, at the Ministry, they will clip the wings of KTDA. This Bill does not appear to crip the wings of KTDA. If it has, it should be very clear that where they come and impose a director--- In Kianjokoma, that is exactly what they did. They imposed a director by way of just nominating him to sit in the Board. It should be very clear and elaborate. When such a move takes place, how should the Tea Board of Kenya, through this new Bill, take care of that? We must, at all times, take care of the farmers' interests. It may be a question of having not read the Bill thoroughly, but I believe that it

is also very important that such an issue is conspicuously positioned in the Bill. That way, the farmer can feel that his needs are being addressed.

I would also want to propose the following to the Minister. As we talk, many of them are going the energy way. They are trying to generate energy so that they can cut cost on their production. It is a good move. But there is fear from the farmers that, that may be a conduit to siphon money. It may not be a well thought out idea and yet, it is a very noble idea. I would like to see how the Bill will address those issues. When KTDA, which is a very important body - and it should be supported for its survival – goes ahead to propose to farmers to approve a project of that magnitude, which has not been well thought out---

The Chief Executive Officer and top management of the KTDA should be put to task. They should be held responsible if they generate electricity and end up making losses; they should all receive a sack. The Bill should be very clear on that, so that we ensure that the farmer is well taken care of.

Mr. Temporary Deputy Speaker, Sir, there are quite a number of issues but I would want to say that this Bill is very welcome. I wish the Minister could harmonize those issues which we think are quite significant. We will then be able to move and pass it, so that we can see our farmers at least celebrating a better income. As we talk, the income looks good on the face it, but the farmer can do better. It is a question of comparison. We are trying to compare tea with coffee and with what the farmer was earning previously. But all that income is still below average. I wish there was a way that this Bill could be done so that it addresses the farmers plight totally and squarely. At the end of the day, the farmer should go home celebrating that he or she has a good income.

Mr. Temporary Deputy Speaker, Sir, it is also worth noting that considering that the KTDA is a national organization, we must address issues in this Bill, where we think that people take advantage of their status when dealing with the activities of farmers. Sometimes they even go ahead and attach a farmer's income because of a loan that was guaranteed through a SACCO. At times, they even go out of their mandate by attaching a wife's income.

I have witnessed such cases and at times they are very embarrassing. They only reverse their decision after a farmer seeks a court injunction, and makes a lot of noise at the KTDA headquarters. We should ensure that when such issues arise--- This Bill should put the KTDA on the firing line, so that they do not take advantage of the fact that they hold farmers' money; they should not be in a position to chop off an income when legally they are not entitled to do that. I believe all this should be covered in this Bill, so that farmers can be going home happy.

With those remarks, I support.

**Mr. Yinda:** Thank you, Mr. Temporary Deputy Speaker, Sir. I would like to thank the Minister for bringing this Tea (Amendment) Bill; it is very timely.

When we look at tea in Kenya, it has done well. It is one of the cash crops in the country that has managed to do well. I have listened to what my colleagues have said in their contributions to this Bill and I quite agree that even before we go into details, it would be wise to understand who, when we talk about KTDA---

**Mr. Langat:** On a point of order, Mr. Temporary Deputy Speaker, Sir. As the hon. Member speaks, he should declare his interest in this matter.

**Mr. Yinda:** Mr. Temporary Deputy Speaker, Sir, I am also involved in tea trade; I sell tea in the auction as a broker. When I talk about tea, I understand what I am talking about.

When you look at the KTDA it is wise to look at its ownership. Who is KTDA? Who owns the KTDA? The KTDA is a farmers' body; it is owned by farmers. So, every time we talk and bash the KTDA, we should actually be talking about how to restructure the KTDA in a way that will make it serve farmers better than it has done, because it is their company. It is not a private company.

When we talk about tea, it should also be understood that tea is not only grown in Kenya; tea is internationally grown. So, it is not as if Kenya is the only country that grows tea. Therefore, the price in Kenya will also be determined by what is the price in the world. Who else is producing what type of tea and how much is that tea costing? It is not question of Kenya coming out independently and saying: This is what we want for our tea. That is not how trade is done. The best way of selling tea is through the auction system. It has served the world over.

When you look at India and Sri Lanka, this is the way tea trade is carried out.

**The Temporary Deputy Speaker** (Mr. Ethuro): Mr. Yinda, you will have 17 minutes to continue when debate will resume on the Floor of the House.

#### **ADJOURNMENT**

Hon. Members, it is now time to interrupt the business of the House. The House stands adjourned until tomorrow, Wednesday, October 6<sup>th</sup>, 2010, at 9.00 a.m.

The House rose at 6.30 p.m.