

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 8th December, 2010

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PAPER

The following Paper was laid on the Table:-

The Report of the Departmental Committee on Finance, Planning and Trade on the petition on Charterhouse Bank Limited.

*(By Mr. Okemo)*

### NOTICE OF MOTION

#### ADOPTION OF REPORT ON CHARTERHOUSE BANK

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

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning, and Trade on the petition on Charterhouse Bank Limited laid on the Table on Wednesday, 8<sup>th</sup> December, 2010.

### QUESTIONS BY PRIVATE NOTICE

#### HIKING OF LEVIES/FEEES BY KISUMU MUNICIPAL COUNCIL

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

(a) Is the Minister aware that the Municipal Council of Kisumu has effected an increase in fees and licences and introduced new ones to cover diverse activities including hawking, bicycle and motorcycle transport, bus park entry for passenger vehicles and levies on various transporters of building materials, manufactured items and fish?

(b) What is the legal validity of these levies and did any level of stakeholder consultations take place before the levies were effected?

(c) Why has the Council ignored a court order declaring the levies and fees illegal?

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

(a) I am not aware that the Municipal Council of Kisumu has effected any increase in fees and licences and introduced new ones to cover diverse activities including hawking, bicycle and motorcycle transport, bus park entry for passenger vehicles and levies on various transporters of building materials, manufactured items and fish. However, the Municipal Council of Kisumu raised its fees and charges in 2007 which I approved and was published in the Kenya Gazette Legal Notice No.4999 of 15<sup>th</sup> May, 2009. I am not aware nor have I approved any other charges by the Council.

(b) The legal validity of these levies is in the Kenya Gazette Legal Notice No.4999 of 15<sup>th</sup> May, 2009 a copy of which I can table here.

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

(c) There is currently no court order operating against the council on the fees and charges that has been brought to my attention.

**Mr. Olago:** Mr. Speaker, Sir, the Deputy Prime Minister and Minister for Local Government has stated that he is not aware about the increments that have occurred since 2007 apart from the last one in the same year. If it is, indeed, true that the council has increased levies as set out in this Question, could the Deputy Prime Minister and Minister for Local Government declare that the levies which were increased after 2007 are clearly illegal?

**Mr. Mudavadi:** Mr. Speaker, Sir, I have said that the legal fees that I am aware of and which I granted approval are set out in the Kenya Gazette, Legal Notice No.4999 of 15<sup>th</sup> May, 2009. I have not as of to date, given any other legal notice. If, indeed, there are any charges that are being levied outside the Legal Notice, they would be illegal and the council will be directed forthwith to stop collecting fees that are not gazetted.

**Mr. Imanyara:** Mr. Speaker, Sir, if any monies have been collected pursuant to such illegal collection, could the Deputy Prime Minister and Minister for Local Government also direct that they be refunded?

**Mr. Mudavadi:** Mr. Speaker, Sir, that is a very difficult question because it depends on the nature of collection of such illegal fees. You will bear with me that it will be very difficult to track down, maybe, *Boda Boda* individuals and refund this kind of money. However, I would like to give the undertaking that the legal fees that ought to be charged are those that are gazetted. If, indeed, any Council – not just Kisumu Municipal Council – is collecting fees that have not been gazetted, then it is involved in an act of illegality. In the absence of refund or corrective measures, then anybody operating on that basis will be disciplined.

**Mr. Ochieng:** Mr. Speaker, Sir, could the Minister also consider disciplining the officials who increased the fees against his orders?

**Mr. Mudavadi:** Mr. Speaker, Sir, we will look into this case very carefully and where we find that there has been a transgression of the law, then that person will have to be disciplined. This will be a case of an individual who does not follow the stipulated law.

**Mr. Pesa:** Mr. Speaker, Sir, most Kenyans do not read the Kenya Gazette. How does he make them aware that this is legal and that is not legal? They may succumb even to fees which are not legal.

**Mr. Mudavadi:** Mr. Speaker, Sir, as it stands now, the only mechanism that is in the hands of the Government for ensuring what can be charged is properly documented as legal is the Kenya Gazette. We have no other mechanism. However, we also instruct the respective councils to make sure that they publicize the gazette notice that has been approved so that the stakeholders in a given area would be very clear. So, it would be an act of dishonesty if, indeed, people are not publicizing what has been properly gazetted.

**Mr. Olago:** Mr. Speaker, Sir, the satisfaction of the people of Kisumu arises from two facts. First, recently the Minister enhanced the allowances of local authorities, particularly in Kisumu and I have no problem with that at all. However, is it possible that the levies which are being enhanced are meant to cover for the increased allowances of the councilors or is it because there was no stakeholders' consultation as required by the Local Government Act?

**Mr. Mudavadi:** Mr. Speaker, Sir, by the time approval is sought from the Minister, the respective local authorities should show that there has been stakeholders' consultation and a process has been followed to arrive at the fees. The records that were brought for approval indicated that they had undertaken stakeholders' consultations at that time.

The hon. Member is also asking whether these revenues are being raised to cater for the allowances of the councilors. The answer is both "Yes" and "No". It is "No" because when the council raises its revenue, it is supposed to make sure that it is within the framework of all its operational expenses. At the same time, if it was specifically to try and ring fence what the *boda boda* pay to pay their salaries, then that would also be unacceptable because it would be wrong.

I would like to draw the House's attention to the fact that over and above this, the councils throughout the country are also subject to the Collective Bargaining Agreement (CBA) which has been signed by the workers' union. Additional pressure has been brought to bear to all local authorities because the workers put their feet down and demanded an enhancement. After several months of negotiations, the CBA was signed between the local authorities and the union. This has brought an additional salary burden to all local authorities to the tune of about 40 per cent.

CONFISCATION OF IRENE MUCHIRI'S PASSPORT  
BY HER SAUDI ARABIA EMPLOYER

**(Mr. Kabogo)** to ask the Minister for Foreign Affairs:-

(a) Is the Minister aware that one Ms Irene Muchiri, who has been working in Saudi Arabia, is unable to return to Kenya because her passport was confiscated by her former employer?

(b) Why has the Ministry not intervened in the matter, despite numerous pleas made by Ms Muchiri's family in the recent months?

(c) Could the Minister state when the passport will be returned to her?

**Mr. Speaker:** Is the Member for Juja not here? I will give the Member for Juja the benefit of the doubt as to why he is not here. This is because I know he has been here

on two previous occasions when this Question had been deferred. However, when I come back to it, he will have to be here.

## COMMUNICATION FROM THE CHAIR

### PRODUCTION OF REPORTS OF COMMISSIONS OF INQUIRY

**Mr. Speaker:** Hon. Members, we have an unusual situation where I have a Communication to make. The main stakeholder who is the Member for Gichugu is required to be at a different place on a very urgent matter not later than 3.00 p.m. Therefore, I will interrupt Question Time just to deliver this Communication.

Hon. Members this pertains to the production of Reports of Commissions of Inquiry. You will recall that on Thursday, 25<sup>th</sup> November, 2010, the Member for Gichugu, hon. Martha Karua sought for the production of the following Reports by the Minister of State for Provincial Administration and Internal Security:

- (a) The Report of the Kiruki Commission of Inquiry on the Artur Brothers.
- (b) The report of the Cockar Commission on the sale of the Grand Regency Hotel.
- (c) The report of the raid on Archbishop Gitari's house in Kirinyaga on 21<sup>st</sup> April, 1999.
- (d) The report of the Akiwumi Inquiry on Tribal Clashes.
- (e) The report of the Chesoni Commission of Inquiry into the Kirinyaga/Embu Land Dispute.

Hon. Members, you will further recall that the Chair deferred this matter in order to give directions as to the issues as hereunder, which arose by way of various points of order.

- (i) What the fate of reports by commissions of inquiry ought to be.
- (ii) Whether or not the appointing authority can decline to make those reports public.
- (iii) Whether or not the provisions of the new Constitution compel the appointing authority to make the reports public.

Hon. Members, commissions of inquiry are appointed under the Commissions of Inquiry Act, Cap.102 of the Laws of Kenya which I shall herein-after, refer to as the Act. For the period prior to 30<sup>th</sup> August, 2010, commissions of inquiry were obligated to report only to the President as the appointing authority, pursuant to Section 7 of the Act which then provided as follows and I quote *in extensor*; Section 7(1) says:-

“It shall be the duty of a commissioner after making and subscribing the prescribed oath to make a full, faithful and impartial inquiry into the matter into which he is commissioned to inquire, to conduct the inquiry in accordance with the directions contained in the commission and in due course to report to the President in writing, the result of the inquiry and the reasons for the conclusions arrived at and also if so required by the President, to furnish to the President a full record of the proceedings of the commission.”

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

However, the said Section 7 as amended by the House through the Commissions of Inquiry (Amendment) Act, Act No.5 of 2010, which imposed on a commissioner an

obligation to report to the President as well as Parliament currently provides as follows, and again I read *in extensor*.

I will pause for a moment to allow hon. Members at the Bar to walk in.

*(Several hon. Members entered the Chamber)*

Section 7(1) says:-

“It shall be the duty of a commissioner after making and subscribing the prescribed oath to make a full, faithful and impartial inquiry into the matter into which he is commissioned to inquire, to conduct the inquiry in accordance with the directions contained in the commission and on completion of the inquiry to report to the President and to the National Assembly in writing the result of the inquiry and the reasons for the conclusions arrived at.”

Hon. Members, the amendment to Section 7 of the Commissions of Inquiry Act came into force on 30<sup>th</sup> August, 2010 and I note that there was no provision in the amending Act backdating its coming into force. Consequently, by virtue of Section 23(3) of the Interpretation and General Provisions Act, Cap.2 of the Laws of Kenya, the amending Act did not have retrospective effect. The said Section 23(3) of the Interpretation and General Provisions Act provides as follows:-

“Where a written law repeals in whole or in part another written law, then unless a contrary intention appears, the repeal shall not (a) revive anything not in force or existing at the time at which the repeal takes effect or (b) affect the previous operation of a written law so repealed or anything duly done or suffered under a written law so repealed or (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under a written law so repealed.”

A commissioner is, therefore, under duty to report to the National Assembly only with respect to those commissions of inquiry which concluded their work after 30<sup>th</sup> August, 2010. The procedural requirement for tabling the report before the House cannot, therefore, be applied retrospectively.

Hon. Members, you will, however, recall that the new Constitution came into effect on 27<sup>th</sup> August, 2010. Article 35 of the new Constitution provides for access to information as follows:- Article 35(1) says:-

“Every citizen has a right of access to (a) information held by the State; and, (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.”

Article 35(2) says:-

“Every person has the right to the correction or deletion of untrue or misleading information that affects the person.”

Article 35 (3) says:-

“The State shall publish and publicize any important information affecting the nation.”

On the issue as was raised as to whether the Minister in failing to produce the requested reports has acted contrary to the new Constitution, I will address myself to it as follows. Whereas the new Constitution guarantees the right to information at Article 35, it goes further to provide for a mechanism for redress in the event of a breach of a provision in the Bill of Rights. Article 22 of the Constitution provides as follows:-

“31(1): “Every person has the right to institute court proceedings claiming that a right or fundamental right in the Bill of Rights has been denied, violated or infringed or is threatened.”

Article 23 of the Constitution then confers upon the High Court the power to make a determination as to whether a provision in the Bill of Rights has been infringed and to grant appropriate remedy. The Article provides as follows. Article 23(1) says:

“The High Court has jurisdiction in accordance with Article 165 to hear and determine applications for redress of a denial, violation or infringement of or threat to the right or fundamental freedom in the Bill of Rights.”

Article 165(2) is not relevant for our purposes. Article 165(3) says:-

“In any proceedings brought under Article 22, the court may grant appropriate relief including (a) a declaration of rights (b) an injunction (c) a conservatory order (d) a declaration of invalidity of any law that denies, violates, infringes or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24 and (e) an order for compensation; (f) an order of judicial review.” Order, hon. Members! I will have to pause again to allow those Members at the bar to come in.

*(The Members entered the Chamber)*

It is clear from the foregoing that the determination of a breach and the enforcement of the Bill of Rights has been left in the purview of the High Court by the Constitution of the Republic of Kenya. Whereas the House must appreciate the need to interrogate and apply the spirit of the new Constitution, it must also be careful to engage in such interrogations within the confines of the limits imposed by the same Constitution. The House must not be seen as taking over the roles which the Constitution expressly confers on other bodies. In the circumstances, I find that up and until 30<sup>th</sup> August, 2010, the discretion to release and publicize a report of a Commission of Inquiry rested with the President. This being so, the position with respect to the five reports whose production is sought is as follows, and this is how I find:-

(a) The Kiruki and Cockar commissions were appointed and operated under the regime of the Act as it stood before 30<sup>th</sup> August, 2010. Under that regime, the President was not obligated by the Constitution or any other law to make public the findings of a Commission of Inquiry. The reports of these two commissions were presented to the President on 28<sup>th</sup> August, 2006 and 24<sup>th</sup> November, 2008, respectively. This is as far as the law in force at the time required. The same fate applies to the other reports requested in respect of inquiries undertaken prior to 30<sup>th</sup> August, 2010.

(b) The Akiwumi Commission of Inquiry into Tribal Clashes was appointed in 1998 and reported in 1999. Following an order of the High Court, the report of this Commission was made public in 2002. This report is, therefore, in the public domain. Please, note that the release and publication of the Akiwumi Report followed a High Court order.

Hon. Members, let me conclude by emphasizing that as I have pointed out, under the law as it now stands, it is the duty of a Commissioner after making a full and faithful and impartial inquiry into the matter into which he is commissioned to inquire, to conduct the inquiry in accordance with the directions contained in a commission and on

completion of the inquiry, to report to the President and to the National Assembly in writing, the results of the inquiry and the reasons for the conclusions arrived at.

Apart from the remedies available in the courts, this House, as Members are aware, is not short of lawful avenues to enforce the compliance with the Constitution and the laws by the Executive.

That is the Communication which incorporates my findings and I thank you.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. I wish to thank you for that very reasoned Communication from the Chair. But as the Speaker will recall, the Bill to amend Section 7 of the Commissions of Inquiries Act was drawn and filed by myself. The spirit of that amendment was to make available to the House both future and past commissions of inquiries reports. In view of that spirit, and in the reading of the Constitution that the Speaker has referred to very ably, I have the request for leave for the Chair to reconsider the ruling, so as to make available to the House, even past reports.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. I would like to applaud you in your ruling, in which you have made sure that you are very fair and consistent with the law. What disturbs me is that the Cockar Commission was a matter of great public concern in view of the fact that the Grand Regency Hotel was a property that was not owned by any individual. I, therefore, find that having been pushed by a very patriotic Kenyan who has made it possible for me to have a copy of the Cockar Report, which has found that hon. Kimunya and Prof. Ndung'u were recommended to take personal responsibility for the questionable manner in which the hotel was disposed, I would like to table the Cockar Commission Report, so that the country can have an opportunity to see it.

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

**Mr. Speaker:** Order! Member for Ikolomani, I will want to look at the document which you have tabled? Is it a photocopy or what is it?

**Dr. Khalwale:** Mr. Speaker, Sir, it is an entire reproduction of the full report in its original form.

**Mr. Speaker:** May I have an opportunity to look at it?

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. While respecting your ruling, I just wish to remind the House that I had sought for these reports sometime last year when you ruled that you had no power to compel the Executive. Now, there is the Constitution with which you could have compelled the Executive. I seek your direction; will questions of this Parliament be henceforth addressed to the courts of law where now I have been referred to go and seek direction? In the three arms of Government, Parliament is supreme. Are we going to henceforth direct questions of this House to courts of law? I sought information as a Member of the House and on behalf of Kenyans and with the force of Section 35 of the Constitution. Are we henceforth going to extend questions to the other arm of Government, namely, the Judiciary? I am not seeking interpretation of the law. It is information from the Government, which the Constitution enjoins me to audit in its action.

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. I have listened to your ruling and I do not wish to refer to it. My concern is that the Assistant Minister had given an undertaking to the House to produce the reports. What becomes of the undertaking of

him under the circumstances where he has stood on the Floor of the House and told Kenyans that he undertakes to bring these reports to the House and then fails and hides behind the cover of Presidential prerogative?

**Mr. Speaker:** Very well! I will address myself to the points of order raised. However, with respect to the one raised by the Member for Imenti Central, I want to hear from the Assistant Minister. Did you give that kind of undertaking?

**The Assistant Ministry, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I have said and I want to repeat that reports which had already been received by the appointing authority and disposed of for public consumption, I will not hesitate to lay them on the Table. However, I am being forced to bring reports which have not been received by the appointing authority. I advised my colleagues in this House that they have to amend the Commission of Inquiries Act, which they went ahead and amended. There is no way a law can be used retrospectively. It is not possible. I have told them so, but they are not listening. I want to agree with your ruling.

**Mr. Speaker:** Order! Order, hon. Members! With respect to the spirit of the amendment which is now part of our law that has been alluded to by the Member for Kisumu Town West, my mind is clear and I did say so in my Communication. I went to the length of reading out in *extenso* the provision of Section 7 as amended. The spirit is something that is implicit and incorporated in, perhaps---

*(Mr. Michuki entered the Chamber  
while Mr. Speaker was on his feet)*

Order! Order! Order! The Member for Kangema, you are out of order! You are an old Member of this House. Indeed, I think this is the fourth time that you are representing a constituency in this House. Your conduct is tantamount to gross disorder. It is clear, and we have pronounced ourselves on this matter severally; that when the Speaker is on his feet, no Member will walk in or walk about; you will freeze! So, Member for Kangema, with the utmost respect, I am afraid you will have to leave for the balance of business.

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

Order, Member for Kangema! If you do not leave voluntarily, I will be compelled to force you!

*(Mr. Michuki walked to the Bar, bowed to  
the Chair and resumed his seat)*

Order! The Member for Kangema, I have directed that you withdraw from the proceedings of the House for the rest of the day and I am entitled to do so under the Standing Orders which you are well aware of! So, you must voluntarily leave or you will be forced to do so!

**The Minister for Environment and Mineral Resources** (Mr. Michuki): Mr. Speaker, Sir, it was not out of disrespect. I will obey what you have said.



**Mr. Speaker:** Order, Member for Kangema! As things stand now, you are a stranger in the House. Please, comply!

*(Mr. Michuki withdrew from the Chamber)*

Order, hon. Members! I was addressing myself to the points of order raised, first, by the Member for Kisumu Town West. My response to that point of order by the Member for Kisumu Town West is that the express provisions of Section 7 of the Act are as I have read out. Short of the Member for Kisumu Town West giving me a different version of those provisions, I am afraid I consider my expression on the Section to be correct.

With respect to the point of order raised by the Member for Imenti Central as to whether or not, in fact, there was an undertaking by the Minister that he would table those reports, I will want to acquaint myself with the record of the HANSARD and pronounce myself on the matter. If, indeed, the Minister gave an undertaking, then he is under duty to do the honourable thing, which is, to comply with his own undertaking because it was not forced out of him, as I want to believe.

Hon. Members, with respect to the point of order raised by the Member for Ikolomani, Dr. Khalwale, I have received the photocopy of the document tabled by him. I will want to ascertain the authenticity of the report. I will have wanted him, perhaps, to go a little further, which I will invite him now to do, on how he obtained this document.

*(Dr. Khalwale consulted loudly with other Members)*

Order, Member for Ikolomani! Just relax! I will give you time to be able to satisfy me as to how you obtained it.

With respect to the point of order raised by the Member for Gichugu, I must admit that it has caused me considerable agony. Even before I made the Communication as I have this afternoon, I juggled with that and wondered whether or not I can actually enforce the provisions of the Constitution as the Speaker of the National Assembly. At the end of the day, I determined that, that prerogative rests with some other organ rather than the Office of the Speaker or for that matter, the Legislature. This is because Section 22 which I referred to and read out is, in fact, clear on what should happen if a right under Chapter 4 of the Constitution is infringed. Section 23 then provides for enforcement of a right. Again, I read out Section 23 of the Constitution and in my considered opinion, I am satisfied that I have given the correct interpretation to both Sections 22 and 23 of the Constitution. I have gone further in the concluding paragraph of my Communication to assert that there may be other remedies available to the House away from the courts. But for the Speaker to compel the Minister to table that report, in the light of the law that I have pronounced myself on, I am afraid that, that would be my Communication.

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. I know that you have asked my good colleague to reveal the source of the documents. To protect whistle blowers--- Most of the documents which come to the Back Bench do originate from the Government. Will I be in order to make a suggestion to the Chair that you talk to the

appointing authority to give you the original documents, so that you can compare the genuine document with this particular document?

**Mr. Speaker:** Order, Member for Yatta! Leave that to me. I have indicated in my preliminary directions that I will ascertain the authenticity of the document. Ascertaining authenticity entails checking the originality of this document. So, please, rest assured that I will go to that length.

The Member for Ikolomani, I wanted you to address me on the matter such that I will have to take into account what you said even as I give other directions. Before I hear the Member for Ikolomani, I give the Floor to Mr. Imanyara.

**Mr. Imanyara:** In the same spirit that hon. C. Kilonzo raised the issue of whistleblowers, I am looking at this spirit against the Witness Protection Act and knowing that we need to protect these witnesses and sources, whether it is right or proper that you would compel the Member to disclose how he obtained the information. In the same spirit that you are not able to compel the Ministers to supply you a copy, the same reason should apply so that you do not compel a Member of Parliament to explain how he has obtain the copy, otherwise it will be very dangerous on the dependence of the Back bench to gather information and, therefore, play our role as the oversight branch of the Legislature.

**Mr. Speaker:** Order! Order! Hon. Members, I fully acknowledge the value of what you are saying. But that notwithstanding, what I had asked the Member for Ikolomani to do is to supply information as much as is in his possession that will help me to give directions on this matter. You will note that this kind of situation is unprecedented and I need to lay the ground on what will happen in future and I must be able to do so exhaustively. So I need that view.

**Dr. Khalwale:** Mr. Speaker, Sir, so that I do not look like I am engaging in an altercation with you, may I with utmost respect, inform you that I feel constrained by the law; the Witness Protection Act. It does not allow anybody to compel me to disclose the source of my information. And what is more, this is not the first time.

**Mr. Speaker:** Order, Member for Ikolomani! There is no point of going to that kind of situation. My question to you was fairly straightforward and simple; say how you obtained these documents. I did not ask you to tell me who you obtained it from. How did you obtain it? That is all.

**Dr. Kalwale:** I obtained these documents from a patriotic Kenyan who felt that Parliament must be empowered to practice its oversight role.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, sometime in the last Parliament, I also tried to table in this House the Kiruki Report which I was also given by a patriotic Kenyan. I was thrown out with that document by the then Deputy Speaker, Hon. Musila. So, it depends on the Chair; whether you are going to accept this one as an authentic document because I was equally thrown out with a document which was similar to the one I thought---

**Mr. Speaker:** Order, hon. Members! This matter must come to an end. I am not certain that the circumstances pertaining to the time that the Assistant Minister may have been thrown out still prevail today. So, please, accord me the opportunity, indeed the privilege and honour to make a decision on the matter, independent of whatever may have happened in the past.

Hon. Members, we will now go back to Questions and we want to take the Question by the Member for Juja!

CONFISCATION OF IRENE MUCHIRI'S PASSPORT  
BY HER SAUDI ARABIA EMPLOYER

**Mr. Kabogo:** Mr. Speaker, Sir, I apologize for coming late. I was just held up in the jam.

However, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice-

- (a) Is the Minister aware that one Ms Irene Muchiri, who has been working in Saudi Arabia, is unable to return to Kenya because her passport was confiscated by her former employer?
- (b) Why has the Ministry not intervened in the matter despite numerous pleas made by Ms. Muchiri's family in the recent months?
- (c) Could the Minister state when the passport will be returned to her?

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** Mr. Speaker, Sir, please, give me a minute because I---

**Mr. Speaker:** Proceed, Mr. Assistant Minister! Please, give attention to the Question!

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** I am Mr. Speaker, Sir; I am just trying to organize myself.

**Mr. Speaker:** Order, Mr. Assistant Minister! You are taking this matter very lightly. It is very unfortunate.

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** Mr. Speaker, Sir, I beg to answer-

(a) Yes, the Minister is aware that the case of Ms. Irene Njoki Muchiri--- The said person worked in Saudi Arabia as a househelp for one year and four months and subsequently ran away from her employer due to mistreatment. Since then, one year and nine months have passed and her case was then reported to the Ministry of Foreign Affairs in September 2010.

(b) It should be noted that the Saudia labour laws allow an employer to take custody of the employee's passport on arrival and when they have secured a job. The same passport is usually released by the employer when the employee leaves the Kingdom on completion of the contract or as per the earlier agreed arrangements. In addition, for one to leave the Kingdom, he or she must have an exit visa which is normally issued by the employer or the relevant Saudia authorities.

(c) In this specific case, she could not travel back to Kenya because she did not have an exit visa.

**Mr. Kabogo:** Mr. Speaker, Sir, I am not sure whether you understood what the Assistant Minister is attempting to say. He is attempting to tell the House that a Kenyan citizen cannot leave Saudi Arabia because she does not have an exit visa yet he confirms that she ran away from her employment in Saudia because of harassment. The second part of my question is: Why has the Ministry not intervened to get this Kenyan to come back home? He has not answered that question.

**Mr. Onyonka:** Mr. Speaker, Sir, I would, first, want to say that the reason why somebody cannot travel from Saudia is because their law requires that somebody must have an exit visa. On the issue of the Government intervening, as I said, the case was brought to us in September 2010. Since then, the Embassy through the Ministry of Foreign Affairs, has contacted the employer who demanded to be paid Kshs6,000 as damages for breach of contract since Miss Muchiri had not completed her two year contract. Two, Miss Muchiri did not have any money to pay her employer to facilitate her release. Three, the embassy contacted the employer once again to negotiate her release. However, the employer informed us that he had already reported the matter to the relevant Saudia authorities and hence, the matter was being dealt with. Four, the Ministry of Foreign Affairs has instructed our Kenyan Ambassador in Saudia to make sure that any further necessary requirements in terms of any funds which may be required, he executes immediately.

**Mrs. Odhiambo-Mabona:** Mr. Speaker, Sir, this is definitely a case of slavery or modern day trafficking and many of the Kenyan girls are falling into the trap, especially in that destination. What is the Government doing to come up with mutual legal co-operation agreements with countries so that you cannot have Kenyans dying like Rose Adhiambo who died about a month ago under similar circumstances? The next thing we will hear is that Miss Muchiri jumped off from a building and yet she has been murdered. What are you doing to come up with such agreements?

**Mr. Onyonka:** Mr. Speaker, Sir, there is a big concern within the Ministry of Foreign Affairs on this issue. The Government has actually been holding consultations with the Ministry of Labour to come up with strategies and interventions on how we can get any Kenyan who goes to work abroad to know who they are. We should record and register their existence. We have also authorized our Ministry employees, especially the ambassadors who are in those countries that any time that Kenyans arrive in those countries, they should go and register with the embassies so that we can know anything that happens to them so as to intervene.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Speaker, Sir. My question was very specific. The Assistant Minister has set up a question and answered it very well but he has not answered mine. Under the Anti-trafficking Act which we passed in this House, what has the Ministry done to develop mutual legal agreement with countries because it is only under that framework that he can protect Kenyans abroad?

**Mr. Onyonka:** Mr. Speaker, Sir that is a very good question. The Ministry of Foreign Affairs and other relevant Ministries are right now coming up with a policy paper. We have not been having these policy documents because when we sign bilateral agreements, they are the ones that protect our people. Secondly, many Kenyans who travel to these countries, especially in the Middle East, have been having these problems because we have not signed any bilateral agreements with those countries. However, I can assure the House that we are in the process of negotiating bilaterals and joint commissions to make sure that any time a Kenyan goes to these countries, they are protected by laws which are internationally accepted.

**Mr. Njuguna:** Mr. Speaker, Sir, it has come out very clearly from the response given by the Assistant Minister that Ms. Irene Muchiri is currently jobless and traumatized. What humanitarian assistance has the Ministry extended to this innocent lady?

**Mr. Onyonka:** Mr. Speaker, Sir, could the hon. Member repeat his question? I apologise for not getting him.

**Mr. Njuguna:** Mr. Speaker, Sir, let me repeat once again. It is very clear that this lady, Irene Muchiri is currently jobless and traumatized. What humanitarian assistance has the Ministry of Foreign Affairs extended to this suffering lady?

**Mr. Onyonka:** Mr. Speaker, Sir, when somebody leaves this country to go and work anywhere---- The Government, especially the Ministry of Foreign Affairs highly appreciates the fact that through foreign remittances, the country benefits a lot. When somebody comes back, we do not have a mechanism where an individual who has gone through such an experience can be rewarded, be compensated or given another job. I can assure hon. Members that the Ministry of Foreign is trying to think and come up with mechanisms to make sure that any Kenyan---

**Mrs. Shebesh:** On a point of order, Mr. Speaker, Sir. I am sure you have heard the Assistant Minister say that the Ministry of Foreign Affairs is trying to think. It is obvious from his answer that the Ministry is admitting that it has no remedy for this situation. Is it in order for the Government to sit and still try to come up with solutions to problems that have been brought to the Ministry countless times?

**Mr. Speaker:** That is not a point of order. It does not pass the test. It is just a question.

Ask the last question, the Member for Juja!

**Mr. Kabogo:** Mr. Speaker, Sir, it is a very sad matter when a young Kenyan girl is in the streets of Saudi Arabia. Her only problem is that she does not have travel documents. The Assistant Minister comes and tells the House---

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

**Mr. Speaker:** Order, the Member for Kisumu Town East!

**Mr. Kabogo:** Mr. Speaker, Sir, a young lady who is a Kenyan citizen is out there in the cold and the Ministry is not able to even give *ex-gratia* allowances for her to wait for whatever it is this Ministry is doing. I have a letter here written by the Ministry of Foreign Affairs to the Embassy in Saudi Arabia on 6<sup>th</sup> September, 2010. What is it that the Ministry is doing? When will the Ministry bring Ms. Muchiri home?

**Mr. Onyonka:** Mr. Speaker, Sir, I would like to tell the hon. Member that we have cases of Kenyans who have suffered the same fate. They are Zubeda Ibrahim Abdalla, Sarah Awinja, Maria Wangui Gachoka and Ruth Waweru. The Ministry of Foreign Affairs has instructed the ambassador in Saudi Arabia to make sure that he looks for these Kenyan individuals and engage them to make sure that he facilitates and fast-tracks the Saudi Arabia Government to make sure that they are given travel documents so that they can come back.

**Mr. Shakeel:** On a point of information, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Mr. Assistant Minister, do you want information from the hon. Member for Kisumu Town East?

**Mr. Onyonka:** I will accommodate my colleague, Mr. Speaker, Sir.

**Mr. Speaker:** Order! The Member for Kisumu Town East, the Assistant Minister is prepared to take information from you but please note that our Standing Orders do not allow two hon. Members to be on their feet at the same time. So, when you stand on a point of order, you do so quickly and if you catch the Speaker's eye, you proceed. Please take note!

**Mr. Shakeel:** Mr. Speaker, Sir, thank you very much for your accommodation. The point of information is that if somebody runs away from his or her job, he or she is arrested. I am concerned that this lady and the other four will be arrested, put in dungeons and we will have a worse situation than we have now. I was trying to inform the Assistant Minister the five Kenyans can be given some sort of refuge by the Kenyan High Commission so that they are not arrested?

**Mr. Onyonka:** Mr. Speaker, Sir, I would like to thank my colleague for giving us that useful information. I can assure you that the Ministry is on top of it and we have given specific instructions to make sure that these Kenyans are treated with respect and are given travel documents under what is called “the emergency travel certificate” to be here as soon as the Saudi Arabia Government gives us the documents. That Government has promised us that they will avail those documents as soon as they will be available.

**Mr. Kabogo:** Mr. Speaker, Sir, my second question was very clear. When will the Ministry facilitate Irene to come home? They are saying in the letter that it is due to her passport that she is not able to come home because it is held by her former employer. However, on the Floor of the House, the Assistant Minister has now brought a second reason that she does not have an exit visa. When will the Ministry facilitate Irene to come home?

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

**Mr. Speaker:** Order! The Assistant Minister has to respond to that point of order.

**Mr. Onyonka:** Mr. Speaker, Sir, immediately the Saudi Government gives an exit visa, she will get her travel documents which the Kenyan Government has prepared.

The other point that I wanted to make is that the ambassador in Saudi Arabia is currently engaged in making sure that Kenyans who are there can come back home as soon as possible. If the House requires that I come with an exact date, I am ready to do that.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. Apparently, the challenge the Ministry is faced with is raising Kshs6,000 which the former employer wanted. Could I be in order to volunteer to give the Assistant Minister the Kshs6,000 so that they can go and pay and the young girl can come back?

**Mr. Speaker:** Mr. Assistant Minister, I also heard you say “Kshs6,000” and yet this is the life of a Kenyan at stake since September. Honestly, Mr. Assistant Minister, your answer cannot be satisfactory.

**Mr. Onyonka:** Mr. Speaker, Sir, I stand to correct myself. The amount is Kshs120,000 which comes to Saudi Riyal 6,000.

**Mr. Speaker:** Even then, Mr. Assistant Minister!

**Mr. Onyonka:** Mr. Speaker, Sir, the other point that I wanted to make is that the Kenyan Embassy in Saudi Arabia is right now handling that matter and I am sure that the Government will be able to deal with it. We actually do not need Dr. Khalwale to donate the money. The embassy will do it.

**Mr. Speaker:** The hon. Member for Juja has asked you to give indication in terms of time. By what date will you have done this?

**Mr. Onyonka:** Mr. Speaker, Sir, if I am able to engage with the officers in the Ministry of Foreign Affairs--- I do not want to commit myself so that it looks like I am not saying the truth because we need the Saudi Arabia Government to release the

documents in order for the Kenyans to come back home. I know that if I engage the Ministry, by next week I will be able to give you an answer.

**Mr. Speaker:** Very well! The Member for Juja, will you please follow up?

**Mr. Kutuny:** Jambo la nidhamu, Bw. Spika. Unyanyasaji wa Wakenya wanaotafuta ajira katika mataifa ambayo yameendelea umekithiri sana na kisa hiki ni mojawapo tu. Kwa hivyo, ningeomba kwamba Kamati ya Bunge ambayo inahusika na masuala haya ifanye uchunguzi, kisha ipendekeze hatua madhubuti ambayo Serikali inaweza kuchukua ili ithibiti unyanyasaji wa Wakenya haswa vijana barubaru ambao wanatafuta ajira katika mataifa mengine.

**Mr. Speaker:** Mhe. Kutuny, umesikika vizuri sana! Hata hivyo, hukutaja jambo lolote la ukosefu wa nidhamu katika mazungumzo yako!

SACKING OF PROF. SAMMY KUBASU  
BY MASINDE MULIRO UNIVERSITY

**Mr. Njuguna:** Mr. Speaker, Sir, I beg to ask the Minister for Higher Education, Science and Technology the following Question by Private Notice.

Is the Minister aware that more than 4,500 University Lecturers have threatened to go on strike over the sacking of the Chairman of the University Academic Staff Union, Prof. Sammy Kubasu, formerly of Masinde Muliro University and if so, what immediate action is the Government taking to avert the strike?

**The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria):** Mr. Speaker, Sir, I beg to reply.

I am aware that the University Academic Staff Union (UASU) has threatened to go on strike in solidarity with Prof. Sammy Kubasu, their Chairman. I would like to tell the House that this matter has already been reported to the University Council. We discussed this matter about three weeks ago. The Appeals Committee of the Council is expected to give a report to the University Council to listen to the case with a view to dealing with the matter or finalizing it.

Mr. Speaker, Sir, UASU has been informed about this in writing. Unfortunately, the Masinde Muliro University Council has not been renewed for some time. We are in the process of doing so. I think in the next week or so, it should be in place after which that report should be given to the Council and hopefully, reinstate Prof. Kubasu.

I would like, therefore, to appeal to the members of UASU with whom the Permanent Secretary has already had a sitting with, I think on 1<sup>st</sup> December, and explained the circumstances, to just be patient. We think Prof. Kubasu has a case and it should not be a problem, except that this Council is not in place. Once it is in place, the matter will be dealt with. So, we beg for patience.

**Mr. Njuguna:** Mr. Speaker, Sir, Prof. Sammy Kubasu was the Chairman of UASU at the Kenyatta University before proceeding to Masinde Muliro University as the Chair of the Union. On moving to the Masinde Muliro University, he was forcefully given a position as Chair of a Department. The borne of contention is that Prof. Kubasu was, in my view, not given a chance to look into pros and cons of the new engagement. Could the Assistant Minister indicate to this House whether Prof. Kubasu was consulted for the new appointment?

**Dr. Mwiria:** Mr. Speaker, Sir, this matter was dealt with about three weeks ago. In fact, the reason Prof Kubasu was thrown out was that he refused a promotion which is ridiculous. The Vice-Chancellor can appoint you as a Head of Department, but you are given an opportunity to accept or reject. Even the letter says: "I accept this appointment under these terms." So, you can reject or accept. He chose one of the options he was given. For deciding to choose an option he was given, he was thrown out. This is ridiculous. Basically, the University has no case. So, we know as soon as it comes to the appeals, he will be back. If he does not, because he seems he has a very good case, he can also take industrial action. He must know that is always another option. However, we are concerned and we would like to have the matter resolved amicably.

**Mr. Bahari:** Mr. Speaker, Sir, the executive power rests with the President. For all the other institutions, it is delegated. Now that the Council is not properly in place, could the Assistant Minister ensure that he uses that authority to take appropriate action without any further delay?

**Dr. Mwiria:** Mr. Speaker, Sir, unlike those days of KANU, when the Government had a lot of powers over universities--- With the new change, one of the things that were done was to leave universities to be independent, so that politicians, Ministers of Education do not go directing institutions of higher learning what to do. They have that independence. We wait until they abuse that independence. We are just giving them a chance; this Council should be in place by this month. If they will not have done their bit, then we have a responsibility as the Government to intervene.

**Dr. Kones:** Mr. Speaker, Sir, the Assistant Minister was a victim of such circumstances. He knows very well how draconian university authorities can be at times. What is the Ministry doing to ensure that Universities Councils are also checked, so that they do not take draconian measures like the way they have done?

**Dr. Mwiria:** Mr. Speaker, Sir, yes, indeed, I was thrown out of the university and I was given no chance to defend myself. I had not stolen. Those days, you were not thrown out for stealing. You were thrown out for other things. The thieves were always in place.

Mr. Speaker, Sir, the appointment of a Council is very consultative and we assume that they would do their bit. However, I think it is only fair like with any independent Government body, to give them the opportunity to make that decision. If there is a problem, an individual as a private citizen, can take relevant action even before the Government takes action, but we are interested in resolving it. We need to give the university a chance. The only reason for the delay right now is because the Council is not in place. Prof. Kubasu himself is free to take any action he deems necessary.

**Mr. Njuguna:** Mr. Speaker, Sir, in my view, this was a deliberate and malicious move by the Ministry to frustrate Prof. Kubasu. Could the Assistant Minister table a copy of the acceptance that was signed by Prof. Kubasu.

**Dr. Mwiria:** Mr. Speaker, Sir, I answered that question. It seems we have a problem. Sometimes, we have Members who formulate questions instead of listening to answers that are being given. I already said he chose not to accept.

Secondly, it is not the Ministry that is frustrating him. It is the Vice-Chancellor who fired him and the University Council is looking at the matter. So, there is no document I can table. When I answered the Question last time, I tabled the document to show that Prof. Kubasu chose not to accept the appointment.



**Mr. Wamalwa:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to say that it is not the Ministry that is frustrating Prof. Kubasu, when the delay in appointment of the Council is the role of the Ministry? If he appointed the Council today, they would have dealt with the matter to avert the strike. What are you doing about it?

**Mr. Speaker:** The last part is a question, but the earlier part is the point of order.

**Dr. Mwiria:** Mr. Speaker, Sir, what are we doing? We will put the Council in place. The Minister has signed the relevant documents.

I would like to remind Members of Parliament that we have not had a substantive Minister for the last three months. We have an acting Minister who is also responsible for the matters of the East African Community. You know she is the one as the Minister who has to sign the appointment, which then goes to the Office of the President. Then that is communicated. That is happening. If by January, it is still not happening, then you have every right to say the Ministry is part of the frustration.

## ORAL ANSWERS TO QUESTIONS

### *Question No.557*

#### COMPLIANCE WITH CONSTITUTIONAL PROVISION ON FINANCIAL PROBITY

**Mr. Kombo** asked the Minister for Justice, National Cohesion and Constitutional Affairs what the Government is doing to ensure compliance with Chapter Six of the Constitution on Leadership and Integrity, particularly Article 76 (2) (a) on financial probity of State Officers, which stipulates that a State Officer shall not maintain a bank account outside Kenya, except in accordance with an Act of Parliament, and Article 77 on restrictions on activities of State Officers?

**The Assistant Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Cheptumo): Mr. Speaker, Sir, I beg to reply. The Government and, indeed, my Ministry is committed to ensuring that all provisions of the new Constitution are fully implemented. My Ministry appreciates the significance of the provisions of Chapter Six of the Constitution. The provisions of this chapter aim at restoring integrity and leadership in public offices. Under this chapter, Parliament is to enact legislation to establish an Independent Ethics Anti-Corruption Commission under Article 79 within one year. In addition, Parliament is also to enact legislation on leadership under Article 80 within two years. To facilitate the enactment of the Legislation and State Chapters, the Government in the Sixth Schedule of the Constitution, Parliament will enact legislation on Independent Ethics and Anti-Corruption Commission, as I said earlier under Article 79 within one year and legislation on leadership within two years.

To facilitate the enactment of legislation anticipated under this chapter, the Government and, indeed, my Ministry has organized strategic inter-agency co-ordination workshops to develop and draft a leadership and integrity law.

Secondly, to facilitate workshops to review the Anti-Corruption and Economic Crimes Act, Public Officers Act and other legislations, a review of these laws and the

enactment of the Ethics and Anti-Corruption Commission will pave way for the restructuring of the current Kenya Anti-Corruption Commission (KACC) into a new Ethics and Anti-Corruption Commission with the mandate to enforce the provisions of Chapter Six of our Constitution.

Mr. Speaker, Sir, in the process of developing an Anti-Corruption Policy Paper, a sum of Kshs10 million has been approved by the Cabinet for this purpose. A concept paper has also been developed which will be discussed in eight regional stakeholders' workshops before a draft national anti-corruption policy is developed. This policy will streamline the legal institutional framework with regard to anti-corruption, leadership and integrity.

Unless and until the legal framework and policy mentioned above are put in place through legislation by this House, the Government cannot effectively ensure compliance with provisions of Chapter Six of the Constitution. The existing law framework is ill equipped to sustain such compliance.

Mr. Speaker, Sir, Article 76 (2) (a), for example, contemplates a scenario where state officers may maintain a foreign bank account in accordance with an Act of Parliament. The Executive, therefore, cannot purport to prohibit state officers from maintaining foreign bank accounts at this level, but can only direct that they may only maintain the same in accordance with an Act of Parliament.

Similarly, to ensure compliance with the provisions of Article 77, there must be appropriate legal framework as outlined above. My Ministry is committed to ensuring that the necessary legal framework is in place within the prescribed timelines so as to achieve the full compliance with the provisions of Chapter Six.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. The other time that the Assistant Minister brought a Ministerial Statement to this House, it was later disowned by the substantive Minister in that Ministry.

Mr. Speaker, Sir, could you, kindly, ascertain---

**Mr. Speaker:** Order! Order, Member for Gwassi! This matter has previously been addressed and I gave my directions on it. I actually pronounced myself on the matter. Please, go and acquaint yourself with the HANSARD. Note that raising a false point of order amounts to disorderly conduct and you may have to take the consequences next time.

Proceed. Hon. Kombo!

**Mr. Kombo:** Mr. Speaker, Sir, this Question is on Chapter Six of the Constitution, a chapter which has not been suspended at all.

The reason why I have asked this Question is so that impunity that has existed in this country since Independence is checked. The new Constitution seems to be a new forest, but the monkeys seem to be the same in the new forest to continue with the impunity.

*(Applause)*

Mr. Speaker, Sir, you have heard the Assistant Minister talk of workshops and seminars on a chapter that has not been suspended. How soon can we ensure that this Chapter is going to be complied with?

**Mr. Cheptumo:** Mr. Speaker, Sir, as I said earlier, the legislation under Article 79 should be in place within one year and the legislation under Article 80 should be in place within two years. As a Ministry, we do not want to wait for that long. We are ensuring that within a shorter period than one year, for legislation under Articles 79 and 80---

I would like to undertake to the House that my Ministry has already started putting in place necessary steps. So, we will ensure that we have it outside the one or two years for Articles 79 and 80, respectively.

**Mr. Ngugi:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is referring to Articles 79 and 80. The Question is on Articles 76 and 77. Is it in order for him to mislead the House by referring to Articles 79 and 80?

**Mr. Speaker:** If that is so, he will be out of order. But if the substance is accurate, then let us accept what he has said. Let us be guided by the substance rather than the form.

The hon. Member for Ikolomani!

**Dr. Khalwale:** Mr. Speaker, Sir, the responsibility under this law is shared both by the State and the state officer himself. I am glad to hear that the Ministry is doing something to ensure that the law is being complied with. Could he tell us, on the side of the responsibility of the state officers, how many Ministers in the Grand Coalition Government hold such bank accounts, how much money is held in those accounts and what action the Government has taken to ensure that these particular Ministers are compliant?

**Mr. Cheptumo:** Mr. Speaker, Sir, I will be misleading the House if I was to attempt to give the number of Ministers or state officers with bank accounts abroad. That will really be difficult for me to ascertain now. That is really a Question outside this Question, but I want to say that it is difficult for me to ascertain now and give the details.

**Mr. Speaker:** Very well! You are entitled to that claim.

Proceed, hon. Kombo!

**Mr. Kombo:** Mr. Speaker, Sir, on Article 77, the Assistant Minister knows who are the Ministers holding political positions. Why can he, as he waits to do other things, ask these particular Ministers, in fact, to relinquish their positions in political parties as a sign of goodwill that the Government is committed to taking action?

**Mr. Cheptumo:** Mr. Speaker, Sir, the Ministers holding positions in political parties are, of course, known by all of us. But the Constitution, although providing that no state officer should hold political office, the provisions of the National Accord are also in force. So, we need to read that section together with Section 3 (2) of the consequential legislation, because it is clear that the National Accord is retained under the new Constitution.

**Mr. Speaker:** Very well! Hon. Member for Konoin!

#### *Question No.610*

#### STALLING OF SIOMO DISPENSARY PROJECT

**Dr. Kones** asked the Minister for Public Health and Sanitation:-

(a) whether she is aware that construction of Siomo Dispensary in Konoin District, funded through the Economic Stimulus Programme, has stalled due to lack of capacity by the contractor;

(b) what action she has taken against the contractor; and,

(c) what steps she has taken to ensure the project is completed in good time.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Speaker, Sir, I beg to reply.

(a) No, the project has not stalled.

(b) My Ministry, through the Technical Economic Stimulus Programme Consultant, has summoned the contractor and provided the schedules of work which stipulate that the project will end in March, 2011.

(c) The Economic Stimulus Project Management Committee shall make a two weekly visit to the site to ensure closer supervision during the construction works. The team---

*(Loud consultations)*

**Mr. Kabogo:** On a point of order, Mr. Speaker, Sir. We can hardly hear what the Minister is saying because of consultations that are going on here.

**Mr. Speaker:** Order, hon. Members. Please let us lower the level of our consultations so that we can hear the Minister.

Proceed, Madam Minister!

**The Minister for Public Health and Sanitation** (Mrs. Mugo): The Economic Stimulus Project Management Committee shall make a two weekly visit to the site to ensure closer supervision during construction work. The team is headed by the technical staff from the Ministry of Public Works, Sotik District. The District Medical Officer of Health will provide monthly progress reports on the project.

Mr. Speaker, Sir, I would like to add here that it is true that the project had a slowdown and we requested the committee on the ground to ensure that the work starts moving again. The contractor explained that he had problems because of the bad road and he had not been able to acquire the wall stones of nine by nine. After a meeting on the ground, the contractor has assured us that he will finish the work because he knows it has to be fenced on the timeframe. Otherwise, we cannot pay him. I do thank the hon. Member for raising the matter.

**Dr. Kones:** Mr. Speaker, Sir, while appreciating the answer from the Minister, I would like to bring to her attention that the management committee has met three times. As we speak, that committee is on the ground monitoring the projects. Out of the three meetings, the District Medical Officer of Health has attended only one meeting and yet he is a member. To date, the PMO has also paid part payment of this project without the approval of the management committee.

**Mr. Speaker:** Please, come to the question.

**Dr. Kones:** What steps will the Minister take to ensure that the MOH complies with the regulations under the Stimulus Management Committee?

**Mrs. Mugo:** Mr. Speaker, Sir, the MOH would have no authority to pay without compliance on the ground. Indeed, he is not the only signatory. I would request the

Member of Parliament, who, as we started this project, we agreed that the Members of Parliament will also play a major role to make sure that the project does not stall or we do not finish the money before the work is done--- It is also for the management committee on the ground to make sure that the work is done according to the level it should have been. We will check on this and if the officer has done that, action will be taken. I want to assure the House that we are concerned about the project. My officers also took time to meet with the people on the ground and the officers from the Ministry of Public Works and we have been assured that it will be done.

Mr. Speaker, Sir, I want to urge the Members of Parliament that as we agreed that they will be responsible there, the CDF committees are also part of the Stimulus Committee. It is teamwork. If you just come to tell us that something is going wrong, we want you to be part and parcel and make sure that the right work is being done on the ground.

**Mr. Kiptanui:** Mr. Speaker, Sir, you heard the Minister say that there is a team which is headed by some technical staff from the Ministry of Public Works in Sotik District. I would like the Minister to tell us why she chose those officers from Sotik District instead of using the ones in Konoin or Buret District which is close to Konoin.

**Mrs. Mugo:** Mr. Speaker, Sir, I would be the wrong person to answer that question because I do not know how the Ministry of Works organizes their work. As far as my answer is concerned, I know that that is the team that is used. But I can also enquire on that because it is the Ministry of Public Works which organizes that work.

**Dr. Nuh:** Mr. Speaker, Sir, this House can recall that we passed the budget and in that budget was Kshs5 million per constituency for health centre improvement towards the Economic Stimulus for this financial year. Could the Minister inform this House what is the progress as per the implementation of these projects countrywide?

**Mrs. Mugo:** Mr. Speaker, Sir, all the money that is supposed to go to these health centres is available. But it is paid according to the progress of work. When the facility is ready, the money for furnishing will also be available. I really do want to urge that we must finish these projects on time, otherwise, the money will go back to Treasury and then it will be a case of not utilizing all the money. Hon. Members are the ones who will help us to make sure that the program moves on time. That is why I thank the hon. Member for Konoin because he brought it to our attention.

Mr. Speaker, Sir, I would like to say that there are some constituencies which have never even started the ground work. They are still arguing about the locality and local politics on the ground. I am afraid we will move that money to other constituencies otherwise, the money will have to go back to the Treasury. So, what happens on the ground is very important.

**Dr. Kones:** Mr. Speaker, Sir, since the Minister has confirmed that the work has delayed, may I know from her whether indeed by March 2011, the work will be completed?

**Mrs. Mugo:** Yes, from the meeting that took place, I would like to confirm that the contractor has been impressed upon that the work must be finished by then. Of course, it will be reviewed from time to time. That is why I said I appreciate your partnership that you also keep on briefing us if you are doubtful that the work is not happening the way it should. The contractor has said it will be finished. My biggest concern is that they finish all the programs before the end of the financial year.

*Question No.527*

LIST OF PERSONS RECRUITED INTO KENYA DEFENCE FORCES

**Mr. Mbadi** asked the Minister of State for Defence whether he could provide the per-district list of persons recently recruited to the Kenya Defence Forces, indicating the gender distribution in each district.

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Speaker, Sir, I beg to reply.

The number of persons recently recruited to the Kenya Defence Forces cannot be disclosed for security reasons. For this reason, I wish to invoke Standing Order No. 43(11).

Thank you, Mr. Speaker, Sir.

**Mr. Mbadi:** Mr. Speaker, Sir, the Assistant Minister has invoked Standing Order No. 43(11). It says:-

“A Question shall not seek information which, by operation of any written law, is secret.”

Mr. Speaker, Sir, I asked for per district names of people recently recruited to the Kenya Defence Forces. The same Assistant Minister is on record saying previously in this House that they recruited 1,800 members in total. It would benefit this House if he explained how an indication of how many people were recruited from each district and the gender balance is secret. How secret is that? Could he explain to this House?

**Mr. Musila:** Mr. Speaker, Sir, I sympathize with the Member for Gwassi. However, as it should be appreciated, matters of the Defence Forces are not to be discussed openly. For this reason, I still maintain that it will not be prudent and in national interest to discuss numbers and the gender of recruits to the Defence Forces.

Yesterday, you will recall, there was a Question regarding recruits to teacher training colleges. We cannot equate the recruitment of members of the Defence Forces to other institutions. This is bound to disclose figures and strength of the military which is not in the national interest.

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

**Mr. Speaker:** Order! Hon. Members, please, relax. Mr. Assistant Minister, the Member for Gwassi contended, not very long ago, that you disclosed the numbers of the persons recruited. So, what is secret now in giving the answer in order of breakdown per district? You have not addressed yourself to that to enable me give direction.

**Mr. Musila:** Mr. Speaker, it may not and it will not be difficult for us to give the numbers per district as the Member had indicated. However, you will appreciate that will not be the end of the question. The supplementary questions pertaining to such a question would lead to matters that are secret in nature.

**Mr. Speaker:** Order! Mr. Assistant Minister, I want you to listen to the various concerns by hon. Members because that will help me to give direction. So, please, listen. I may want your responses and thereafter, I will give appropriate direction. So, let us begin with the hon. Member for Gwassi.

**Mr. Mbadi:** Mr. Speaker, Sir, you rightly quoted me when I said that the Assistant Minister not too long ago talked about recruiting 1,800. He even went further and said that 400 or thereabout of the same, were women. The question I am asking is very simple. I want him to give the breakdown per district of that number that he gave us. There is nothing that will compromise on the security of this country. I find it out of order for him to anticipate and speculate on questions which are likely to come to the Floor of this House.

**Mr. Kabogo:** Thank you, Mr. Speaker, Sir. If you heard the Assistant Minister, he clearly said that if he were to give the number of recruits for this year to this House, he will be disclosing the strength of the armed forces in the country. He wants to hide under the issue of secrecy. It is not the strength of the entire armed forces that we are asking. We are asking only about the breakdown of a figure that he has already given. If you go to the Standing Order, 43 (11), it says:

“A Question shall not seek information which, by operation of any written law, is secret.”

He has not told us operation of which law is secret.

**Mr. Lessonet:** Mr. Speaker, Sir, definitely, what the Assistant Minister is supposed to lay on the Table of this House cannot be secret considering that even the Budget of his Ministry is laid on this Table. For instance, this year, this House approved more than Kshs40 billion for his Ministry. That cannot be a secret. So, it cannot, therefore, be a secret when it comes to names of recruits. Further to that, if it is truly a secret, this is a constitutional House, the Kenya National Assembly and we can go into camera to listen to him.

**Mr. Speaker:** Member for Imenti Central! We must really bring this to an end.

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. My concern is that the Assistant Minister is arrogating to himself the role of interpreting the Standing Orders. He is the one who is determining what is secret rather than asking you whether releasing that information would not be in breach of the Standing Orders. Is it in order for him to purport to interpret the Standing Orders of the House rather than referring to the Speaker to declare what amounts to secrecy?

**Ms. Abdalla:** Mr. Speaker, Sir, since the Assistant Minister has declined to give the breakdown per district, could he give the allocation per district?

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

**Mr. Speaker:** Member for Kisumu Town West, you know that you cannot arrogate yourself the duty of determining which one should be the last question.

Mr. Assistant Minister, could you respond to those issues because I would want to give directions?

**Mr. Musila:** Thank you, Mr. Speaker, Sir. With regard to the question raised by hon. Imanyara, I want to say that I consulted the Chair in this respect. Therefore, I did not determine the matter myself. I consulted the Chair and sought guidance because I felt that it was not in the public interest to respond. If the Chair feels strongly that I give this answer, then I will do so.

**Mr. Speaker:** Order! Mr. Assistant Minister, sit for a moment. You stood to answer Question No.547 and claimed that the information sought was secret. Just satisfy

me that the answer would compromise State security or is secret. Why is it secret? That is what I want to know. I will not force you to give that information if you can satisfy me and the House that it is secret.

**Mr. Musila:** Mr. Speaker, Sri, I do not know how I can satisfy you. I said that--

**Mr. Speaker:** Tell me what prejudice this disclosure would cause.

**Mr. Musila:** Mr. Speaker, Sir, I said with respect, that the information sought was secret. I said that if the House would want me to give this answer in camera, then I would do so.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. I have a lot of respect for hon. Musila. However, I think he got it wrong this time round. In addition to what hon. Kabogo said that he has to state the law on which he is relying, it is important that if he will invoke confidentiality as the ground to which he will not answer a Question before the House, is it in order for him to do so, without regarding Section 35 of the Constitution which is clear and states as follows:

“Every citizen has a right to access of;

(a) Information held by the State.”

**Mr. Washiali:** On a point of order, Mr. Speaker, Sir. Not long ago, I asked a Question to the same Assistant Minister for Defence, wanting to know how many recruits had been recruited from Mumias. He gave me five names. He even laid on the Table the names of the officers who had been recruited. Why has it now become a secret and he cannot disclose information regarding other districts?

**Mr. Speaker:** Hon. Members, I have heard adequate information on this and I want to address myself on this matter and give directions tomorrow afternoon at 2.30 p.m. However, even as I retreat to do so, Assistant Minister, I am afraid I am a bit skeptical. You have not satisfied me as to why you are claiming that this information would be secret. What prejudice would it cause? It is a simple thing! You ought to have said to this House what damage it would cause if you disclosed this information. In my mind, I am able to speculate but the Assistant Minister has just not put anything on record.

**Mr. Musila:** Mr. Speaker, Sir, if for example the Member for Gwasssi wished that I give him the numbers and names of people recruited from his constituency or district, I will be obliged to do so. But giving national names and figures, I think is not in the interest of the State.

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

**Mr. Speaker:** Order, hon. Members! This matter must rest there. I will give directions on it tomorrow at 2.30 p.m.

Hon. Members, that then brings us to the end of Question Time!

Next order!

**Mr. Speaker:** Are there any Statements which are ready to be delivered?

## COMMUNICATION FROM THE CHAIR

INFORMATION AND COMMUNICATIONS MINISTER TO DELIVER  
MINISTERIAL STATEMENT AS PROMISED



**Mr. Speaker:** Hon. Members, on the 1<sup>st</sup> September 2010 the Member for Bura, Dr. Nuh did request for a Statement from the Minister for Information and Communications with respect to SMS messages that were being sent to Kenyans. That Statement has not been forthcoming although the Minister at some point claimed to have covered it on the 1<sup>st</sup> September 2010. I have checked the HANSARD records and there is no indication that the Statement was delivered. I, therefore, now direct that the Minister delivers that Statement on Tuesday next week.

I would like the Deputy Leader of Government Business to take that information to the Minister.

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, we will communicate the same.

**Mr. Speaker:** Very well! Please, do so, so that he comes with it on Tuesday at 2.30 p.m.

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

**Mr. Speaker:** What is it Member for Vihiga?

Dr. Nuh, your matter is addressed!

**Mr. Chanzu:** Mr. Speaker, Sir, about two weeks ago, I asked for a Ministerial Statement from the Minister for Transport regarding a fatal accident that took place and he promised to bring it.

**Mr. Speaker:** Minister, now that you are here, when will it be ready?

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I believe the day was Thursday. Today is Wednesday.

**Mr. Speaker:** Very well! So will you have it on Thursday this week?

**The Minister for Transport** (Mr. Kimunya): Tomorrow, Mr. Speaker, Sir.

**Mr. Speaker:** Very well! It is so ordered.

## POINTS OF ORDER

### OMISSION OF PRIME MINISTER'S TIME FROM THE ORDER PAPER

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. Today is a Wednesday and I have not heard anything about the Prime Minister's Time. Although he is not here, I think the Standing Orders require that in his absence, one of the deputies address that issue.

**Mr. Speaker:** Order, Member for Imenti Central! I have also not received any indication that the Prime Minister would be issuing a Statement or answering a Question. I have previously addressed myself to the provisions of Standing Order No.34, I think to the satisfaction of the House. I gave an opinion on it and gave appropriate directions. It is not mandatory. In a nutshell, that is what I said. That will remain the position.

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

**Mr. Speaker:** What is it Member for Ainamoi?

### INSECURITY IN KERICHO

**Mr. Langat:** Mr. Speaker, Sir, about a month ago, I requested for a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security regarding the insecurity in Kericho. It has not come despite the promise at that time that it will come within a week.

**Mr. Speaker:** Mr. Amos Kimunya!

*(Mr. Ojode stood to address the House from the Opposition Benches)*

The Assistant Minister is here!

Order, Assistant Minister, you cannot speak from that side!

*(Mr. Ojode crossed the Floor to the Government side)*

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, the day I was supposed to issue this Statement, the hon. Member was not in the House.

Yesterday, I mentioned to him that the Statement is ready and I can give it out as and when he wants it. He had not communicated to me on when he wants me to give the Statement. It is on record that whenever an hon. Member asks for a Statement we have to issue it when he or she is in the House.

**Mr. Speaker:** Can you give it tomorrow afternoon? Member for Ainamoi, is that good for you?

**Mr. Langat:** That is okay, Mr. Speaker, Sir.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): On a point of order, Mr. Speaker, Sir. Tomorrow, I have another sensitive Statement which I have to make. Could I do this on Tuesday or Wednesday next week?

**Mr. Speaker:** Member for Ainamoi, is Tuesday at 2.30 p.m. okay with you?

**Mr. Langat:** Mr. Speaker, Sir, I would appreciate if he does it tomorrow.

**Mr. Speaker:** Order, Member for Ainamoi! You have heard the reason the Assistant Minister cannot deliver it tomorrow.

**Mr. Langat:** It is okay, Mr. Speaker, Sir.

**Mr. Speaker:** Very well! It is so ordered. The Statement will be given on Tuesday next week.

That then brings us to the end of Statements!

Next order!

## COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

*[Mr. Speaker left the Chair]*

IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Mr. Imanyara) took the Chair]*

THE FINANCE BILL

*(Clause 2 agreed to)*

*Clause 3*

**Mr. Koech:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 3 of the Bill be deleted.

Mr. Temporary Deputy Chairman, Sir, Clause 3 intends to re-appeal Section 91(a) (1) which provided for the packaging of alcoholic drinks to a minimum of 250 milliliters. When this section was introduced it was courtesy of the request from the Kenya Secondary Schools Heads Association, of which I was a member. It was intended to ensure that our children do not access alcohol. When this was introduced, it cut down the issue of alcohol abuse by students in schools. I want to request my colleagues that we delete Clause 3. I am aware that it could have fallen under the Weights and Measures Act, but it is not provided for there as we speak today. I would request my colleagues and the Minister to consider the children of the Republic of Kenya.

**The Temporary Deputy Chairman** (Mr. Imanyara): Minister, what do you have to say to that one?

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I would plead with the hon. Member that on the particular thing he is trying to cure, the Committee is also addressing itself to the same issue in one of the amendments that have been proposed by the Committee. So, I would plead that we allow the amendment by the Committee to go through. The issue he is trying to deal with, which falls under the Weights and Measures Act, is already being addressed and will be cured by this particular amendment by the Committee. On the issue of weights and measures, we have now restored the Authority.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Koech, have you talked to Mr. Chris Okemo regarding that issue?

**Mr. Koech:** Mr. Chairman, Sir, I have already discussed it with the Chairman of the Committee, hon. Chris Okemo, and he said that he did not know that I had already introduced this amendment. The proposal by hon. Chris Okemo is trying to reduce the packaging from 250 millilitres to 200 millilitres, and we are in agreement that there is need for some consultation and some research to look into whether reducing the packaging to 200 millilitres will not again serve to confirm our fears. We are in agreement that he is going to withdraw his proposed amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): Let us hear hon. Okemo.

**Mr. Okemo:** Mr. Temporary Deputy Chairman, Sir, if you look at hon. Koech's amendment and my amendment, you will realise that the difference is that the market today is actually selling sachets of 200 millilitres. The 250 millilitre sachets are not there, even though it is being used as a benchmark for control of consumption of alcohol by school children and others. So, if we agree between ourselves, the effect is that it becomes a controlling agent. Secondly, it is the reduction from 250 millilitres to 200

millilitres, which actually exists on the market. So, maybe, mine goes a little further. It does not contradict hon. Koech's amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): If we succeed in deleting the proposed words, there will be nothing to amend.

**Mr. Okemo:** Mr. Temporary Deputy Chairman, Sir, what I am saying is that on second thought, my amendment actually goes further than hon. Koech's. What his amendment basically means is that the control is going to be removed away from the KRA to the Weights and Measures Authority. That is really what his---

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Koech is asking for total deletion of Clause 3. You are seeking an amendment of Clause 3. If his Motion is carried, there will be no Clause 3 to amend.

**Mr. Okemo:** Mr. Temporary Deputy Chairman, Sir, I agree with you. That is why I am now suggesting that we adopt my amendment. That is on second thought because mine does more than what Mr. Koech's amendment seeks to do. It will do exactly the same thing, but it will go further.

**Mr. Koech:** Mr. Temporary Deputy Chairman, Sir, the purpose of us being here is to consult and look at the best way forward. What my colleague is actually saying is that if it is true that they are now selling in 200 millilitre packages, then for sure, we are saying that Kenyans have actually been doing this illegally because the law is very clear that the minimum packaging is 250 millilitres. I have no problem. It is good that the Minister for Education is here. We can all agree. We are leaders. My concern is to safeguard the child of the Republic of Kenya. If by allowing the new amount seeking to reduce the packaging to 200 millilitres--- I do not know whether it is true, because I do not have any evidence. Maybe, we can have other hon. Members' views, because we are debating for the good of this country.

**The Temporary Deputy Chairman** (Mr. Imanyara): So, are you withdrawing your proposed amendment?

**Mr. Koech:** Mr. Temporary Deputy Chairman, Sir, maybe, we can gauge the mood of the House; if you could allow one or two other hon. Members, especially the Minister for Education and the Deputy Prime Minister and Minister for Finance to speak on the same, because all of us are here for the children.

**The Temporary Deputy Chairman** (Mr. Imanyara): Waziri, we are in the Committee of the whole House, but what do you have to say?

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, once again, I would plead with the Chairman of the Departmental Committee on Education to allow hon. Okemo's proposal to go through. It is actually a superior proposal, and I think it deals with the concerns that hon. Koech has. So, I plead with the hon. Member to withdraw his amendment.

**Mr. Koech:** Mr. Temporary Deputy Chairman, Sir, I agree totally. Let us all ensure that hon. Okemo's amendment goes through.

*(Proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Okemo, it is now your turn to move your amendment.

*Clause 3*

**Mr. Okemo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended by deleting the words “by repealing Section 91A” and substituting therefor the words “in Section 91A (1) by deleting the words “two hundred and fifty millilitres” and substituting therefor the words “two hundred millilitres.”

*(Question of amendment proposed)*

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 3 as amended agreed to)*

*Clause 4*

**Dr. Kones:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended—

- (a) by inserting the words “in accordance with subsection (5)” immediately after the word “prescribe” appearing at the end of the proposed new subsection (4) of Section 95;
- (b) by inserting the following new subsection immediately after the proposed subsection (4) of Section 95:-
  - (5) A notice made under Subsection (4) shall-
    - (a) come into operation upon the expiry of six months from the date of publication in the Gazette; and,
    - (b) be made by the Commissioner only after consideration of the relevant international standards and practice.

Mr. Temporary Deputy Chairman, Sir, the idea behind this amendment is that we need to give a grace period within which these companies are supposed to introduce the metering devices that have been proposed by the Minister. The effect is that we are giving them a six months grace period for them to introduce those metres. This is also to ensure that the metres that will be introduced meet the required international standards.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment because, by proposing a six months grace period, the hon. Member is assuming that that period of time is adequate for a person to install, first and foremost, such a device. Secondly, the hon. Member seems to doubt the ability of the Commissioner to act judiciously and reasonably

when issuing a Gazette Notice. Again, by prescribing the timeframe, in the principle of the law, it would unduly tie the hands of the Commissioner. For example, where circumstances warrant a period of time longer than six months, the taxpayer will ultimately be greatly disadvantaged.

Secondly, the issue of standards is a matter that is under the domain of the Kenya Bureau of Standards, and the Commissioner would not be in a position to determine whether the device meets any standards, including international standards. In any case, locally manufactured or imported goods must comply with the Standards Act.

So, I beg to oppose this particular amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Kones, do you have anything to say on what the Deputy Prime Minister and Minister for Finance has said?

**Dr. Kones:** Mr. Temporary Deputy Chairman, Sir, the idea is to remove ambiguity. We do not want to say that we doubt the Commission, but we have to be clear in the law; that we are giving them a certain period of time as to when this law will come into effect. So, giving them six months is not to say that we doubt the ability of the Commissioner to act judiciously. Issues of standards are very critical. We have seen some cases in the past where devices such as motor vehicle seat belts were imported into the country, but they did not meet the required standards. So, by specifying in the law that the metres be of certain standards, we are just trying to be very sure that we provide the necessary metres for these people.

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, we are supporting this amendment by Dr. Kones. However, the Deputy Prime Minister and Minister for Finance has said that if we allow the amendment, it is going to hurt the taxpayer. Can he tell us how the taxpayer is going to be hurt, so that we can change our minds? Otherwise, this is a good amendment.

**Mr. Langat:** Mr. Temporary Deputy Chairman, I think the amendment seeks to make sure that taxpayers are given enough time, at the very minimum six months, because the amendment seeks to make it happen at the expiry of six months. So, after six months, the Commissioner has a leeway to give the notice that he wants to give. On standards, everything must comply with the standards if we have to have a standardized way of doing things. Therefore, the Deputy Prime Minister and Minister for Finance should accept this amendment because it will help him manage this matter.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Minister, do you want to say anything else?

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, what if, for example, a taxpayer cannot install one of those devices within that six months period and there is need to extend? So, we are just allowing for flexibility and I was asking the hon. Member to allow that flexibility because cases will differ. Secondly, when it comes to a question of standards, the Kenya Revenue Authority (KRA) is not the standards body. We would assume that all these devices must meet those standards which are not set by the KRA. Those standards are set by the Kenya Bureau of Standards (KEBS). So, one would assume that any device that is installed has met those standards because the Commissioner does not have the capacity to determine whether a device has met the standards or not except the fact that it should have the KEBS stamp. This is because the Commissioner does not have the instruments to determine whether a device meets the standards.

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Kones, are you persuaded?

**Dr. Kones:** No, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Imanyara): That is okay for the House. I will give Mr. Koech the final say on this.

**Mr. Koech:** Mr. Temporary Deputy Chairman, Sir, I have listened to the Deputy Prime Minister and Minister for Finance. I am just picking up from Dr. Khalwale. On the six months grace period, our understanding is to ensure that we do not allow the officers to go harassing these people before they settle down.

*(Applause)*

I am reading from him that he is even ready to give them up to one year or three years. The problem with that is that his officers can go and start using the law tomorrow and thus hurt the same taxpayer he really wants to protect immediately. I beg that the Deputy Prime Minister and Minister for Finance supports this.

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

*(Clause 4 as amended agreed to)*

*(Clauses 5, 6, 7, 8, 9 and 10 agreed to)*

*Clause 11*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 11 and substituting therefor the following new clause-

**Amendment of Section.** The Value Added Tax Act is amended in section 19(A)  
**19A of Cap.476.** 11 by deleting the proviso to subsection (2) and  
Substituting therefor the following new proviso-

Provided that –

- (a) no tax shall be withheld from suppliers who are subject to turnover tax as provided under Section 12C of the Income Tax Act, upon presentation of a valid turnover tax registration certificate;
- (b) the tax to be withheld by the Ministry responsible for roads, the Kenya Roads Board, the Kenya Rural Roads Authority, the Kenya Urban Roads Authority and the Kenya National Highways Authority shall be fifty per cent of the tax payable on the purchase made by these institutions.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 11 as amended agreed to)*

*(Clauses 12, 13, 14, 15, 16, 17 and 18 agreed to)*

*Clause 19*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 19 of the Bill be amended by deleting the proviso to the proposed Section 5(4) and substituting therefor the following-

Provided that –

- (a) that this paragraph shall only apply in respect of amounts not exceeding two hundred and forty thousand shillings for each year of service;
- (b) this paragraph shall not apply to any person who is eligible for deductions under Section 22A.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 19 as amended agreed to)*

*(Clauses 20, 21, 22, 23 and 24 agreed to)*

*Clause 25*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-



THAT, Clause 25 of the Bill be amended by deleting paragraph (b) of the proposed proviso and substituting therefor the following new paragraph-

(c) this section shall not apply in the case of penalties imposed for breach of any other provision of this Act.

*(Question of the amendment proposed)*

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

*(Question that, the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 25 as amended agreed to)*

#### *Clause 26*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 26 of the Bill be amended by deleting paragraph (b) and substituting therefor the following-

(b) by deleting the proviso to subsection (1) and substituting therefor the following new proviso-

Provided that –

- (a) the interest chargeable under this subsection shall not exceed one hundred percentum of the tax owing; and
- (b) the penalty referred to in this subsection or imposed under any other section of this Act shall not attract any interest.

*(Question of the amendment proposed)*

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

*(Question that, the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 26 as amended agreed to)*

*(Clauses 27, 28, 29, 30, 31, 32, 33, 34,  
35, 36, 37, 38, 39 and 40 agreed to)*

#### *Clause 41*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 41 of the Bill be amended –

- (a) by deleting the expression “24(2)” appearing in paragraph (b) and substituting therefor the expressions “24(1)”;
- (b) by deleting paragraph (c).

*(Question of the amendment proposed)*

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

*(Paragraph (b) deleted)*

*(Question that, the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 41 as amended agreed to)*

*(Clauses 42 and 43 agreed to)*

*Clause 44*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 44 of the Bill be amended by deleting paragraph

- (b).

*(Question of the amendment proposed)*

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

*(Clause 44 as amended agreed to)*

*(Clauses 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59,  
60, 61, 62, 63, 64, 65, 66, 67 and 68 agreed to)*

*Clause 69*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 69.

*(Question of the amendment proposed)*

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

*(Clause 69 deleted)*

*(Clauses 70, 71, 72, 73, 74 and 75 agreed to)*

*Clause 76*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 76 of the Bill be amended in the proposed Section 13A-

- (a) by deleting the words “or other institution”;
- (b) by renumbering the existing provision as subsection (1) and inserting the following new subsection-  
(2) A regulatory authority to which this section applies shall be exempt from income tax.

*(Question of the amendment proposed)*

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

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

*(Clause 76 as amended agreed to)*

*(Clauses 77, 78, 79, 80, 81, 82, 83 and 84 agreed to)*

*New Clauses*

*New Clause 85*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting new clauses immediately after Clause 84 as follows-

**Insertion of a new Section 143A to Cap. 472** 85. The Customs and Excise Act is amended by inserting the following new section immediately after section 143-

**Exemption from  
Excise duty on water**

**Provided to the community 143A.** Subject to the provisions of this Act, water, other than water which is bottled or otherwise packaged for sale, shall be exempt from Excise Duty.

*(Question of the new Clause proposed)*

*(New Clause read the First Time)*

*(Question, that new Clause be read  
a Second Time, proposed)*

*(Question, that the new Clause be read  
a Second Time, put and agreed to)*

*(The New Clause was read a Second Time)*

*(Question that the new Clause be added  
to the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): I notice that hon. Midiwo also has an addition therein.

*New Clause 85*

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill, be amended by inserting a new clause immediately before Clause 33 in Part V of the Bill as follows-

**Amendment of Section**

**42 of Act No.12 of 2001 85.** The Copyright Act is amended by deleting Section 42 and substituting therefor the following-

42(1) An inspector of the Board, duly authorized in writing by the Board and wearing a visible badge of office, may, following an inspection under this Act, notify a police officer of any offence suspected to have been committed under this Act and request such police officer to arrest the person suspected of having committed the offence.

(2) A police officer who is notified of an offence suspected to have been committed under sub-section (1), may, upon obtaining a warrant of arrest, effect an arrest and may thereupon confiscate any offending material necessary for evidence before a court.

The purpose of this amendment is to benefit this country and Members of this Parliament. The Copyright Act allows ordinary citizens, against the new Constitution, to go around market places and towns arresting and detaining people without warrants purportedly because they are violating copy right laws. They collect money in all our

constituencies. Just to bring it home, two weeks ago, along Langata Road, a lady was arrested by police because of playing pirated music in her car without a warrant of arrest. This amendment puts the law in its right perspective and makes this law in line with the new constitutional dispensation.

*((Question of the new Clause proposed))*

*(New Clause read the First Time)*

*(Question, that new Clause be read  
a Second Time, proposed)*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I have had discussions with my colleague on this particular issue and I have tried to impress upon him that this is really not a matter that falls under finance. I have no problem with his argument, but really, this is an enforcement issue. As such, it is misplaced in the Finance Bill. It should be raised under the Miscellaneous (Amendment) Bill because that is where the matter lies. I would plead with him to allow that this be brought up under the Miscellaneous (Amendment) Bill because it is not an issue to do with finance at all. So, it is an enforcement issue. I agree with his argument, but I think it is misplaced because it is the Attorney-General who should handle this particular issue and not the Ministry of Finance.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Midiwo, what do you have to say about that?

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, I have consulted extensively with the Legal Department of Parliament and that is how I got to this point. The Copyright Act allows this body to collect taxes from Kenyans who are running businesses. In fact, last year, they even attempted to have the Kenya Revenue Authority do it on their behalf. It is all in the Act. The Legal Department of Parliament has said that this is in the right place and whether the Minister is concerned or not, is neither here nor there. We cannot live in a country where people walk into a barber shop in the village and demand Kshs10,000 and confiscate everything. We cannot live in a country like that. It is our duty to make laws and make it right. I believe we will be doing the right thing as Parliament.

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Temporary Deputy Chairman, Sir, I support the amendment. We must live up to the spirit of the new Constitution, more so, on the Chapter on Bill of Rights. Days are gone when people who purport to be Government officials or agencies walk into your shop, confiscate your goods and go away with them. All that we are asking is that we must live within the spirit of the new Constitution under this amendment.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, while I appreciate the concerns raised by hon. Midiwo, I would wish to oppose this amendment, not because I do not believe in what he is talking about but, perhaps, because of the route that we are taking to effect such a fundamental amendment.

Mr. Temporary Deputy Chairman, Sir, this House has not had the benefit of having a substantive debate on this matter. This is a matter that is bringing in issues of

arrest. It is giving the police powers to arrest and we are using the Finance Bill to bring it in, whereas we should actually be using an amendment to the Penal Code or within Miscellaneous Amendments, where this House will have adequate time to deliberate on the matter. He is basically talking of “a police officer will be able to or may arrest and thereupon confiscate any offending material.” By this coming through the Finance Bill, we will then be asking the Minister for Finance: “Since it passed through the Finance Bill, how far have you implemented these provisions.” This is because the route through which a matter passes also has a bearing on the person responsible for implementing the law coming through that route.

Mr. Temporary Deputy Chairman, Sir, I believe in the last Parliament, the Speaker at that point did rule that there are matters that cannot be brought through the Finance Bill, unless they have come directly from the Treasury. This is because the Treasury now knows that they are also responsible for the oversight of those matters.

Mr. Temporary Deputy Chairman, Sir, on that basis, I would like to persuade the House that we remove this matter from here and then get the route for it to come in, so that by the time we amend the appropriate law – the Copyright Act – which is not administered by the Ministry of Finance, we will also have the Minister in charge of the Copyright Act and the Committee in charge of looking at these matters. They will be given the advantage of looking at this amendment and then guide us accordingly in terms of: Is this what we should be doing or should we be doing more or less?

Mr. Temporary Deputy Chairman, Sir, it is more of deferring this matter rather than opposing it. Let us get the appropriate route to effect this amendment, so that we are actually not seen as if we are hijacking the Bill that is with us in the Committee, to pass a law that should be coming through another Bill.

**Mr. Shakeel:** Mr. Temporary Deputy Chairman, Sir, I rise to support the amendment. I think this Copyright Bill together with such other Bills and words have been supported by people outside this country. The fact of the issue is that we have done a lot of research on copyright and other things. When the Copyright Bill comes then, perhaps, this can be moved out. However, at this moment in time, the Ministry of Finance is best placed to make sure that there are no violations by certain people who just want to go and arrest on the pretext of copyrights. Many of the people who do that are actually part and parcel of the Kenya Revenue Authority (KRA) and others.

Mr. Temporary Deputy Chairman, Sir, I actually oppose what the Minister is saying and I am sorry that the former Minister seems to have taken the same route of bowing to pressure and not making sure that copyright violations are properly dealt with. I am sorry we cannot allow that. Thank you.

**Mr. Koech:** Mr. Temporary Deputy Chairman, Sir, when we are in this House, we really want to be fully convinced. Having listened to my colleague, hon. Midiwo, he has actually done some bit of research on this. Listening to our very able Minister, he has concurred with him that we need this law. With that spirit that we need the law and the fact that the Copyright Act really falls within his domain, could we agree on this?

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** On a point of order, Mr. Temporary Deputy Chairman, Sir. The Copyright Act does not fall under the Ministry of Finance at all.

**An hon. Member:** Which Ministry does it fall under?

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): If I am not wrong, it is the Attorney-General's Chambers; the State Law Office.

**Mr. Koech:** Mr. Temporary Deputy Chairman, Sir, I was addressing the Minister for Finance who is also the Deputy Prime Minister of the Republic of Kenya. In that spirit that we have in the House and the fact that the Finance Bill comes every year, could we try this route this year and if it does not work, we can remove it next year?

**Dr. Kones:** Mr. Temporary Deputy Chairman, Sir, I rise to support this amendment.

Mr. Temporary Deputy Chairman, Sir, what is happening really is that officers from the Copyright Society of Kenya are going round shops impounding radios and other electronic goods in the name of having violated the Copyright Act. Since they are going round and purporting to be collecting levies or taxes on behalf of you, then for sure this is the way to go.

Mr. Temporary Deputy Chairman, Sir, I support the amendment.

**The Minister for Education** (Prof. Onger): Mr. Temporary Deputy Chairman, Sir, I have listened very attentively and I think we all do agree that anything to do with copyrights, whether it is intellectual property rights or copyrights, rightfully belongs to the Kenya Intellectual Property Office, the State Law Office and the Ministry of Trade. I think one of the biggest problems we have in this House is trying to take laws that pertain, for instance, to education and then applying them to the Ministry of Finance.

Mr. Temporary Deputy Chairman, Sir, we are strictly dealing with the Finance Bill here. I think this particular amendment does not fall within the laws that govern the Finance Bill itself. Therefore, in the interest of moving forward, I think we should drop that amendment and bring it up under the Miscellaneous (Amendments) Bill because there is a provision for it.

Mr. Temporary Deputy Chairman, Sir, I oppose this amendment.

**Mr. Okemo:** Mr. Temporary Deputy Chairman, Sir, the Finance Bill deals with among other things revenue collection measures, taxation and matters related thereto. This is a matter related thereto. So, I do not really believe that you can use an escape route to try and avoid discussing this.

Mr. Temporary Deputy Chairman, Sir, what is involved here is people called inspectors going round harassing wananchi under the name of collecting certain revenues. We are trying to make sure that the police, using the relevant laws, should be the people who have the power to arrest and not just anybody under the Copyright Act.

**The Temporary Deputy Chairman** (Mr. Imanyara): I will let the House make the decision now. So, I will put the Question.

*(Question, that the New Clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the New Clause be added to the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, the consequence of this is that the entire Bill will have to be renumbered in order to reflect the new additional Clause 85 but that will be done by the Clerk's Department.

Mr. Minister, I believe you are introducing a new Clause 86.

*New Clause 86*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting New Clause 86 as follows:-

**Amendment of Section 149A**

Of Cap.472. **86.** Section 149 (A) of the Customs and Exercise Act is amended by inserting the following new subsection immediately after subsection (2)-

(3) Where excise duty has been paid on spirits which have subsequently been used for manufacturing unexcisable goods, the exercise duty previously paid shall, on application by the manufacturer, be refunded by the Commissioner:-

Provided that this subsection shall apply only to where the manufacturer is licensed by the Commissioner.

This amendment seeks to allow users of spirits who manufacture unexcisable goods to reclaim refund on excise duty paid by them on the spirits.

*(Question of the new clause proposed)*  
*(New Clause read the First Time)*

*(Question, that the new clause be read a*  
*Second Time, proposed)*

**Mr. Shakeel:** I oppose this amendment because I am not clear as to why the Minister wishes to have this clause included in the Bill. It appears that some manufacturer somewhere put a proposal forward to the Minister so that they could be accommodated. If somebody has paid excise duty, why would the Minister want manufacturers of unexcisable spirits to pay tax on spirits because they are allowed to import non-excisable spirits? It appears that this is one of those amendments that are actually designed to help some particular manufacturing agents. I am not sure that I am convinced that this is the way to go. Let them import non-excisable spirits and let us not talk about refunds. Thank you.

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): This is actually applying to small-scale industries. It really applies to the spirits that are used for burners in restaurants and do not have the capacity to claim the refunds. This is not about any larger manufacturer. In actual fact, it is opening a window for those small restaurants and caterers and people like that who use this kind of spirit because they are the only



people who use this kind of spirit to be able to claim back their refunds. But if the House does not feel that it is prudent, we can do without it.

**Mr. Langat:** Mr. Temporary Deputy Chairman, Sir, I am not opposing it but I am only standing to ask the Minister to also be consistent in other things. For example, tea export is zero-rated but when you go to transport of the tea itself, VAT is paid. I think we need to be consistent when treating of all these matters so that we do not say all the exports are zero-rated yet VAT is imposed on transportation.

*(Question, that the New Clause be read  
the Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to  
the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Minister, you have a new Clause 87.

*New Clause 87*

**The Deputy Prime Minister and Minister for Finance:** Mr. Temporary Deputy Chairman, Sir, I beg to move that a new Clause 87 be added to the Bill as follows:

**Amendment of the**

**First Schedule to Cap.470. 87.** The First Schedule to the Income Tax Act is amended by deleting paragraph 51 and substituting therefor the following new paragraph-

**51.** Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.

This amendment seeks to exempt interest income earned on bonds, notes and similar securities used to raise funds for development of infrastructure and other social services.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be  
read a Second Time, proposed)*

*(Question, tha the new clause be read a  
Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new Clause be added to the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, we have now finished the new clauses. We go to the Schedule and the Chairman of the Committee, hon. Okemo, will move the amendment.

*Schedule*

**Mr. Okemo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:  
THAT, the Schedule to the Bill be amended by inserting the following new paragraph immediately after the items at paragraph 2 –

3. Delete the existing PART II and insert the following new PART II

**PART II**

<b>CATEGORY</b>	<b>DESCRIPTION</b>	<b>RATE OF DUTY</b>
<b>A</b>	Plain cigarettes or cigarettes with RSP of up to Shs2,500 per mille	Shs700 per mille
<b>B</b>	Soft cap cigarettes with RSP of Shs2,501 to Shs3,500 per mille	Shs1,000 per mille
<b>C</b>	Soft cap cigarettes with RSP of Shs3,501 to Shs4,500 per mille	Shs1,500 per mille
<b>D</b>	Hinge lid cigarettes or cigarettes with RSP of more than Shs4,500 per mille	Shs2,500 per mille

**(RSP means Retail Selling Price)**

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Minister, do you have anything to say?

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I stand to oppose this particular amendment. Basically, changing the taxation on cigarettes from physical characteristics to retail selling prices is likely to lead to a total loss of excise revenue on locally manufactured cigarettes of about Kshs2 billion. This is excluding the loss from imported cigarettes which is estimated to be about Kshs1.5 billion. We are talking about Kshs3.5 billion that could be put to use for development in this country.

*(Loud consultations)*

There is somebody using unparliamentary language here.

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Order, hon. Members! Allow the Minister to give his contribution.

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Thank you, Mr. Temporary Deputy Chairman, Sir.

**Mr. Mbadi:** On a point of order, Mr. Temporary Chairman, Sir. You heard the Deputy Prime and Minister for Finance say somebody is using unparliamentary language in the House. In this House, there is no somebody. We have hon. Members. Is it in order for the Deputy Prime Minister and Minister for Finance to refer to an hon. Member as somebody?

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Order!

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir. Let me clarify and apologise. I was referring to hon. Shakeel.

This will also cause administrative challenges as the taxman now has to keep on varying the prices in the market. There is also an influx of imported cigarettes. That will also affect the local producers as well as excise revenue. I plead with the Chairman of the Departmental Committee on Finance, Planning and Trade to do away with this particular amendment and allow for further discussions going forward on this particular matter.

Mr. Chairman, Sir, I think the total loss of revenue would be detrimental to our own development agenda. So, I beg to oppose.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Okemo, what do you have to say to what the Deputy Prime Minister and Minister for Finance has said? Could you respond to that particular issue?

**Mr. Okemo:** Mr. Temporary Deputy Chairman, Sir, I do not think that the Deputy Prime Minister and Minister for Finance has given sufficient background to the problem and what we are really trying to address. This problem is as old as the year 2007. The main problem in this case is not the question of revenue or not. We are trying to address the issue of taxation on an equitable basis so that everybody receives equality of treatment. If you look at what has happened in the past, you will find that in 2007 when there were no physical characteristics but there was retail selling price as the unit for classification, there was an attempt to revise taxes and the four categories that are there were still there only that the classification is different. An attempt was made by Treasury to revise the rates of excise tax and we were very surprised. This is because the increases that were suggested for Class A were from Kshs500 to Kshs700 and Class B – from Kshs800 to Kshs1,200 which was 50 per cent increase. For Class C, they increased from Kshs1,200 to Kshs1,500 which was a 30 per cent increase. On Class D, which is the most expensive classification, they increased it from Kshs2,000 to Kshs2,500 which was a 40 per cent increase. We wondered why one specific class had a 50 per cent increase than all the others. So, we came to only one conclusion which was discriminatory. There cannot be any other explanation. So, we went ahead and convinced the Treasury, as a Committee in the 9<sup>th</sup> Parliament. These were the revised rates of increased Excise Tax. They increased from Kshs500 to Kshs700; from Kshs800 to Kshs1,000; from Kshs1,200 to Kshs1,500 and from Kshs2,000 to Kshs2,500. Here we saw some equality of treatment. If you look at those increases, you will find that they were fair and equitable and every classification was treated equally. After that we agreed with the Treasury that they go and implement the increases and in the process they went and sneaked in something called the

physical characteristic called “cigarette length”. They sneaked it in because we realized after we had passed it here and after we had trusted them. When you talk about physical characteristics, even in Britain, Excise Tax is based on retail price and weight of the cigarette. In Uganda it is based on the packaging characteristics and the weight of the cigarette. In Rwanda it is a straight percentage. In Kenya, we have come up with something very strange called “length of cigarette”. When 98 per cent of the cigarettes are 84 millimetres and above, why do you introduce 72 millimetres? If you check you will find that 72 millimetres was only introduced for one reason; to make sure that Mastermind cigarettes were brought from Class B to Class C so that they can pay a higher tax. So, we said that, that cannot be right. Tax must be fair, equitable and the rates have remained the same.

Mr. Temporary Deputy Chairman, Sir, in conclusion, I urge that the amount of tax revenue that is claimed to be lost by this change will be remedied by the other cigarettes moving to a class where they pay less tax and, therefore, the influx of imported cigarettes will be minimized. So, whatever we lose in the tax revenue that will be reduced will actually be compensated for by the cigarettes that will not come in from Uganda and Tanzania.

Mr. Temporary Deputy Chairman, Sir, I would like to support my amendments.

**The Assistant Minister for Agriculture** (Mr. Mbiuki): Mr. Temporary Deputy Chairman, Sir, I strongly beg to support the amendment. It is high time this Government supported indigenous companies vis-à-vis the multinationals. This is a war between multinationals and indigenous companies. We need to go further and protect our home-grown companies so that they can continue to create employment opportunities for our young people. I would like to plead with the Deputy Prime Minister and Minister for Finance that it is high time they created a fair playing ground for all the companies that operate in this country.

With those few remarks, I beg to strongly support the amendments.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I want to oppose this amendment very strongly from a health side. We should increase the cost of cigarettes. We should increase taxes on cigarettes because when you bring down the taxes, the number of children who start to smoke increase.

Mr. Temporary Deputy Chairman, Sir, cigarette-related diseases are the biggest killer in this country and globally. The World Health Organization (WHO) has said that tobacco-related illnesses will cause more deaths than malaria, childhood diseases and all the others combined.

**The Assistant Minister for Livestock Development** (Mr. Duale): On a point of order, Mr. Temporary Deputy Chairman, Sir. We are not discussing the health aspect of cigarettes. We are discussing the financial aspects and we are saying that we need a level playing ground when it comes to taxation.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, we have to look at this as far as the interest of Kenyans is concerned and not the money we make. This is because health is paramount over everything else. I plead with these hon. Gentlemen and Ladies that if we throw the health of Kenyans to the dogs and fight for a certain company, we really betray our nation and children. If there is any revision to the taxation, it should go up and not bring it down so that cigarettes do not flood the country. We will be making nonsense of the Tobacco

Regulatory Act which we passed in this House. We all know the WHO issues and what our scientists have said. Of what use is it to bring down taxes on cigarettes and kill Kenyans and our children with tobacco?

Mr. Temporary Deputy Chairman, Sir, I oppose the amendments.

**Mr. Ruteere:** Thank you, Mr. Temporary Deputy Chairman, Sir, for giving me this opportunity to support the amendments. We should separate the issue of health and the issue of bringing equality to the players in the tobacco industry. If we do not want to create a monopoly, we should create a fair playing ground for everybody. What is happening here is that we want to bring one company and make it enjoy a monopoly by imposing taxation that will kill another indigenous company that is trying to come up. I believe that what was brought in was a research to see how we can kill this one so that we survive. However, let us remember that these companies are all over the country and people will choose which cigarette to smoke. We cannot say that by increasing taxation we will stop smoking. Smoking is voluntary. Whether you stop it or not, people will learn to smoke.

Otherwise, I support the amendments.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, I beg to oppose this amendment.

**Mr. Shakeel:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the Minister in order to mislead the House that Kshs1.9 billion will be lost if this amendment goes through? He is quite aware that Mastermind has got a court order and they have not paid---

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! That is not a point of order.

Continue, Mr. Minister!

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, I beg to oppose this amendment.

In opposing this amendment, I would like to put some matter into perspective. The whole change of excise regime puts emphasis from retail selling price to the characteristics of cigarettes to be in tandem with what is happening in Uganda, which is part of East Africa, as the Chairman of the Departmental Committee of Finance Committee has so ably said, happened when I was active at the Treasury.

Mr. Temporary Deputy Chairman, Sir, I am glad that the Chairman recognized that through a negotiation process in the Committee the rates were harmonized. At that point, it was very clear that by pegging taxation to a selling price, we are basically running the risk of curtailing the capacity of a company to increase the price of its products beyond the ceiling. This is because immediately they go beyond that ceiling, then they have to start paying the higher duty for the same cigarettes.

Mr. Temporary Deputy Chairman, Sir, this issue became very clear in 2008, when the prices of about everything went up. For the cigarettes that were being sold as Class A and B, despite the economic realities of the day, the manufacturers could not sell them beyond a certain price - which is what we are capping here - without attracting a higher tax duty although we are basically talking of the same cigarettes. After thorough research, it was looked at and we said, we must move from pegging duty on bands of prices, which then curtail the manufacturers from raising the prices beyond those bands, to characteristics of cigarettes. For example, if you are to set excise duties of the vehicle on

the selling price, you would basically be saying that any vehicle costing up to certain amount would attract so much duty. But it is actually based on the cc rating because that is the global standard, rather than the price.

Mr. Temporary Deputy Chairman, Sir, I can appreciate the sensitivity that there is one company whose cigarettes currently fall within those bands.

**Hon. Members:** Summarise! Summarise!

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, as I summarise, the important thing for us to note is that as we make this amendment we may think we are actually helping a local company to grow. What we are actually doing is curtailing the growth of that company because if they move the price range because of inflation, change of raw materials, and anything else, it means immediately their cigarettes move up in price from Kshs2,500 per mille to Kshs2501, they start paying the higher tax although the cigarette has not changed. So, we may think we are actually helping, but we are actually not helping.

I would just like to have that on record. One day the company will come saying this House stopped me from raising my prices without having to pay a higher tax for the same cigarette. We need to be aware of that fact. I would like to seriously oppose this amendment and ask the Committee to reconsider it further.

**The Minister for Education** (Prof. Onger): Mr. Temporary Deputy Chairman, Sir, I want to be on record purely on a moral issue. Anything that has the propensity of reducing prices is a clear attraction to our young boys and girls in schools. I am sure the Chairman of the Departmental Committee on Education would bear me out that one of our biggest problems is that some of these companies try to short-change other companies by selling cheaper brands at cheaper prices because they get away with the tax element. These companies are creating potential danger to our schools and other learning institutions.

That is a fact. Even if you do not agree with it, I just want to stand on a moral issue and state that we are treading on highly dangerous grounds.

**The Temporary Deputy Chairman** (Mr. Manyara): I would like the Chairman of the Departmental Committee on Education to respond to that because it was addressed to him.

**Mr. Koech:** Mr. Temporary Deputy Chairman, Sir, I have listened to all the arguments. Let me start with my sister, the Minister for Public Health and Sanitation. My understanding in this country is that we tax cigarettes the highest because you want to discourage the majority of Kenyans from consuming it. I do not want to believe that the argument brought on this proposal is to reduce the prices of cigarettes. It is to bring balance. I still want to insist on ensuring that we continuously increase the taxes on such issues. So, I support the amendment.

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(The Schedule as amended agreed to)*

*(The title agreed to)*

*Clause 1*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 1 of the Bill be amended-

(a) in paragraph (a) by deleting the expression “and 76” and substituting therefor the expression “76 and 87”;

(b) in paragraph (b) by deleting the expression “and 84” and substituting therefor the expression “84, 85 and 86”.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)  
(Clause 1 as amended agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Minister, so that we can deal with this expeditiously can you go to the Insurance Motor Vehicle Third Party Risks amendment Bill, if you are ready.

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I was ready to proceed, but after consultations with the Chair of the Finance Committee and members of the legal Committee, we have decided that we need to hold another meeting tomorrow. So, I think in the spirit of moving together, we can, therefore, defer this particular order to tomorrow afternoon.

**The Temporary Deputy Chairman** (Mr. Imanyara): So, I would defer that particular order relating to Insurance Motor Vehicle Third Party Risks amendments Bill, Bill No.10 to tomorrow.

*(Committee Stage of the Insurance  
(Motor Vehicle Third Party Risks)  
(Amendment) Bill deferred)*

Is it the same case with the Tea amendment Bill?

**The Minister for Agriculture** (Dr. Kosgei): Mr. Temporary Deputy Chairman, Sir, what you heard is true.

The problem has been that this Bill went through the House a long time ago. At no time has the Departmental Committee called a meeting for us to harmonize our positions. However, I have been in touch with it several times and there was a Member who had his own Bill and we agreed after his contributions here, we would consolidate. Somewhere along the line when I did not get any information from the other side, I actually incorporated all the amendments and sent them to the Clerk. But they are not

here. So, they are not able to see it and I am not able to see them. So, let us defer it to next week, so that we have time.

**The Temporary Deputy Chairman** (Mr. Imanyara): We defer it to next week or tomorrow?

**The Minister for Agriculture** (Dr. Kosgei): Tomorrow it cannot be done because we still have a House Business Committee meeting this evening.

**The Temporary Deputy Chairman** (Mr. Imanyara): That is okay. I will leave the matter to the House Business Committee.

*(Committee Stage of the Tea  
(Amendment) Bill Deferred)*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Finance Bill and its approval thereof with amendments.

**The Minister for Education** (Prof. Ongeru) Seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

### **THE FINANCE BILL**

**Mr. Imanyara:** Mr. Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the Whole House has considered the Finance Bill and approved the same with amendments.

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Public Health and Sanitation** (Mrs. Mugo) seconded

*(Question proposed)*

*(Question put and agreed to)*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Finance Bill be now read the Third Time.

**The Minister for Public Health and Sanitation** (Mrs. Mugo) seconded



*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

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

### **MOTION**

#### **ADOPTION OF 2006/2007 PAC REPORT**

THAT, this House adopts the Report of the Public Accounts Committee on the Government of Kenya Accounts for the Year 2006/2007 laid on the Table of the House on Thursday, 25<sup>th</sup> November 2010.

*(Dr. Khalwale on 30.11.2010)*

*(Resumption of Debate interrupted on 7.12.2010)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Kaino, you have a balance of 18 minutes.

Proceed!

**Mr. Kaino:** Mr. Temporary Deputy Speaker, Sir, thank you very much for allowing me to continue debating on this very, very important Public Accounts Committee (PAC) Report. Yesterday when I was concluding before I was caught up with time, I was talking about the foreign debts that we have in this country which have increased to trillions. We are seeing this as a big problem.

We are impressed with the reforms that are taking place in the country in various sectors, even in the finance sector. When it comes to foreign debts that we have, it is very important that things are brought to this House before any money is borrowed so that we know whether it is a priority or not; why are we borrowing this money and also the type of work that this money will come and do in this country. We have heard that in the past, money has just been borrowed and we only see our debts going up all the time. Governments are coming in only to find the country heavily indebted by the former Government. It is very important that we discuss that issue very, very seriously so that we do not drive on roads that were actually build on debts alone. So, anything that we are doing, we are actually indebted even when we are walking. It is very dangerous!

Mr. Temporary Deputy Speaker, Sir, yesterday, I talked about the work done by the PAC. These people work very hard; they did a lot of work so that those Members who will be in the Committee later on, even in the next Parliament will have an easy job to do.

*(Applause)*

The job that has been done by the PAC is excellent! If you can see the record of these hon. Members, you will actually conclude that if they are not ranked number one, they are number two in this Parliament, if there is anything to do with ranking.

I am saying that because they have held about 100 meetings and in these meetings, they have had to ask a lot of questions and study some reports. They have done a lot in the process and if we continue like that, we are going to save this country a lot of money which looters are actually trying to take.

Mr. Temporary Deputy Speaker, Sir, we have had several major scandals in this country, but if the PAC, the Public Investments Committee (PIC) and other watchdog Committees do their work properly and very serious people are actually put in these Committees, this country is going to save a lot of money which is going to very, very greedy hands.

This is a very rich country. We have a lot of resources; we have a lot of income – we are generating a lot of money in this country. But, unfortunately, this money goes into the wrong hands. Most of the officers who are put in charge of these finances are corrupt. I do not want to name anybody. In the PAC, we have seen that this country is very rich and if we are very firm in our scrutiny and in taking care of these resources, the country shall advance to the level of developed countries. We should not be an under-developed or even developing country. We should be in the higher positions as far as development is concerned.

With those few points that I have just raised, I wish to point out that I am supporting this very important Report of the Public Accounts Committee.

Thank you.

**Mr. Langat:** Mr. Temporary Deputy Speaker, Sir, I rise to support this Report. I want to congratulate the Committee for doing a very thorough job. The Public Accounts Committee has done the Report every year. When you read the Report, it is very obvious that the same issues that have been raised over the years continue to be raised. This means that those who are supposed to implement the recommendations of the PAC and the Controller and Auditor-General just take it for granted. Those who are supposed to implement the recommendations of this Committee must ensure that everything is implemented so that we do not have the same audit queries being raised in the report every year.

The issue of public debt has been raised by an hon. Member before. When you read the Report, you will note that we are standing at Kshs1.2 trillion in terms of public debt. This means that those who are supposed to control expenditure are not doing their job. Since external debts are controlled by the External Debts Act, the Government has misused the local debts by borrowing in excess of the public debt. I think in future, local debts should not exceed external debts so that this matter cannot be abused and so that the financial system cannot be interfered with by the Government.

Mr. Temporary Deputy Speaker, Sir, the office of the Controller and Auditor-General should be further strengthened so that they do the job within a given timeframe and bring up the issues so that we can solve them when they are still alive. This will ensure that we do not get to a situation where matters are raised long after they have happened.

On the issue of corruption, the Government should ensure that corruption ends. We are tired of getting this question on expenditure from the Reports of the PAC. We

expect that the Public Financial Management Act will be implemented in accordance with the letter and spirit of the law.

I wish to support the Report.

**Mr. Oyongo Nyamweya:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to make a contribution to this report. I have actually gone through this Report but when I look at it, the Government has a lot of resources. The first challenge which we face is: How do we use the resources that we allocate to various Ministries? Do they serve the intended purpose?

The first point I want to raise is with regard to the procurement of goods at inflated prices. It is apparent from this Report that the Government procures goods from suppliers and in some cases, the goods are not delivered. It is indicated in this report. I have seen a situation where there is no generator but it has been paid for. It raises a serious issue for us as a nation; how do we utilize our resources?

This report will come here, be adopted and yet nothing will be done. For the officers who are concerned, it will be business as usual. Probably the best thing which happens is that when they are mentioned, they are transferred. The transfer does not actually help anybody. It does not bring financial discipline in Government Ministries. I wish that this Report could be acted upon. Some of the officers who are concerned have admitted that they were at fault. We have got imprests being taken by Government officers. A lot of money is outstanding in imprests. Imprest is money which somebody is given to travel. But you will find that when the officer comes back, he is unable to account for it and he keeps quiet. Nothing happens. The issue we have here is that as the Government allocates resources, the enforcement agencies are weak. Either we do not have manpower to supervise these officers or alternatively, nothing is being done the way it should be done.

The Member for Ainamoi talked about the Office of the Controller and Auditor-General. That office needs to be strengthened, given more powers so that when it writes a report, the people who have squandered public funds, people who have bought things at inflated prices, people who have given money to officers and have not paid are made to be accountable. It is very wrong for officers to spend money---

The Chairman of PAC has spent a lot of time to produce a quality Report which is supposed to ask the Government to strengthen its management systems. Unfortunately, this will come out in another Report for Parliament to adopt and no action will be taken.

I urge the Government and the people concerned to take this Report seriously so that action is taken against the people who have squandered public funds. When you go through this Report, you will find that foreign missions, the Ministry of Public Works, the Ministry of Roads and the Office of the President have been mentioned. When you go through this Report, you will note that every Ministry has misused funds. It has become a ritual for us for the PAC to sit, they do a report and nothing is done.

We have another case of incomplete projects. They are all over the country. In every Ministry you go, you will find that money was allocated but the projects were not completed every place you go in this country. Everywhere money for healthcare, of all the institutions, has been squandered. We are talking about the health of human beings. You will find that a dispensary or hospital is not completed. Unfortunately, when it comes to purchase of goods for hospitals, there is an example here of Homa Bay where money for healthcare cost-sharing has been misappropriated and nothing has been done.

You will find the same thing happening in Siaya, Murang'a, Port Reitz and Nyeri District Hospital. When this Report is being done, could the people concerned take appropriate action so that the officers who are concerned in making sure that those funds are used well is implemented? If you go to the Ministry of Home Affairs, you will see that the Prison Department overspent from their budget. You wonder how they overspent. Who authorized them to overspend, that this bill will be paid in the next financial years? Who authorized them? When you read this Report, you will note that various Ministries are overspending. They are incurring expenditure without authority and nothing happens. As we go through this report it is very important that Government Ministries, Ministers and Permanent Secretaries take this Report seriously and act to conserve public funds so that they can be used for the intended purpose.

I support the Report as tabled but I only urge that we are dealing with the accounts for the year 2006/2007. The Committee has tried to bring the Report where it is. But I wish it could be more current so that we know what problem happened last year. The Committee has done a commendable job. They are dealing with the accounts for the financial year 2006/2007. Accounts for the financial years, 2007, 2008 and 2009 have not yet been done.

The nation would like to know who has stolen public funds and what action has been taken.

With those few remarks, I support the Report.

**The Temporary Deputy Speaker** (Prof. Kaloki): I now call upon the Mover to reply.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, I want you to look at the Front-Bench of the Grand Coalition Government as we debate this Motion. The way you are seeing it now, is the way it has been for the last three days that this most important debate has been going on in this House. This makes me to ask the following. Do they know the best international practices when it comes to the issue of Reports of the Public Accounts Committee? If you go to the House of Commons, you will see that this is one report that is given the same weight as the Budget Speech. You will find that when debate on the Report is going on, the Prime Minister sits in. The Chancellor to the Exchequer also sits in. Where is our Prime Minister? Where is our Deputy Prime Minister and Minister for Finance? How on earth, do they expect to know how the Ministries they gave money to have been performing? I thought that the Prime Minister was there for coordination of Government functions and Ministries? We cannot afford to have the Grand Coalition Government giving the impression to Accounting Officers that they give casual treatment to this kind of Report.

I would like to thank all hon. Members who have contributed and the few Ministers who managed to contribute. I am glad to notice that all the contributions were in support of this particular report.

I would like to take this opportunity to encourage those Members of Parliament who did not manage to sit in and contribute. Now that we have laid on the Table the next report, it will be due for debate any time soon. They should take interest and make their contributions, so that my Committee can perform better, so that they do not think that they are doing an exercise in futility. I would like to remind hon. Members, who did not contribute, that if you go to the Library, you will find that contributions of the following prominent Members were always there when these reports were tabled. You will find the

contributions of Tom Mboya, Josiah Mwangi Kariuki, Masinde Muliro and those of Martin Shikuku. They are there. They all spoke on all these reports.

In responding to some of the last things that hon. Members raised, I would like to mention the issue of donor funds. Donor funds are treated separately from the Reports which are put here. The reason for this is that I cannot access the evidence I would require because the *modus operandi* is that the Controller and Auditor-General is expected to audit these reports of donor funds separately and they are supposed to be ready every 31<sup>st</sup> December, of every calendar year. Whereas that might appear to be a good practice, there is something terrible that is going on in the sense that accounting documents, when it comes to donor funds are limited to reports and letters as supporting documents. Original receipts are not given to the Controller and Auditor-General because the donors require that the original receipts go to the parent country for them to do their accounting. It would, therefore, be important that this is addressed, so that the Controller and Auditor-General can give us a real insight.

Courtesy of this wrong practice, at the Ministry of Education, there is Kshs317 million that is not properly accounted for. No wonder, we found out about the loss of Free Primary Education (FPE) Funds early this year.

Also, in the Ministry of Education, we noticed that Kshs2.7 billion was returned to the Treasury. How I wish the Minister for Education was here to hear this. In a Ministry like that of education which requires funds, Kshs2.7 billion was returned to the Treasury due to under-expenditure. This cannot be acceptable. If this money was spent, we would have built more than 26 million new classrooms in the country. I am quite sure that this would have disturbed the Minister if he was here.

I want to conclude by pointing out the advantages of us having become current. I want to remind my brothers that we are now current. Being current has the following advantages.

- (i) It means that the quality of our reports will now be enhanced. We will be putting greater emphasis on performance rather than financial auditing and, thereby, giving a clear certificate of value for money audit. This will go a long way. It will not just be a question of money having been spent, but the Controller and Auditor-General will go on the ground to establish whether there was value for money that was taken to the ground.
- (ii) My Committee will now have more time and money to spend on field visits, so that they can check for themselves that what the Controller and Auditor-General is telling the Committee reflects the truth on the ground.
- (iii) We will now have more real time reports. By this, I mean that we will now have time to call for special forensic audit, so that when a matter of great national importance comes up, my Committee will sit very quickly, write to the Controller and Auditor-General and tell him that we want a forensic audit into the matter. Since it will be done with real interest and the Accounting Officer will still be in office, the Accounting Officer will neither have been transferred nor died, we will get him on real time basis.

With this achievement, we must demand from the electorate to elect a good President for this country. A good President who will do what Jerry Rawlings did in Ghana. He was a President who committed himself to fighting corruption. When he took over, he could announce at 1.00 p.m. every day and he did this for 10 years, call out the name of the

most corrupt person and he would be taken to the national stadium of Accra. This man would then be executed. Standards on corruption in Ghana are very high.

Secondly, we will call upon Parliament to ensure that having got a good President, we also make sure that the President has a good controller of the budget. That will mean when his appointment is brought to this House under the new Constitution, this Parliament must discharge its responsibility of vetting thoroughly. The same standard should be applied to the Auditor-General. If we achieve that, we will make a difference.

Mr. Temporary Deputy Speaker, Sir, finally there is the issue of legislation. I have been studying the legislation in Uganda which helped to bring the young nation that had come from war into a state that has respect for public funds. They have a beautiful legislation. I have studied it and will soon be asking this House to debate on it so that we see if we can introduce that standard. The standard is that in the National Assembly of Uganda, there is a flying squad of police attached to the Public Accounts Committee (PAC). This is how the flying squad works; when the Chairman of the PAC is in the blue chair in Room 9 and witnesses are there and Members of Parliament are seated, there are two special seats for police officers in uniform. These are members of the flying squad. They come there with handcuffs. The moment the PAC discovers that the Accounting Officer has issues to be investigated by the Criminal Investigation Department (CID) or the Kenya Anti-Corruption Commission (KACC), for example, this man is arrested on the spot and taken in, to record a statement. If he cannot argue out his case, he remains there and ends up in jail. The purpose of these things is supposed to be a deterrent. If we do these we will not lose our money the way we are losing.

Thank you and I beg to move.

*(Question put and agreed to)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, that brings us to the end of the business on the Order Paper. The House, therefore, is adjourned until tomorrow, Thursday, 9<sup>th</sup> December, 2010 at 2.30 p.m.

The House rose at 6.08 p.m.