

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 9<sup>th</sup> June, 2010

The House met at 2.30 a.m.

*[Mr. Speaker in the Chair]*

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

2010/2011 Estimates of Recurrent Expenditure of the Government of Kenya for the year ending 30<sup>th</sup> June, 2011, Volume 1, 2, and 3.

2010/2011 Estimates of Development Expenditure of the Government of Kenya for the year ending 30<sup>th</sup> June, 2011, volumes 1, and 2.

*(By the Assistant Minister, Office of the Deputy Prime Minister  
and Ministry of Finance (Dr. Oburu) on behalf of  
the Deputy Prime Minister and Minister for Finance)*

Annual Report and financial statements of National Social Security Fund for the years 2006/2007 and the certificates thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the Deputy Prime Minister  
and Ministry of Finance (Dr. Oburu) on behalf of  
the Minister for Labour)*

Financial Statement of the Kenya Marine Authority for the year ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the Deputy Prime Minister  
and Ministry of Finance (Dr. Oburu) on behalf of  
the Minister for Fisheries Development)*

Annual Report and Financial Statement of the East African Portland Cement Company Limited for the year 2008/2009 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the Deputy Prime Minister  
and Ministry of Finance (Dr. Oburu) on behalf of  
the Minister for Industrialization)*

Financial Statement of the Export Processing Zones Authority for the year ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the Deputy Prime Minister  
and Ministry of Finance (Dr. Oburu) on behalf of  
the Minister for Trade)*

Financial Statement of the Kenya Agricultural Research Institute for the year ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

Annual Report and Financial Statement of the Tea Research Foundation of Kenya for the year ended 30<sup>th</sup> June, 2009, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the Deputy Prime Minister  
and Ministry for Finance (Dr. Oburu) on behalf of  
the Minister for Agriculture)*

Annual Report and Accounts of the University of Nairobi for the year ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the Deputy Prime Minister  
and Ministry of Finance (Dr. Oburu) on behalf of the  
Minister for Higher Education, Science and Technology)*

Financial Statement of the Communications Commission of Kenya for the year ended 30<sup>th</sup> June, 2009, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the Deputy Prime Minister  
and Ministry for Finance (Dr. Oburu) on behalf of the  
Minister for Information and Communications)*

Annual Report and Financial Statement of the Kenya Institute of Administration for the year ended 30<sup>th</sup> June, 2009, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the Deputy Prime Minister  
and Ministry for Finance (Dr. Oburu) on behalf of the  
Ministry of State for Public Service)*

Annual Report and Financial Statement of the Catering and Tourism Development Levy Trustee for the year ended 30<sup>th</sup> June, 2009, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the Deputy Prime Minister  
and Ministry of Finance (Dr. Oburu) on behalf of the*

*Minister for Tourism)*

**Mr. Speaker:** Mr. Assistant Minister, what is the total number of your list?

**The Assistant Minister, Office of the Deputy Prime Minister and Minister for Finance** (Dr. Oburu): On this list, they are ten and on the other one, they are two.

**Mr. Speaker:** So they should be a total of twelve? Have you got a copy of each with you now?

**The Assistant Minister, Office of the Deputy Prime Minister and Minister for Finance** (Dr. Oburu): Yes!

**Mr. Speaker:** Fair enough! You may resume your seat. Yes, Mr. Vice-Chairman of the Parliamentary Service Commission (PSC)!

### PAPER LAID

The following Paper was laid on the Table:-  
The Kenya National Assembly 2010/2011 Medium Term Expenditure Framework Budget.

*(By Mr. Nyambati, on behalf of the Chairman,  
Parliamentary Service Commission)*

### QUESTIONS BY PRIVATE NOTICE

#### CANCELLATION OF 2009 KCSE CHEMISTRY PAPER IN KAPLONG SECONDARY SCHOOL

**Dr. Laboso:** Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice-

- (a) Could the Minister explain the circumstances that led to the cancellation of the 2009 KCSE Chemistry Paper 3 (Practicals) exam results of Kaplong Girls' Secondary School?
- (b) What is the fate of the students concerned?

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

- (a) During the year 2009 KCSE Examinations, 78 candidates from Kaplong Girls' Secondary School colluded in Chemistry Paper 3. Subsequently, their results were cancelled as a result of this examination irregularity.
- (b) The fate of the 78 students involved in KCSE examination irregularities in Kaplong Girls' Secondary School, and other schools in the whole country, was properly addressed on the floor of the House on 24<sup>th</sup> March, 2010, following a Ministerial Statement requested by the Member for Chepalungu, hon. Isaac Ruto. Accordingly, I directed the Kenya National Examination Council (KNEC) to withdraw the two year ban on the 78 students for registration and sitting for the 2010 KCSE Examinations. The implementation of this directive in early June, 2010, saw the late registration of the affected students.

**Dr. Laboso:** Mr. Speaker, Sir, I thank the Assistant Minister for his answer. However, I think in the last answer that was given, you directed the Assistant Minister to

consult with the Attorney General (AG) because a question had been asked whether it was in order to cancel the results before carrying out the investigations. I would like to know from the Assistant Minister whether the consultation was done with the AG. What was the outcome of that consultation?

**Mr. Mwatela:** In my statement on 24<sup>th</sup> March, 2010, if I may quote, I said: “I have examined the issue of the ban and noted that it was irregularly imposed. Subsequently I have instructed the KNEC to withdraw the two year ban with immediate effect and issue a circular to this effect. Meanwhile the Council has been also instructed to look for other measures of dealing with examination irregularities.” Indeed there was consultation, that is why we issued a Ministerial Statement revoking the directive issued by the KNEC.

**Mr. Imanyara:** Thank you, Mr. Speaker, Sir. I do recall that moment when this Ministerial Statement was given. The issue was whether the students had been afforded the opportunity to make representations, because it is only when students are given an opportunity to make representations in fulfillment of the rules of natural justice, that the true picture arises, particularly where teachers and other administration officials are involved in wrong doing. Has that been done in relation to this school? If so, when were the students afforded that opportunity so that they could reveal the teachers and other officials behind these irregularities?

**Mr. Mwatela:** Mr. Speaker, Sir, the Kenya National Examinations Council (KNEC) has ways of detecting irregularities, and in this particular case in the chemistry paper, there was collusion. The question of whether the students were given adequate hearing does not arise; there was collusion.

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. I recall that on this, you actually advised the Minister to seek advice from the Attorney-General, because he gave the same answer, that they were not entitled to a hearing when we know that the rules of natural justice require that a person affected be heard before decisions that are adverse to them are made. How can you now stand up and say that there was collusion when no opportunity was given to students and it is at that moment when they would have known which of the teachers and other officials were involved in this scam; the culprits would have come out. Is it in order for him to say that the students were not entitled to a hearing when the rules of natural justice clearly demand so? You, Mr. Speaker, did indicate and emphasize that point the last time this Question came up.

**Mr. Speaker:** Mr. Assistant Minister, that is a valid concern. Indeed, the hon. Member is in order.

**Mr. Mwatela:** Mr. Speaker, Sir, the KNEC follows certain procedures in investigations and all the procedures were followed in investigating this particular matter.

**Mr. Speaker:** Order, Mr. Assistant Minister! Should the Ministry not adopt best practices? If the rules of natural justice demand that before you condemn a person, you must hear them, why should the Ministry not hear a student before meting out punishment?

**Mr. Mwatela:** Mr. Speaker, Sir, my Ministry has directed the KNEC to cancel the directive as issued in the Gazette Notice of 9<sup>th</sup> December, 2009. That is as a result of noticing that these rules were not properly followed.

**Mr. Speaker:** Fair enough, Mr. Assistant Minister. But you are obligated to follow best practices and you must move to do so quickly, if you have not already done so!

Proceed, the hon. Member for Kitutu Masaba!

**Mr. Nyambati:** Mr. Speaker, Sir, this is really very disappointing, given the casual answer that the Assistant Minister is giving. I do not know whether the Ministry knows that we are destroying the children of this country year in, year out, especially from Kisii where we had problems in this examination. What is the Ministry really doing to ensure that the KNEC ensures that there are no leakages that punish the Kenyan children and destroy them? The Ministry must come up with methods of eliminating this menace once and for all.

**Mr. Mwatela:** First of all, Mr. Speaker, Sir, my answer is not casual, as the hon. Member alleges. The Ministry is gravely concerned that examinations must remain examinations; if we allow students to collude with teachers or with any other particular person, then these examinations will be useless!

So, Mr. Speaker, Sir, on the question of following the rules of natural justice, my Ministry is going to make sure that in future, everybody is accorded the right to be heard.

**Dr. Laboso:** Mr. Speaker, Sir, I think we all know what examinations mean in this country, especially the form four examination. To a lot of our students; they are a matter of life and death. I would really like to urge the Assistant Minister that it is very important that we do not have any doubts in our minds that the decision that you have arrived at – for example, making the decision that they have colluded – is actually above board, and that everybody agrees that these children will be given an opportunity to actually be heard. Because it is very clear that this Chemistry Paper 3, as we have been informed, is not the first time and this is not the only school that has had this problem. What is the Ministry really doing, apart from just simply telling us that the students colluded? We need a little bit more details so that we can really be sure that this is a verdict that was arrived at after thorough investigations.

**Mr. Mwatela:** Mr. Speaker, Sir, as a professional teacher, I concur with the hon. Member that we need to give very thorough thoughts to any investigation that involves student examinations. But that does not dilute the fact that we must handle exams as they are supposed to be handled.

So, Mr. Speaker, Sir, I am just giving an undertaking that in future, we will give adequate attention to proper investigation, so that the students are given adequate hearing.

Thank you, Mr. Speaker, Sir.

#### APPOINTMENT OF DIRECTORS TO LAKE VICTORIA SOUTH WATER SERVICES BOARD

**Dr. Kones:** Mr. Speaker, Sir, I beg to ask the Minister for Water and Irrigation the following Question by Private Notice.

(a) Can the Minister provide the names and districts of origin of the directors of the Lake Victoria South Water Services Board, appointed on 9<sup>th</sup> April, 2009?

(b) Why did the Minister ignore the Government directive on equitable regional distribution in appointments to public institutions by excluding people from the Mau catchment area?

(c) Could the Minister tabulate all projects undertaken by the Board in the Mau catchment area and also indicate when the formation of Kericho Water Services Board will be finalized?

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

(a) Under the powers conferred to me by the Water Act, 2002, Section 51 (b), on 9<sup>th</sup> April, 2010, I appointed nine directors of Lake Victoria South Water Services Board as follows: George Ngenya and Margaret A. Siwe, Nairobi; John Onono, Gem; Lucas N. Obondo, Siaya; James Morogwe and Justine Obati, Kisii; Permanent Secretary, Office of the Deputy Prime Minister and Minister for Finance, Permanent Secretary, Office of the Deputy Prime Minister and Minister for Local Government and Permanent Secretary, Ministry of Water and Irrigation.

(b) My Ministry has always implemented regional balancing in appointments, but this does not mean that every micro-region has to be considered. Lake Victoria South Water Services Board covers the drainage basin, which mainly includes the whole of Nyanza Province, some parts of the South Rift and the Rift Valley Province. Board appointments are made to achieve geographical representation, experience in water matters and other relevant professional expertise. Based on the above considerations, and given that we still have vacancies to fill, I will give the Mau catchment area priority during the next appointments.

(c) Mr. Speaker, Sir, my Ministry has continued to implement water and sewerage projects in the Mau catchment area together with other parts of the country. For instance, Phase I of construction of Bomet Water Supply has been completed, and Phase II is due to start in August, 2010, and be completed by December, 2012, and a total of Kshs370 million will be spend. Rehabilitation of Kericho Water Supply and Sewerage is at the tendering stage and construction is due to start in July this year, and end, once again, in November, 2012, at a cost of Kshs916 million. Plans for the rehabilitation of the Chepalungu water supply have been completed at a total cost of Kshs17 million.

Further, Mr. Speaker, Sir, within the current financial year, the Government has allocated a total of Kshs85 million to Kericho East, Kericho West, Konoin, Kipkelion, Tinderet, Nandi East, Nandi South, Nandi West, Chepalungu and Bomet Districts to construct rural water schemes, so as to improve on water coverage in the larger Mau water catchment basin.

(d) Currently, there are eight water service boards in the whole country, and there is no basis to add another water service board, especially in Kericho area since Lake Victoria South Water Services Board, and the Rift Valley Water Services Board, adequately cover the Mau Catchment region in terms of water supply. However, the Ministry has formed the Kericho Water and Sewerage Company, which directly provides water and sewerage services in Kericho Town and its environs. Under these boards and water companies, all the local issues pertinent to water supply are taken into consideration and attended to accordingly.

**Dr. Kones:** Mr. Speaker, Sir, I am really saddened by the response given by the Assistant Minister. He admits that the water services board serves Nyanza and parts of Rift Valley provinces. He has read out names of directors appointed to the board, all of whom are from Nyanza Province. What made him not to appoint even one person from the Rift Valley Province, especially since the Ministry has been complaining about the Mau Catchment area? Why did they not appoint somebody from the Mau Catchment area to the board?

**Mr. Kiunjuri:** Mr. Speaker, Sir, all board appointments are not made on the same day. Some board members can be appointed this year, and others next year. Other board members can be appointed even in the third year, because each one of them serves for three years. We appoint new board members to replace individual board members whose terms have expired. The terms that had expired were for the Kisii and Upper Nyanza regions. However, the other appointments that we are going to make very soon are from the Mau Catchment area. Once the time comes, the hon. Member will have a basis to complain that they will not have been considered.

**Dr. Laboso:** Mr. Speaker, Sir, I would like to ask the Assistant Minister whether he is aware that the fact that he does not have any of the board members coming from the greater Kericho has greatly affected the distribution of water of projects in the area covered by that board. We are told that Lake Victoria South has a lot of water projects that are being funded. However, none of those water projects has been allocated to the greater Kericho area. Is the Assistant Minister aware of that fact? Could he clarify?

**Mr. Kiunjuri:** Mr. Speaker, Sir, first of all, we do not only appoint board members because they come from those regions. We look at other things like qualifications. If in a given area there are no applicants who qualify for appointment, we are not going to appoint people just because they come from that area. However, I am not saying that we have not gotten people from that area who are qualified. What I am trying to say is that we decided to go to the regions. Otherwise, we can pick board members from across the country. We are, however, going to consider the people in the Mau Catchment area. The appointments that are going to be made next time must come from that area.

On the issue of distribution of resources, if Dr. Laboso listened carefully, I mentioned projects worth about Kshs2 billion, which are ongoing, or which are intended to start in that region. Even when it comes to the National Budget, an area cannot be allocated Kshs2 billion and then somebody argues that that region has not been properly taken care of.

**Dr. Kones:** Mr. Speaker, Sir, sometime last year, I visited the Minister, and she made the promise that she was considering the establishment of a Kericho water services board, given that the area served by Lake Vitoria South Water Services Board is too large. However, in his response, the Assistant Minister seems to negate that promise. Could he confirm that they have changed their mind?

**Mr. Kiunjuri:** Mr. Speaker, Sir, we are not only considering the Rift Valley side of it. We are looking across the country to see whether if we form additional water services boards they will be sustainable. The most important thing to consider is sustainability.

Secondly, we must ask ourselves what water catchment area is. At the end of the day, if you look at the Mau Complex, it is the catchment area that feeds the rest of the Rift Valley and Nyanza. Therefore, we must take that fact into consideration. I believe that the Minister is doing this. She is capable of doing so. Once we come up with a final decision, we shall say whether we are going to create additional water services boards or not. However, in this year, we have not considered the area, because we think that an additional water board is not sustainable.

**Mr. Speaker:** Next Question, Member of Parliament for Vihiga!

## ORAL ANSWERS TO QUESTIONS

*Question No. 146*

EXTENT OF IRANIAN GOVERNMENT FINANCIAL  
SUPPORT TO MBALE MOSQUE

**Mr. Chanzu** asked the Minister for Foreign Affairs:-

- (a) what he knows about the financial aid or support by the Iranian Government to Mbale Mosque in Vihiga; and,
- (b) to state the extent and purpose of the assistance.

**Mr. Chanzu:** Mr. Speaker, Sir, before the Minister answers, let me confirm that the circumstances that led me to file this Question have already been explained to me satisfactorily by the Minister. So, I do not wish to pursue the Question in the House.

**Mr. Speaker:** Mr. Assistant Minister, you have heard what the Member of Parliament for Vihiga has said.

**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): Mr. Speaker, Sir, it is true that we have already discussed the matter. It has been agreed amongst us that it has really been overtaken by events.

**Mr. Speaker:** Hon. Members, given that the Member of Parliament says that this matter has been attended to satisfactorily, we are tempted to treat the matter as spent but since it is now the property of the House, if there is any hon. Member who is interested in interrogating it, or raising any issues, he is at liberty to do so.

**Mr. Olago:** Mr. Speaker, Sir, I do not wish to interrogate whatever the answer is, but since you have ruled that it is the property of the House, I wish to request with humility that an answer be given for the sake of the Members of Parliament who may wish to know what the answer is.

**Mr. Affey:** Mr. Speaker, Sir, arising from what hon. Olago has just said, I do not think it is necessary that the House is subjected to a matter on which we do not have background information. We could essentially get the background information from the hon. Members but since he is satisfied, we can leave matter as it is.

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

**Mr. Speaker:** Order! Order, hon. Members! The Member of Parliament for Vihiga, in asking Question No.146, raised specific areas of concern as captured in parts (a) and (b). The Member of Parliament for Vihiga now says that he is satisfied that these concerns have been attended to. So, if there are concerns outside what is captured in parts (a) and (b) of the Question, you may raise them.

**Mr. Imanyara:** Mr. Speaker, Sir, just to seek your guidance, we do not know what went on during the discussions between the Assistant Minister and the hon. Member. Since the matter is already before the House, should we not have the benefit of that answer, so that we know whether, indeed, there are issues that we need to raise?

**Mr. Speaker:** Order! Order! I think this position is adequately ventilated.



Assistant Minister, this leans in favour of you giving your answer, so that hon. Members, other than the Member of Parliament for Vihiga, who may have issues, can raise them.

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** Mr. Speaker, Sir, after consultation and in-depth analysis of the issues that had originally been raised by the Member of Parliament for Vihiga, we had amicably agreed on what needs to be done. However, since this is the property of the House, it is true that I need to clarify some of those issues.

It is true that the Mbale Mosque Committee did write to the ambassador of the Islamic Republic of Iran just like many other committees always write to different countries and different ambassadors. They requested for assistant to construct a madrasa, classes, offices, hostels, shops and an office within the Mbale Mosque premises. The Iranian Embassy has since sent a technical inspection team to the mosque upon which an appraisal was done and the project was recommended for assistance.

Mr. Speaker, Sir, the extent to which and purpose of the assistance was that the embassy decided to give US\$120,000 from what is generally known as the Overseas Development Assistance for the direct development, construction and refurbishment of the aforesaid mosque at Mbale. It is the prerequisite and the prerogative of the Iranian Embassy to make recommendations on how they will refurbish or reconstruct these premises.

**Mr. Linturi:** Mr. Speaker, Sir, as I congratulate the Assistant Minister for that nice answer. Since we have had foreign missions or countries give plenty of support to this country with certain conditions, could he tell us whether the support from the Islamic Republic of Iran to the mosque in Vihiga is pegged to any conditions?

**Mr. Onyonka:** Mr. Speaker, Sir, you sincerely will have to help me. I actually did not understand the question. Could the hon. Member repeat it?

**Mr. Linturi:** Mr. Speaker, Sir, for the benefit of the Assistant Minister; I said that certain counties have pledged support to this country with conditions. I would like to know whether the Islamic Republic of Iran has any conditions attached to the support of the mosque in Vihiga.

**Mr. Onyonka:** Mr. Speaker, Sir, at least, I have got him now. The answer is "No". There are no other pre-conditionalities which come with ODA funding. Usually, the Kenyan Government does not accept any conditionalities unless it is a bi-lateral agreement which has been signed between the two parties. On this case, there are absolutely no conditionalities given by the Iranian Government.

**Mr. Imanyara:** Mr. Speaker, Sir, given the fact that a lot of concern has been expressed regarding religious organizations particularly at this time of campaign for the adoption of a new Constitution, could the Assistant Minister tell us what the Government policy is regarding funding of religious organizations and groups by foreign Governments and entities?

**Mr. Onyonka:** Mr. Speaker, Sir, I may not have mentioned earlier on that this is something the Government of Kenya started discussing with the Iranian Government two-and-half year ago. That was even before we knew that the Draft Constitution would have passed in this House. As a matter of principle or policy, I am sure that hon. Members in this House know that just as much as there are Christian organizations which receive funding from donor agencies and other Governments from abroad, the Muslim

community is also entitled to receive funding from any other country that may so wish, as long as it is within the law.

**Mr. Twaha:** Mr. Speaker, Sir, yesterday, Kenyans were treated to a spectacle of a Kenyan police vehicle being stopped and searched by American Secret Service Agents. Under which law of diplomatic protocol was this being done?

*(Applause)*

**Mr. Speaker:** Order, hon. Members! Mr. Twaha, that question is different. It does not relate to this matter at all!

Let us move on to the Member for Makueni's Question!

*Question No.190*

REPAIR OF ILENGENI DAM

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

(a) whether she is aware that I lengeni Dam which was constructed in November/December, 2009 to supply water to residents of Mbithini Division in Nzau District has been damaged;

(b) whether she could confirmed that the contractor completed the work satisfactorily; and,

(c) what immediate plans the Government has to repair dam.

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

(a) I am aware that I lengeni Dam which was constructed in November/December, 2009 to supply water to the residents of Mbithini Division in Nzau District is damaged. This was due to an unusual storm that occurred in the area between 27<sup>th</sup> February, 2010 and 28<sup>th</sup> February the same year.

(b) I can confirm that the contractor completed the works satisfactorily and the project was inspected and verified complete on 21<sup>st</sup> December, 2009.

(c) The contractor has already commenced the repairs of the damaged section of the dam under the defects liability period. The works already done include:-

(i) Repair of the damaged section.

(ii) Expansion of the spiral base width.

The contractor is still on site working on the eroded part of the spillway after which construction of No.3 concrete seals across the spillway will be done.

The works are expected to be completed before the end of the financial year.

**Mr. Kiilu:** Mr. Speaker, Sir, I would like to thank the Assistant Minister for accepting that this dam which was supposed to supply water to residents of Mbithini Division was damaged. I deny that the constructor is on site. I request the Assistant Minister to send the contractor on site. I do not believe that repairing the wall and constructing spillways here and there will solve the problem. Perhaps the Assistant Minister should consider expanding the surface area of this dam in order to have a permanent solution to the problem.

**Mr. Kiunjuri:** Mr. Speaker, Sir, I have said that the cause of the damage of this dam was the unusual storm that caused a huge runoff of water. Secondly, the spillway could not adequately drain the runoff water.

Thirdly, the reservoir had more water than it could contain. Therefore, we have taken the necessary measures. We are expanding the spillway and strengthening the walls of that dam.

Mr. Speaker, Sir, since we are still experiencing a lot of rain, we have instructed the contractor not to repair the dam now. Definitely, if he does some repairs the dam will be damaged again. Therefore, we have taken caution but the contractor is supposed to be on site.

**Mr. Ochieng:** Mr. Speaker, Sir, several years ago, citizens of this country were promised that they would have clean drinking water in their homesteads come the year 2000. Ten years down the line we are still suffering because we do not have clean drinking water in our homesteads. Does the Ministry have a master plan to achieve this and by when?

**Mr. Kiunjuri:** Mr. Speaker, Sir, the Government keeps on revising its programmes. This was revised again to meet the expectations of Vision 2030. I assure the hon. Member that we are taking all the necessary measures to make sure that Kenyans get clean water.

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

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

**Mr. Kiilu:** Mr. Speaker, Sir, I would like the Assistant Minister to tell us how much money was spent on the construction of that dam.

**Mr. Kiunjuri:** Mr. Speaker, Sir, a total of Kshs3.7 million was used in the construction of that dam.

#### *Question No.025*

#### DEATH OF GALBEITU IN MARSABIT

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

- (a) to explain the circumstances that led to the death of Mr. Galbeitu Arbele in Marsabit Town on the night of 3<sup>rd</sup> August, 2007; and,
- (b) what investigations have been carried out and what are the results.

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

- (a) In August 2007, there was no report of murder made within Marsabit Town. However, the late Arbele, who was 35 years old, was found murdered on 27<sup>th</sup> July, 2009 at about 12.00 a.m. It was on 27th July and not 3<sup>rd</sup> August, 2007. A report was made to the police and the scene was visited. Later, a postmortem was performed and the following results were filed:-

The body had a large bullet wound on the left postural lateral aspects of the chest. There was massive blood loss. There was no exit wound. The bullet was lodged inside the body and the cause of death was determined to be due to gunshot wound on the chest.

- (b) Following the incident, a police file No.CR451/100/09 was opened. Several witnesses have recorded statements and the case is still pending and under investigations. The police are narrowing down on a suspect whose name cannot be revealed because it will compromise the investigations. I would like to table the postmortem report for the hon. Member to peruse.

**Mr. Lekuton:** Mr. Speaker, Sir, it has been a year since Arbele was murdered. When he was murdered, there was no break-in and no money was taken. But he was found dead. The police have been very slow in doing their investigations. I would like to ask the Assistant Minister the following question: Does the police have a motive as to why that gentleman was murdered? Why is it taking so long?

**Mr. Ojode:** Mr. Speaker, Sir, you will agree with me that anything to do with murder, we have to investigate thoroughly. The Questioner is talking about one year but we have pending murder cases. On the Robert Ouko murder, not even a single person has been identified as the suspect behind the murder. We are talking of J.M. Kariuki! How many years? He is just talking about one year. Murder is not something which you can just go and apprehend anybody. This case was done in-house and I do not want to give him the name now. But I can give him privately if he so wishes. But we are going to arrest that person! That person, if I can give some chronology, has been hopping from one province to another. There was a time he wanted to leave this country to go to Tanzania. But I want to promise this House that we are going to arrest him. So, if the Questioner can give us time, I am assuring this House that we will arrest the murderer.

**Mr. Lekuton:** Mr. Speaker, Sir, Marsabit Town is known for notorious murder cases. Many people have been killed and we have never had one or two instances where the people who have killed others have been captured and arrested. That is why I am so worried that this case will go the way the rest have gone. Let me ask the Assistant Minister the last question: When are you going to arrest that murder suspect? If the police have a suspect, what is taking them so long to arrest and charge him?

**Mr. Ojode:** Mr. Speaker, Sir, that is the reason why I do not want to give the name of the person whom we suspect to be the murderer. We are going to arrest that fellow once we have identified where he is. I want to assure this House that I am not aware of those other cases that he is talking about. I only know of this one and I can assure this House that we are going to arrest that particular person.

*Question No.121*

CONSTRUCTION OF NJABINI-OL KALOU-NDUNDORI ROAD

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

- (a) when the construction of the Njabini-Ol Kalou-Ndundori Road will be completed; and,  
(b) what size of culverts are supposed to be constructed on the access to every household, school or shopping centre along the road and why the same have not being placed.

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

(a) The Njabini-Ol Kalou-Ndundori Road is substantially complete and open to traffic.

(b) The size of the culverts depends on the size and the place that it will be installed. In this case, the minimum size is 5.5 metres in length and 600 millimetres in diameter. The contractor has already started installing the culverts according to the design provided.

**Mr. Ngugi:** Mr. Speaker, Sir, I thank the Assistant Minister for that answer, even though this Question has been pending for a long time. But the sizes of the culverts given in the specifications are not the same as the ones that have already been installed. I would like to know, in case the installed culverts do not meet the specifications, whether they will be expanded or rectified.

**Dr. Machage:** Mr. Speaker, Sir, I am aware of the anomaly where the contractor installed 3 metre culverts. That anomaly is now being corrected and I believe everything will be to his satisfaction.

**Mr. Gaichuhie:** Mr. Speaker, Sir, I would like the Assistant Minister to clarify when he is going to finish the section between Lanet and Ndundori. That is because the road was supposed to start from Lanet, to Ndundori and then to Njabini.

**Dr. Machage:** Mr. Speaker, Sir, the road was divided into three sections. The first section is Ndundori-Ol Kalou which is 22.54 kilometres, the second section is Ol Kalou to Mawingu which is 39.342 kilometres. It also included Wanjohi Spa which is about 2.36 kilometres. Those two sections have been completed and handed over to us. For the Njabini-Mawingu section, which I think includes the section that he is talking about, we expect it completion, maybe, in the next one month, all factors notwithstanding.

**Mr. Gaichuhie:** On a point of order, Mr. Speaker, Sir. The section he is talking about is different from the section I have asked about. I am asking about the section from Ndundori to Lanet!

**Dr. Machage:** Mr. Speaker, Sir, his question, therefore, is out of the scope of the Question that I have in Parliament and the answer I have. He will have to come up with another Question.

**Mr. Speaker:** Right, Dr. Machage. You are entitled to claim that, that is a different Question.

**Mr. Shakeel:** Mr. Speaker, Sir, could the Assistant Minister inform the House how wrong culverts were put and passed by the road engineer? It has become a common practice for road engineers to approve substandard work and the contractor is paid. When the Assistant Minister says that, that is an anomaly, he has taken it very lightly. But it appears that it is more than an anomaly. What is he doing to make sure that, that does not occur in other constituencies as well?

**Dr. Machage:** Mr. Speaker, Sir, on the contrary, this anomaly was discovered by my engineers and a correction ordered, which is being done. If there is any particular place the hon. Member would want to draw my attention to, I am ready to make the correction.

**Mr. Speaker:** Last question, Member for Kinangop!

**Mr. Ngugi:** Mr. Speaker, Sir, I would like the Assistant Minister to assure this House that every house, church, shopping centre and plot alongside this road will have a culvert installed in order to have access to the homesteads.

**Dr. Machage:** Mr. Speaker, Sir, I assure this House that there will be access to all those facilities that the hon. Member has talked about, but not necessarily everything.

**Mr. Speaker:** Hon. Members, that brings us to the end of Question Time.

Next Order!

## STATEMENTS

### STATE OF REFORMS IN THE COUNTRY

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, I would like to make a Statement on the state of reforms in the country as it stands today.

Mr. Speaker, Sir, I am glad to report to the House that despite many challenges our reform agenda, particularly with regard to our long search for a new Constitution, is by and large on track. Before I give specifics, I want to thank the hon. Members of Parliament who on 1<sup>st</sup> April, 2010 adopted the Draft Constitution as part of the reforms agreed in 2008, to end the post-election violence. I have reason to commend this House and it is based on our history. In June, 1982, this Parliament amended the Constitution, making Kenya officially a one party state. Since that time our National Assembly has been seen as a place where Members of Parliament gather to frustrate reform and enact laws that favour them and other ruling and business elite in the country, while the wananchi suffer. This image got firmly implanted in the minds of Kenyans when Members of Parliament sat in this House to argue that Kenya did not need multiparty politics, while the wananchi fought in the streets and died in prisons to press for the opening up of the political space.

Mr. Speaker, Sir, by passing the proposed Constitution, the Tenth Parliament once again set itself apart and proved that they are ready to listen to the cries of Kenyans. The Government is committed more than ever to see to it that the reform agenda remains on course. I am confidently reporting that we are on course.

Mr. Speaker, Sir, with regard to the Constitutional review process, here is where we are: Parliament adopted the proposed new Constitution and the Report of the Committee of Experts on 1<sup>st</sup> April, 2010. The public is currently being educated on the proposed Constitution in preparation for 4<sup>th</sup> August Referendum. It is a little disappointing that the process of civic education began on a slow note due to delays in disbursement of funds. However, the Government has now authorized the release of Kshs553 million for the remainder of the review activities.

Mr. Speaker, Sir, we are pursuing reforms beyond the Constitution. Work is going on with the Interim Independent Constitution Dispute Resolution Court which was established by an amendment to the Constitution to address disputes relating to the constitutional review process. The judges were appointed to this court by His Excellency the President on 6<sup>th</sup> January, 2010. They were sworn in on 15<sup>th</sup> January, 2010 and 26<sup>th</sup> February, 2010. The court has secured premises at the Kenyatta International Conference Centre (KICC) and finalized its rules of procedure and registry. It has begun receiving cases on the constitutional review process.

Mr. Speaker, Sir, with regard to the voter registration and reform to the electoral process, the Interim Independent Electoral Commission (IEEC) is currently undertaking a review of the voter registers, having undertaken voter registration between April and May

this year. A total of 12,656,451 voters have been registered by the Commission. The Commission has assured us that it is ready to conduct the constitutional Referendum on 4<sup>th</sup> August, 2010. I am confident that the IIEC is equal to the task.

Mr. Speaker, Sir, even as the Government pushes ahead, particularly with the constitutional reforms, there are challenges that we have to overcome. Developing consensus on some fundamental reforms has been difficult. This was, however, to be expected, given the kind of issues we are dealing with. Even more daunting, is the enormous cost of implementing the reforms at a time the country is facing economic constraints, but we are determined to soldier on and I am confident that we shall prevail.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Hon. Members, we will take those who want clarifications made from that Statement, beginning with the Member for Yatta.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, I would have really wanted the Prime Minister also to comment on the visit by the Vice-President of America in as far as reforms are concerned. At the same time, I would like him to comment on the inconveniences caused by the State visit. Could the Government consider hosting Government guests in convenient areas? In this particular case, I would suggest somewhere like Maasai Mara, where they can fly in and out.

**Mr. Imanyara:** Mr. Speaker, Sir, I wish to congratulate the Prime Minister for the gallant effort in leading the campaign to adopt the proposed new Constitution as agreed by this House, when we unanimously adopted the proposed Constitution. What steps is the Prime Minister taking to ensure that those of his colleagues who are determined to scuttle the process and deny this country a new Constitution are stopped from doing so? I have in mind the recent situation where an agreement has been signed with KUPPET that undermines an existing agreement. This agreement was signed without the advantage of legal advice from the Attorney-General and clearly, the purpose is to get the Kenya National Union of Teachers (KNUT) to start campaigning against the proposed new Constitution. What is the Prime Minister doing to ensure that none of his colleagues scuttles this process that is going on so well?

**Mr. Mungatana:** Mr. Speaker, Sir, I also want to join my other colleagues in thanking the Prime Minister and the President for leading the campaign for the new Constitution.

Mr. Speaker, Sir, I want the Prime Minister to clarify the question of funding for this process. You will recall that there was a big delay in the release of funds for civic education. When we inquired, we were told that the Prime Minister's Office had only sent Kshs30 million and the Ministry of Justice, National Cohesion and Constitutional Affairs, Kshs10 million. It was none other than the Chairman of the IIEC himself who was raising this concern when he was flagging off the civic education campaign. I am happy to note that today the Prime Minister has assured us that Kshs553 million has been released. But in the next most important step to be taken, which is the actual voting, conducting of the Referendum and the mechanics of it, has the Government made provisions for it, because this Kshs553 million, to my understanding, concerns only the money that is supposed to go for civic education? Is the Prime Minister satisfied that the IIEC is properly funded to conduct this Referendum exercise? If not, what plans has the Government put in place to ensure that we do not have those kinds of complaints from the Chairman again, in fact, publicly, meaning there is a problem somewhere?

**Mr. Shakeel:** Mr. Speaker, Sir, may I also join my colleagues in congratulating His Excellency the President and the Right hon. Prime Minister for the valiant effort and dedication towards the “Yes” Campaign.

However, on the issue of the protocol that we all observed the other day, as I was flying in, I saw the American and British army walk straight past immigration officers. When I checked with the immigration officers, they told me that they are not allowed to check their immigration status. They just show them their cards and they go. Is this reciprocated the Kenya Army when they go to the United States and the United Kingdom?

**Mr. Speaker:** Order, hon. Members! Could we ensure that our requests for clarification are relevant to the Statement issued? The Member for Yatta at least tied it in, in the sense that he asked the Right hon. Prime Minister to also indicate the interface of the visit on the reform process. But the Member for Kisumu Town East has gone off at a target. You are out of order. You cannot proceed beyond there.

**Mr. Namwamba:** Mr. Speaker, Sir, I too do applaud the Right hon. Prime Minister and His Excellency the President for leading the reform drive from the front, especially our journey towards a new constitutional dispensation.

Given that the Grand Coalition Government that is so ably headed by the Right hon. Prime Minister and His Excellency the President had as one of its primary responsibilities to drive this country towards attainment of Agenda Four reforms at whose core is to usher this country into a new constitutional dispensation, could the Prime Minister confirm to this House and to the country at large, unequivocally, that indeed the constitutional review process is a Government project and there is absolutely no doubt within circles of Government that this is a task that the Government takes as a primary responsibility that must be delivered and that, indeed, it is the project of the Government?

**Mr. Speaker:** Order, hon. Members! Those are five clarifications sought so far, which is the number that we have established ought to be sought from any Ministerial Statement. The Prime Minister’s Time runs until quarter to 4 p.m. So, we will take the responses from the Right hon. Prime Minister, and if we still have any more time, then we can do another round of five.

**The Prime Minister (Mr. Raila):** Mr. Speaker, Sir, I have actually four because you said that Mr. Shakeel’s question was not a clarification.

The Member for Yatta wanted a clarification about the visit of the Vice-President of the United States of America.

The Vice-President of the United States of America is visiting our country at the invitation of our Government. So, he is our visitor. Being a visitor, we have accommodated him appropriately. However, sometimes, visitors have certain privileges which are accorded to them by their hosts. It is the responsibility of the host country to provide maximum security to the visitor. The visitor, of course, is also entitled to his or her additional security. So, what we have dealt with since our guest arrived here is not something unusual, given the position of the United States of America as the only super power in the world which is also a country that has got very many friends and enemies. So, we do not want anything untoward to happen to the Vice-President of the United States of America while he is here. That is the reason why we have gone to great lengths to allow them additional security and privileges which they have sought which is our way of showing hospitality to our visitor.



Mr. Speaker, Sir, the Vice-President himself has spoken about their position with regard to reforms in our country. He has said clearly that ultimately, this is the responsibility of Kenyans. They do not want to say that Kenyans should vote “yes” or “no” in the review process.

I want to go straight to the second question which was asked by Mr. Imanyara with regard to an agreement which was signed between the Government and KUPPET. I want to say without hesitation that I understand that the Attorney-General’s legal advice was not sought before this agreement was signed. I have asked the Attorney-General to look at the agreement and give his legal opinion. In the meantime, I have directed that the agreement be set aside until such time that the Attorney-General will have given proper legal advice to the Government.

I would like to assure Mr. Mungatana that, yes, we have made adequate arrangements. Hon. Members will recall this current year’s Budget did not provide funding for the review process. The review process was not included in the Budget of 2009/2010. Assumptions had been made that the arrangements that were required to be made would last much longer and that we would not move to the referendum stage before the Budget. We have had to somehow get Kshs7 billion by making some savings or shelving some projects within the budget in order to be able to fund the review process this far. As things stand right now, there is sufficient money up to tomorrow. What will not have been provided for up to tomorrow will be provided for in the Budget which will be read before this House tomorrow. I want therefore, to give a firm assurance to the House that there will be sufficient money to the Interim Independent Electoral Commission to conduct the referendum on 4<sup>th</sup> of August.

The Member for Budalang’i wanted to know whether this is a Government project. I would like to take the hon. Member down memory lane. In 2008, we did sign the Accord which gave birth to the formation of a Grand Coalition Government. Thereafter, we had a team that was negotiating at the Serena Hotel which came up with the Serena Agreement. This agreement identified what has come to be known as Agenda Four. The constitutional review process is part of Agenda Four. It is the most important reform agenda by this Government.

This Government, therefore, committed itself to ensuring that the people of this country get a new Constitution within its life. Because of that, several commissions were set up, funded by the Government. One of them is the Committee of Experts (CoE) which was tasked with the responsibility of looking at all the past draft constitutions and the current one and then coming up with a Revised Draft Constitution. The CoE was fully funded by the Exchequer. The CoE produced a draft which was then handed over to Parliament. The Parliamentary Select Committee (PSC) took over that document and went to Naivasha where they stayed for a number of days, funded from the public coffers trying to get a kind of consensus. The draft Constitution was taken back to the CoE from where it came to this House.

Hon. Members will remember that they took leave to go to Kenya Institute of Administration (KIA) to try and develop consensus among themselves. Again, that exercise was funded by the public funds. After that, the draft document came to this House. So, hon. Members made some proposals for amendment. However, most of them, did not see the light of day. However, on 1<sup>st</sup> April, 2010, we were all here when we deliberated extensively until the wee hours of the night. Eventually, Mr. Speaker, Sir,

under your Chair, you put the Question for those supporting to say “Aye” and those opposing to say “Nay.” I was seated right here and I did not here any voice say “Nay”. So, this proposed Constitution was passed by this House unanimously.

Some hon. Members have suggested that this is not a Government project and that if the Government is going to fund the “Yes Campaign”, then it must also fund the “No Campaign.” The Government is under obligation to implement decisions of this House. Sometimes hon. Members accuse the Government for not implementing the resolutions of this House. This is one of the most important resolutions of this House. We, as the Executive, are under duty and obligation to ensure that the resolution of this House is implemented. That is why the President and I have clearly said that we will spearhead the “Yes Campaign”. In doing so, we are implementing the resolution of this House. That is the reason I have come to this House dressed in green colour to show that I am in the “green camp.” I am also green---

*(Laughter)*

**Mr. Affey:** On a point of order, Mr. Speaker, Sir. Is the Right Honorable Prime Minister in order to suggest that anybody who is not in green colour does not support the Draft Constitution and yet we passed it and we support it?

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, I did not imply that anybody who is not wearing green colour is opposing the draft. Even Mr. Speaker is in red.

*(Laughter)*

However, I just want to say that I am green outside and green inside. I am not a watermelon.

*(Laughter)*

**Mr. Speaker:** Order, hon. Members! The concern raised by hon. Affey has some substance in it. I will urge hon. Members to refrain from campaigning on the Floor of the House. However, you are at liberty to wear whatever colour of clothes you may choose for as long as they comply with the Speaker’s Rules on the mode of dress. We will take another round of five. Let us begin with Mr. Yakub.

**Mr. Yakub:** Mr. Speaker, Sir, I would like to thank the Prime Minister for informing the House that Kshs533 million has been released. I have gone to almost half of the country and I realized that many Kenyans have not received the copies of the draft Constitution. My concern is that there is a huge outcry that Kenyans need a Kiswahili version of the draft Constitution, so that they can really understand it and come up with a proper decision by 4<sup>th</sup> August, 2010. Could he ensure that some copies are produced in Kiswahili Language?

**Dr. Kones:** Mr. Speaker, Sir, first of all, I must applaud your ruling that we should not use this Floor to campaign for or against the document. Having said that, may I know from the Prime Minister the projects which have been shelved, so that funding is diverted to the review process?

**Mr. Sambu:** Mr. Speaker, Sir, may I also take this chance to congratulate the Prime Minister and His Excellency the President for spearheading this exercise. We have been looking for the new Constitution for a long time. However, there are hon. Members and other people who are engaged in hate speeches and information. At the same time, we have the National Cohesion and Integration Commission which should also be dealing with these issues, but it seems to be toothless. It seems to be simply issuing threats about calling individuals and yet, nothing is happening. I would like the Prime Minister to elaborate on the issue of the role of the National Cohesion and Integration Commission. He needs to tell us whether they have actually identified any individuals and brought them to book, particularly those who are involved in hate speech and misinformation over this very useful exercise the country is going through.

**Mr. Ngugi:** Mr. Speaker, Sir, I enjoin my colleagues in applauding His Excellency the President and the Right Honorable Prime Minister for showing leadership in leading the Yes Campaign. I applaud the Prime Minister for releasing the Kshs533 million. He really showed leadership. However, I would like him to clarify the status of other reforms other than the Constitution, in particular the police reforms and the judicial reforms. He said in his opening statement that he was going to deliver a statement on the status of the reforms.

**Mr. Yinda:** Mr. Speaker, Sir, I would also like to lend my hand in thanking the Right Honorable Prime Minister for a very clear statement. It is clear that it is in the interest of this country that we have the new Constitution. It has been clarified that this House unanimously passed the proposed new Constitution. We all know that the Cabinet has the rule of collective responsibility. What is the Government doing to ensure that all the Cabinet Ministers toe the same line?

**Mr. Affey:** Mr. Speaker, Sir, I join my colleagues in congratulating the Prime Minister for the Statement. I want to know what the Grand Coalition Government is doing to avoid the possibility of those in the No Camp using the Courts of Kenya, particularly the Judiciary to undermine the process that we want the country to go through. What is he doing to avoid the possibility of our courts being used to undermine the new constitutional dispensation?

**Mr. Speaker:** Hon. Members, because of the persistence of the Member for Kisumu Town West and the Member for Saboti, we will make the exception and exceed the number by those two. Let us begin with the Member for Kisumu Town West.

**Mr. Olago:** Mr. Speaker, Sir, I wish to thank you most sincerely for giving me this chance after the count of five.

The issue I want to raise touches on the Draft Constitution, Chapter 11, which has been mentioned very briefly by hon. Affey. This chapter is on the reforms of the Judiciary. What is contained in Chapter 11 of the Draft Constitution is meant to create a robust, transparent and independent Judiciary. Those are qualities that some members of the Judiciary are afraid of. To that extent, therefore, what steps is the Government taking to ensure that the Judiciary is not manipulated by those who are anti-reform in Kenya?

Secondly, the Act requires that the Draft be passed by 50 per cent plus one. That in itself is the law. But for the Draft Constitution to have legitimacy and acceptance across the board in Kenya, it is necessary that the margin be higher than that. So, what steps is the Government taking to ensure that as many Kenyans as possible that have registered as voters vote for the draft so that the margin is much higher than 50 plus one?

**Mr. Wamalwa:** Thank you, Mr. Speaker, Sir, for giving me a chance. Mine is to do with electoral reforms. The part of the electoral reforms was to deal with the monster of violence whether it is pre-election, election or post-election violence. We have seen violence in South Mugirango. My good friend Joe Sagero was beaten and his hand fractured. We have seen youths attack planes landing and prevent them from landing. We have seen leaflets dropped in Kitale threatening people from voting for or against, which are all signs of violence either during the referendum or ongoing by-election. What is the Government doing to prevent this violence?

**Mr. Speaker:** Right Hon. Prime Minister, you may now respond.

**The Prime Minister (Mr. Raila):** Mr. Speaker, Sir, I would like to assure hon. Yakub that this Swahili version of the Draft Constitution is already in the process of being distributed. There will be sufficient copies distributed. Also additional copies of the English version have been printed and sufficient copies are available.

I also want Members to understand really, this animal called civic education. Kenyans are not starting from the scratch. Civic education about Constitution has been done in this country for a long time. Prof. Yash Pal Ghai Commission started first by giving people civic education about the Constitution itself. What does the current Constitution say? How does the Constitution affect your life? That was a very comprehensive exercise before they went on to collect views of the people about the kind of the Constitution that they wanted. So, by the time Kenyans were giving their views about the Constitution, they knew what the Constitution is all about. By the time they were going to Referendum last time to vote for or against the Bomas, Kilifi and Wako Constitution, they knew exactly what they were saying. What now needs to be done and what has been done is just to tell the people what is different in this current draft Constitution from the one that they either voted for or against in 2005. So, we are not really late on time because majority of Kenyans know what a Constitution is all about. All that they want to be told is what is it that is different in this kind of Draft. What is new compared to what they voted for in 2005.

Mr. Speaker, Sir, with regard to hon. Dr. Kones concern, there are usually several projects in the Budget, some of which are never implemented because the preparations were not on time. Rather than return those funds back to the Treasury, those funds are usually diverted to meet other more needy projects. I am not in a position to state clearly here which those projects were. But I am just saying that we were able through some savings within the Budget to divert funds in order to fund the Constitutional review process.

Hon. Sambu is concerned just like many other Kenyans are concerned about some hate speeches; hate speeches coming through public rallies, pulpits, print and electronic media, which have the effect of trying to incite the population against each other. Those kind of speeches are banned. That is the reason we set up the National Cohesion and Integration Commission. That Commission has started working. It has issued some very stern warnings to Kenyans in general to desist from issuing statements which could have the effect of inciting communities against communities. They have identified particularly, vernacular radio stations as some of the media that has been used to incite the public. They have actually issued warnings to those people. I think it is also the responsibility of Members of Parliament to educate their supporters and also desist from issuing statements, which can create division among our people.

Hon. Member for Kinangop wanted to know the status with regard to other reforms. On the police reforms, we set up a taskforce to carry out investigations and make recommendations as to why to reform the police force. It came up with a very comprehensive report, which was approved and thereafter we set up a team to oversee the implementation of the recommendations contained in that report. That team is already working. Major changes have taken place within the police force. For example, there is retraining of those who are already in the force. There are those who have been retired. Some of them have been dismissed. There are also proposals to improve the living and working conditions within the force, some of which decisions are going to be contained in the Budget which will be read here tomorrow. So, the police reforms are already on course.

On judicial reforms, there was a taskforce which was set up by the Judiciary which came up with recommendations. But we felt those recommendations needed more refining. As you know, the draft Constitution has provisions for members of the Judiciary to retire or resign and then be vetted and appointed. I want to assure the hon. Member that the reform in the Judiciary is going to be done much more comprehensively after the adoption of the new draft Constitution.

The hon. Member also wanted to know why Cabinet Ministers have not been directed to tow the line with regard to the constitutional review process. We take the view that this is a matter of conscience. This is an area where we can remove the bar and allow hon. Members to vote with their conscience. We have not seen it necessary to try and force Members of the Cabinet to say yes. The Constitution is a very fundamental document that goes beyond the Government of the day. Due to that, we have told hon. Members, Ministers and Assistant Ministers to support what they think is right and that they will not be victimized. We have gone further to say that they will be given full protection by the Government when they will be carrying out their campaigns.

Hon. Affey and hon. Olago wanted to know what steps will be taken to ensure that the Judiciary is not used to sabotage the reform process. You know very well that there is clear separation of powers. There is the Judiciary, Legislature and the Executive. We do not think that we should dictate to the Judiciary what they should do. We know that some of the provisions in the draft Constitution may hurt some of the privileges that the Judiciary officers currently enjoy. For example, there is a provision that some categories or members of the Judiciary may have to retire and be reappointed. That might be the reason that has influenced some of the decisions that we have seen recently like, for example, the ruling on the Kadhi's Court. How else do you explain a case which was filed in 2004, heard in 2005 and the arguments were finished in---

**Mr. Imanyara:** On a point of order Mr. Speaker, Sir. Is the Prime Minister in order to anticipate debate on a Motion that is already in your office?

**Mr. Speaker:** Order, Member for Imenti Central. That Motion is not yet the property of the House because notice of it has not yet been given. So, the House does not even know that there is a Motion.

**The Prime Minister (Mr. Raila):** Mr. Speaker, Sir, I did not even know that there is a Motion. Thank you for making that clarification.

I wanted to say that it defeats any logic for the ruling to be made at this time when the case was filed over a draft which was defeated in a Referendum in 2005. But, be that

as it may, we hope that the Judiciary will not try to sabotage this review process because this is the most important agenda that this country has had to deal with in a long time.

Hon. Eugene Wamalwa has talked about violence. The Interim Independent Electoral Commission (IIEC) has a responsibility to deal with cases of violence, particularly, during the election campaigns. Yesterday, I saw the Chairman of the Commission issue a very stern warning. He said that he would deal very effectively with cases of violence.

Mr. Speaker, Sir, let me make a clarification now that I am here. It must be understood that when we are talking about South Mugirango, that political parties have a right to organize their rallies during the campaign. Every political party is given an opportunity to schedule its rallies so that rallies do not coincide and supporters clash. What happened in South Mugirango was that one particular party was not organizing its own rallies. It would go to address rallies which had been organized by other political parties. If you go to address rallies which have not been organized by your supporters, then you must know that you are addressing your opponents. If those opponents feel that they did not want to be addressed by you, that is not the business of the other political party. You must have the facts that if you are going to address a rally of PNU and you are in ODM, you must know that, sometimes, those supporters may feel offended. Those are the facts the way they are. Kenyans need to know the truth wherever they are. ODM supporters did not attack anybody. Somebody went to address an ODM rally after those who had organized that ODM rally had left the venue. We will not organize any kind of hooliganism or thuggery against our opponents. We will not because we know we are sufficiently strong.

Thank you.

**Mr. Speaker:** Thank you. That 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 COMMISSIONS OF INQUIRY (AMENDMENT) BILL

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Mr. Olago:** Mr. Temporary Deputy Chairman Sir, I beg to move that the Committee doth report to the House its considerations of the Commissions of Inquiry (Amendment) Bill and its approval, thereof, without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker*

*(Mr. Affey) took the Chair]*

## **REPORT AND THIRD READING**

### THE COMMISSIONS OF INQUIRY (AMENDMENT) BILL

**Mr. Imanyara:** Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Commissions of Inquiry (Amendment) Bill, and approved the same without amendment.

**Mr. Olago:** Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**Mr. Wamalwa** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Mr. Olago:** Mr. Temporary Deputy Speaker, Sir, I beg to move that the Commissions of Inquiry (Amendment) Bill, be now read the Third Time.

**Mr. Wamalwa** seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

## **MOTION**

### ADOPTION OF REPORT ON APPOINTMENT OF KMTC DIRECTOR

**Ms. A. Abdalla:** Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the report of the Departmental Committee on Health, Committee on Delegated Legislation and the Committee on Equal Opportunities

on the appointment of the Director, Kenya Medical Training College (KMTC), laid on the Table of the House on Thursday, April 15, 2010.

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

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

On Tuesday, 1<sup>st</sup> December, 2009, the Member for Mutito, hon. K. Kilonzo asked the Minister for Medical Services a Question by Private Notice, seeking to know the procedures followed to appoint the current Director of the KMTC. The House was not satisfied with the Minister's responses, especially to the supplementary questions. In this regard, the Speaker directed that the matter be examined by the Departmental Committee on Health jointly with the Committee on Delegated Legislation and the Committee on Equal Opportunities. Pursuant to this directive, the Committee held four joint meetings to examine the matter.

As you are aware, the Committee on Delegated Legislation is established under Standing Order No.197 to undertake the activities listed under that Standing Order while the Committee on Equal Opportunities is established under Standing Order No.192 and its mandate is explained there. The Departmental Committee on Health is established under the provisions of Standing Order No.198 and its activities are also listed there. The Committee that looked into this matter comprised of the following Members:-

The hon. Amina Abdalla, MP  
The hon. Robert Monda, MP  
The hon. Mohammed Affey, MP  
The hon. Ababu Namwamba, MP  
The hon. Bonny Khalwale, MP  
The hon. Dr. Julius Kones, MP  
The Hon. Francis Chachu Ganya, MP  
The Hon. Olago Oluoch, MP  
The hon. Maison Leshomo, MP  
The hon. Njoroge Baiya, MP  
The hon. Muturi Mwangi, MP  
The hon. Joseph Lekuton, MP  
The hon. Fahim Twaha, MP  
The hon. Cyprian Omollo, MP  
The hon. Thomas Mwadeghu, MP  
The hon. Fred Kapondi, MP  
The hon. Luka Kigen, MP  
The hon. Millie Odhiambo, MP  
The hon. Ephraim Maina, MP  
The hon. Noor Nasir, MP  
The hon. Eseli Simiyu (Dr.) MP  
The hon. Gitobu Imanyara, MP  
The hon. Kioko Munyaka, MP



The hon. Fredrick Outa, MP  
The hon. Kiema Kilonzo, MP  
The hon. Raphael Letimalo, MP  
The hon. Sheik Mohammed Dor Yakub, MP  
The hon. Joseph Oyugi Magwanga, MP

In examining the matter, the joint Committee sought to answer the following three questions:-

- (i) Whether the Minister followed the right procedures in appointing the director?
- (ii) Whether law conferred discretion upon the Minister to disregard the advice of the Board?
- (iii) Whether the Minister's action in disregarding the Board was justified?

Mr. Temporary Deputy Speaker, Sir, the Committee held a total of four meetings which included a meeting with the Minister for Medical Services and other three meetings that examined additional information submitted to it by both the Minister and by going through the Efficiency Monitoring Unit (EMU) report. The Committee wishes to thank the office of the Speaker and the Clerk of the National Assembly for the support it provided.

On 19<sup>th</sup> February, 2010, the Committee received evidence from the Minister for Medical Services in which he informed the Committee that pursuant to the provisions of Section 8(1) of the Kenya Medical Training College Act, he consulted the Board and requested it to hire a human resource firm to recruit a replacement for the Director of the KMTC. The Board hired a firm, M/s. Hawkings and Associates, who put in an advert and applicants shortlisted and the list provided to the Board. The Board concluded by submitting a list of the following four names to the Minister to choose one to appoint. These are:- Dr. Chebish Maswani; Dr. Mildred Mudanyi; Dr. Morris Simiyu and Dr. Timothy Kagondu. He also informed the Committee that after the KMTC Board provided him with the four names, he decided not to appoint any of the four because he felt that the KMTC Board of Management was not competent. He also informed the Committee that he had instructed the EMU to investigate the state of affairs of the management of the college and the report implicated members of the KMTC management, hence he felt that members of that Board were not competent to choose the person.

He also felt that having gone through the CVs of the four, they would not be able to undertake the job. He then requested for the full list of the CVs of all those who had applied for the position and decided to appoint Dr. Olago Onundi as the KMTC Director, since he considered him most qualified on account of his exemplary record at the Ministry of Health. He said that the decision he took of appointing Dr. Onundi was in the best interest of the college and the country. He said that it is not true that he had attended a party in honour of Dr. Onundi's appointment, but instead, he had attended a Christmas party. He also agreed that Dr. Onundi does not hail from his constituency.

The Committee also looked at the report of the Human Resource Consultancy, M/s. Hawkings and Associates and clarified that the vacancy was, indeed, advertised in the local newspapers on 24<sup>th</sup> and 27<sup>th</sup> April, and that 23 applicants applied for the position and the human resource firm shortlisted 18 applicants for further interview by the Hawkings and Associates. After the interviews, they gave ten names to the KMTC Board of Management to do another interview, from which the KMTC Board of Management agreed on the four names that I had initially mentioned.

Mr. Temporary Deputy Speaker, Sir, with regard to the issue as to why the Minister disregarded the advice of the Kenya Medical Training College (KMTC) Board, he elaborated that the Efficiency Monitoring Unit (EMU) report implicated three members out of the four who were short-listed and as such he was not confident that they would turn around the KMTC. In his defence, he also mentioned that the KMTC Board of Management was adversely mentioned in the EMU report. He said that since time was of essence, he felt that it was important that he made that decision.

The Committee further looked deeply into the question of whether the Act provided the Minister with the discretion in the appointment process. It was very clear to the Committee that, that discretionary power was not provided and that the appointment was to be a joint venture between the Board of Management and the Minister, and that the Board of Management had undertaken its responsibility and in disregarding the advice of the board, the Minister did contravene Section 8(1) of the KMTC Act since that Act talks of “shall in consultation” and that the word “shall” is not discretionary upon the Minister. The Committee observed that if the legislation wished the Minister to be the sole appointing authority then the Act would have clearly stated so as stated in other Acts that request him to be the sole recruitment agency.

Mr. Temporary Deputy Speaker, Sir, on the issue of the Minister’s justification that the EMU report discredited three of the four persons who had been listed, the Committee, after reviewing the report, found out that it was only Dr. Timothy Kigundu who was adversely mentioned in that report and as such the Minister was misleading it.

On the issue of the incompetence of the KMTC Board of Management, the Committee felt that the composition of the same is such that they would not be applicants to such a position. As such, his justification was not valid. The Committee did not find his justification holding water because the EMU report came out in January, 2010 and his actions were undertaken in August, 2009.

In conclusion, the Committee found that by disregarding the advice of the KMTC Board of Management, the Minister for Medical Services, did not follow the laid down procedure as enacted in Section 8(1) of the KMTC Act. Secondly, the appointment of the Director of the KMTC as made by the Minister for Medical Services contravenes Section 8(1) of the KMTC Act. Thirdly, the appointment was contrary to the spirit of the National Cohesion and Reconciliation Act in that it was not fair and it failed to accord equal opportunity to all persons qualified for the position.

Fourthly, by failing to follow the due process, the expenditure on the recruitment exercise totaling Kshs1,878,926 made up of sitting allowances and consultancy fee was unavoidable expenditure of public funds. The Minister failed to demonstrate that the KMTC Board of Management, save for Dr. Kagundu and the consultancy firm M/s. Hawkins Associates Limited was corrupt, inefficient, and incompetent as alluded in his response in the House and before the Committee.

Mr. Temporary Deputy Speaker, Sir, the Committee registered a descending view from Mr. Olago, the Member for Kisumu Town West in which he said that he did not agree with the Committee’s interpretation of the use of the word “shall” in Section 8(1) to mean a mandatory obligation on the Minister. The Committee, therefore, recommends that the House expresses its displeasure and reprimands the Minister for Medical Services for misleading it and the Joint Committee on the role of the KMTC Board of Management and the consultation M/s. Hawkins and Associates Limited in the

recruitment process and resolves that the process of the appointment of the KMTC Director as followed by the Minister was irregular. Secondly, the House should also direct the Minister for Medical Services to follow due process of the law and regularise the appointment of the director of the KMTC within 60 days.

With those few remarks, I beg to move and request the Chairman of the Committee on Equal Opportunity to second.

**Mr. Affey:** Mr. Temporary Deputy Speaker, Sir, I thank my colleague for moving this Report. What the House had asked us to do was to inquire into the possibility that the Minister might have over-stepped his mandate or abused the procedure and breached the law that exists. There is a common practice in this country, particularly with the creation of the Grand Coalition Government. There is a common practice in the Government for Ministers to continue to abuse the powers vested in them. Ministers have decided to use their privileged positions to abuse the law. This is a clear example of a case where the Minister did not, in any interpretation of the law, follow it. We have no problem with the competence or educational qualification of the current Director of the KMTC. We are not questioning his competency or whether he is the right person to hold that office. However, the procedure the Minister used to appoint the Director of the KMTC was clearly not within the law. He used his discretion to appoint that Director. He decided that the said person would be the Director of the KMTC. Therefore, the Minister bulldozed in many ways the appointment of the current Director of the KMTC.

After interviewing the Minister, the conclusion, as has been made by the hon. Chairlady, the Minister disregarded the advice of the KMTC Board of Management, and yet in law, he was supposed to listen to it. He did not follow the laid down procedure as enacted in Section 8(1) of the KMTC Act. The appointment of the Director was made by the Minister for Medical Services which contravenes the same Act which he is supposed to defend. The appointment was contrary to the spirit of the National Cohesion and Reconciliation Act in that it was not fair. As the Chairman of the Committee on Equal Opportunity, I can confirm that Kenyans were not given equal access to compete for this position. Dr. Onudi is a very fine doctor and manager. He is good in many ways but the procedure in which the Minister used to appoint him clearly did not give other Kenyans an opportunity to access and serve the country in that position. Therefore, we have Ministers who contravene the law and continue to sit in the Cabinet and give policy statements.

By failing to follow the due process, a huge amount of money was incurred. Why did the KMTC Board of Management have to advertise the position? Why did they have to use the taxpayers' money? Why was it relevant for the board to use such an amount of money if their recommendations would eventually be disregarded? In fact, the recommendations were not even disregarded; they were not even considered by the Minister. Therefore, this House must resolve the manner in which it should deal with these issues.

We want this country to be reformed and belong to all Kenyans. We want Kenyans to feel that Ministers who occupy privileged positions are, indeed, Ministers of the Republic of Kenya and not Minister for constituencies or tribes.

We want the Kenyan women who have not been given a chance in this country to be given their fair share of the functions of the state. You have a situation where out of the applicants who applied for that job, there was one female candidate, a very fine

doctor. So the Minister even in his own wisdom, if he used the names given to him by the Board and appointed one whether that one was number one or number four, he had the discretion to appoint any of the four, then the House and the country would have had a lot of respect. But here you have a situation where you do not check whether in that list you have groups in this country who are marginalised category either through regional imbalance or through sex orientation or whether the female have not been given any particular opportunity. There was even a lady who was acting and she is a member of staff of that same institution. They could still have gone ahead to confirm her. She was a good manager as we know. But we have a situation where, now we are only expressing displeasure. The Minister of State for public Service is here and I think he is well placed to advise the Cabinet Ministers particularly when they have their meetings at State House, to tell them if there is a Minister in Government, the Minister is a Minister of the Republic of Kenya. He is not there to represent his own constituency or his own tribe or your own relatives. You give this country and Kenyan people, the 40 million Kenyans, equal chance then people can feel proud that they have a country and they have got leaders. If the Minister wanted to appoint Dr. Onudi, there was nothing difficult by him allowing Dr. Onudi to go through the process, then the Board would have shortlisted him and then he had the discretion to appoint. Here, we have a situation where the Board has been trashed. How many other Ministers have done the same thing?

If you go to a Ministry today, you will realise that everyone speaks one language. From the Minister all the way down the language is one. It is neither English nor Kiswahili but the native language of the Minister. Then we want to say that we have a country? If you go to state Corporations, you find that people have put in all their clansmen and tribesmen to fill those positions, yet those positions belong to everybody in this country. As a Committee, we are going to be very thorough and I will provide reports to Parliament. I will begin from Parliament itself. We will ask the Parliamentary Service Commission to furnish us with the staff they have. We will go to the Office of the President and particularly the Ministry of State for Provincial Administration and Internal Security. From there, we will go to the Treasury and to every Ministry in this Republic and ask them to furnish us with the list of the staff they have.

Mr. Temporary Deputy Speaker, Sir, you will be shocked to see that there are Ministries which belong exclusively to one community. That is a shame. We want Ministers to be sure that the law is followed. Here is a clear case of abuse of the law yet we have the director still serving even after Parliament has shown displeasure. The Minister has no apologies to make. We are only asking two things; we want him to follow the due process of law within 60 days. He can as well have Dr. Onudi back and continue to serve the institution but for heaven's sake, let us clear the process so that this is not repeated by Ministers who will be occupying these offices as one Minister exits. If this continues, we risk polarising the country. When we polarise the country, what we have seen after the elections becomes quite shallow because of what could befall us. The country is bitter because of such activities. If we allow this to happen now, it will happen in another Ministry. It will happen in another corporation and by the end of it all, you have no country to call Kenya, people will be fighting in the streets.

Mr. Temporary Deputy Speaker, Sir, we want Parliament to approve this Report. We want to reprimand the Minister for Medical Services for what he did but not only him, let us reprimand any other Minister who violates the law. Let us reprimand all of

them because there is no Minister who is above the law, so that this country becomes a country where Kenyans feel proud and happy to belong to.

With those few remarks, I beg to second.

*(Question proposed)*

**Mr. Midiwo:** I rise to support the adoption of this Report. I want to thank the three Departmental Committees for the work they have done. But particularly I want to thank the Committee of Equal Opportunity. I want to remind you that the reason why that Committee was created was for reasons such as this and they are rampant all over. I think your work is cut out for you, Mr. Chairman.

Mr. Temporary Deputy Speaker, Sir, we have passed laws in the recent past in this House and one of them requires that a certain percentage of particular individuals from a certain community should be employed in any Government institution, parastatal or department. We want to see the Committee of Equal Opportunities taking up that job and doing it to the expectation of Kenyans. As you know, the issue of tribalism is the biggest vice alongside corruption in this country. That is what we are struggling very hard to kill. The realisation by the Committee that it is not the civil servants that we need to be criminalising--- A few months ago when some civil servants were relieved of their duties and politicians were left, I disagreed with that. I think people who take the lead in these things all the time are the politicians. So I do not think we should live above the law. In this case, I want to agree that the Minister should regularise this employment but it should be as a last example so that everybody does the right thing when they need to for the sake of harmony because we need to do right and good for our country.

I beg to support.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): I rise to support the Report but I have some few issues to raise about this Report. You have realised that when it comes to the law, in this case the Act gives the Minister the express authority to go for the Chief Executive of the institution. But that Act is only good when somebody else apart from a person coming from Luo Nyanza is appointed.

**Mr. Affey:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead the House that actually the Act is only good when it is referred to a certain region, yet the Committee of Parliament interrogated this particular Minister and found him to have violated the Act itself! It has nothing to do with tribes!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I will refer you to what the Act says. The KMTC Act says that: "There shall be a principal of the college who shall be appointed by the Minister on the advice of the Board---." That is what the KMTC Act says. But if you look at even other places, for example, Ministry of Water and Irrigation, all boards are headed by people from one particular region. There is nothing wrong in that because that does not come from Luo Nyanza.

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

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order! Order! Hon. Ojode, you are totally out of order! This Motion before the House has nothing to do with Luo or non-Luo Nyanza.

*(Applause)*

Please maintain---

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Okay, Mr. Temporary Deputy Speaker, Sir, let me continue.

**Ms. A. Abdallah:** Apologize!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): I apologize.

Mr. Temporary Deputy Speaker, Sir, I am a Luo, a real one. While I would support what the Minister has done, this fellow, Dr. Onudi, is highly qualified to manage the KMTC---

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

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Please, Mr. Temporary Deputy Speaker, Sir, protect me!

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order! Order! Hon. Ojode, the hon. Member is rightly on a point of order.

What is your point of order, Amb. Affey?

**Mr. Affey:** Mr. Temporary Deputy Speaker, Sir, is the hon. Member in order to continue to mislead the House? We have never questioned the competence of Dr. Onudi; we have questioned the process the Minister used to appoint him. So, do not mislead the House!

*(Applause)*

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

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order! Order, hon. Ojode! Indeed, if you were in the House, you would have heard the Mover say that they are not challenging the competence of the holder of that office. I think, if you were in the House you would not be attracting so many points of order. So, please, stick to the rules.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, you know if you want to say the truth, a lot of points of order will be raised.

Mr. Temporary Deputy Speaker, Sir, why is it that when Dr. Onudi, who is highly qualified is appointed, then he raises eyebrows? What we are saying here is that we were looking for a professional who would turn around the institution.

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! When an hon. Member rises on a point of order, hon. Assistant Minister, you must allow them.

Yes, Mr. Langat, what is your point of order?

**Mr. Langat:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think that despite your warnings to the hon. Member, he has continued to engage the House in

irrelevancies. I think the hon. Member has not read the Report. If he continues, I will ask that you send him away!

*(Laughter)*

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, you see, we have Standing Orders which guide the debate in this House. He is a first comer, so, I will excuse him for that. Let us be serious on this.

Mr. Temporary Deputy Speaker, Sir, we have seen so many anomalies in the appointments; the one for KRA, water services boards; it is everywhere!

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order, hon. Ojode! You have been referred to the Standing Orders and even you have referred to them. Relevant debates; please, stick to the issues that are within the Report; do not bring to us the reports of other Ministries!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I thought that we were talking about an institution where a Minister contravened some Act on the KMTC, and that is what I am talking about.

Mr. Temporary Deputy Speaker, Sir, I am saying that I do support the action the Minister took by appointing Dr. Onudi. That is what I am saying!

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

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Mr. Muthama, what is your point of order?

**Mr. Muthama:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Would I be in order to ask the Assistant Minister if it is correct, as an Assistant Minister, for him to stand here and say that because there was an anomaly in another Ministry, this one should also be accepted?

*(Applause)*

Does he mean that because there was an anomaly elsewhere, we should continue doing the same thing, or that if it happens, it has to be supported? It is up to the Assistant Minister to stand and debate issues as an Assistant Minister of the Government!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, let us be sober while talking about a very important institution like this one. The question here is that the Minister did not follow the right channel in the appointment, and I am saying no! The Minister followed the right channel, because the KMTC Act says that the Minister has prerogative powers to appoint anybody who qualifies to run the institution! That is what we are saying!

Mr. Temporary Deputy Speaker, Sir, why would it be---

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

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

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Why do you not sit so that I make my points known? You are a member of the Committee!

**Mr. Ruto:** I have the Floor now, Mr. Ojode! The hon. Assistant Minister is actually confirming to this House that it is normal business in the Government. Is he confirming that it is normal business in the Government to appoint directors in the manner that has now been discovered in the Ministry of Health? Is it also in order for the Assistant Minister to allege that one of the qualifications they normally look for is ethnicity? He has said he is qualified because he is a Luo; is this one of the qualifications that you need to work in the Ministry of Health?

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order, Mr. Ruto!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, you have realized that even hon. Ruto has not gone through the Report. I never said that!

Mr. Temporary Deputy Speaker, Sir, what I am saying is that the Minister has powers to appoint the Chief Executive of the institution of KMTTC. When the Minister exercised those powers and appointed Dr. Onudi, then there is hue and cry, that we should have gone to North Eastern or the Coast. What is happening in other areas?

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order! Order! If you are not going to be relevant, hon. Ojode, I will have to ask you to sit down. Please, be relevant and concentrate on issues that are properly before the House!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, you know that---

**Mr. Midiwo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to concur with you that the Assistant Minister is a bit out of order, because the Chairman of the Committee on Equal Opportunity rose up here and told this House very elaborately how Dr. Onudi is very qualified, not because he is a Luo, but as a Kenyan. Therefore, is the Assistant Minister in order not to stick to the substance of the Report, which simply addresses the process which the Minister did not follow? If you read the Report, the Minister has not even denied that in the Report.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, you will realize that I am a bitter person in terms of---

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order! Order! You may be bitter or not but, please, I want to caution you to be relevant.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, go to page 28 of this Report, which is where I want to base my argument. It says clearly that the KMTTC Act gives the Minister express authority to appoint.

**The Temporary Deputy Speaker** (Mr. Imanyara): Read it!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, the Report states as follows:-



“The KMTC Act states that there shall be a principal of the college, who shall be appointed by the Minister on the advice of the Board of Management.”

Mr. Temporary Deputy Speaker, Sir, if you go through the Report, you will see that the EMU gave their side of the story. They actually said that the Chief Executive of the institution is highly qualified.

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

**The Temporary Deputy Speaker** (Mr. Imanyara): What is it?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, can you, please, protect me, so that I can complete my contribution?

**Mr. Were:** Mr. Temporary Deputy Speaker, Sir, is it in order for the Assistant Minister to contradict himself? He started his contribution by saying that he supported the Report but as he progresses, in between, he says he supports the Minister. So, which is which? Does he support the Report or the Minister?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I said that I support the adoption of the Report, but I also gave the rider that I am supporting the action of the Minister, because he has been given the powers to act by the KMTC Act. Why is it that when---

**The Assistant Minister for Livestock Development** (Mr. Duale): On a point of order, Mr. Speaker, Sir. It is sad that the Assistant Minister is still dwelling on irrelevance. One, he has already read out what the Act says – the appointment shall be done on the advice of the Board of Directors. It is as simple as that. So, why is he telling the House that the Minister has express authority to appoint the principal when the Act says clearly that he must do so on the advice of the Board?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, because there are a number of points of order, I want to conclude by saying that we, from Luo Nyanza, have been marginalised for a long time. I would want to say that I fully support the Minister. I fully support the action that the Minister took in appointing Dr. Olang’o Onudi, who is highly qualified.

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

**Mr. Ogindo:** Mr. Temporary Deputy Speaker, Sir, I rise to support the adoption of the Report. As I support, I want to say that the three committees have done a commendable job. The Committee on Equal Opportunity leads the pack of the Committee on Health, and the Committee on Delegated Legislation.

It is important that this House stands by the laws that it passes. These are very serious matters, because it is on this account that this country can remain cohesive, united and focused. It is the abuse of such small things that can make this country go to war. I have commended the Committee on Equal Opportunities, but I want to say that the Committee needed no prompting in dealing with this matter. The Standing Orders have given unlimited authority to the Committee on Equal Opportunities to ensure that every Kenyan is accorded equal opportunity.

Mr. Temporary Deputy Speaker, Sir, I have seen, in many places I have been to, that there is enormous imbalance in this country, particularly on matters of employment.

It is important that the Committee on Equal Opportunity takes up these matters very vigorously. There are even earlier cases where the law might not have been followed.

I want to say that Dr. Onudi is a very refined doctor and quite an astute manager. The work he has done ever since he was appointed is commendable. However, I want to join the Committee in reprimanding the Minister, so that after we adopt this Report, he can regularise the appointment, so that we can have continuity. There is no doubt that this House has no problem with the performance and ability of Dr. Onudi.

Mr. Temporary Deputy Speaker, Sir, there is a law which says that a third party is under no obligation to know whether the internal rules were complied with. So, this House must not punish Dr. Onudi for a mistake that was not his. I would even take an appointment letter any day, if I get it.

With those words, I want to join this House in supporting the adoption of the Report.

**Mr. Langat:** Thank you very much, Mr. Temporary Deputy Speaker, Sir. I rise to support the Report.

The criteria used in appointment of various directors and Chief Executive Officers in Kenya is spelt out. The KMTC Act is very clear on how to appoint the Principal of the College. This is a very clear case of impunity, and the Government must take a very clear action against it. Many of the Ministers in the Government go round the country talking about reforms. They talk about the fact that the proposed Constitution will bring changes in Kenya.

However, the new Constitution or the so-called “reforms” will never see the light of the day if the Ministers we will have will be the same ones who are in the current Government. Those Ministers talk about reforms by day but, by night, they are the anti-reformists of these days. So, I support the adoption of the Report. The appointment of the KMTC Principal should be regularised. It is very important that it has been said that we are not worried about the person in question; we are worried about the process through which he was appointed.

With those few remarks, I beg to support.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I thank you for giving me this opportunity. As you know, I witness so many of such cases. I have been able to analyse the matter based on past spirit and past pressure, and then looked at the reform spirit and the future manner in which these things should be done.

I want to commend the three Committees for initiating this action and making the recommendation, particularly only to the extent that the appointment needs to be regularised, which means the persons sitting on those Committees appreciate what used to be the past spirit. The past spirit was based on executive powers. Those with powers would do what they wished and expected everybody else to follow. We all know it.

Mr. Temporary Deputy Speaker, Sir, the Members of the Committee also appreciate the past pressures. When you hold a position of authority, everybody who knows you puts pressure on you to give them what is within your powers to give, even if their request is tantamount to asking you to bend the law.

It is in this spirit that I support the initiative of Parliament; the Joint Committee has started early enough, even before the new Constitution comes into place, to hold the Executive accountable. This is just an early warning to the future Executive of this

country that Parliament will be insisting on accountability and adherence to the rule of law. However trivial a matter may be, Parliament will not let you get away with it.

Mr. Temporary Deputy Speaker, Sir, as you know, we have a real challenge in this country, of convincing every Kenyan that what is Kenyan should belong to Kenya and should be given to Kenya.

What is personal or regional can remain regional. If in future somebody wants to think and act in the interest of a region, a section or a tribe, that person had better go and be a governor in a certain area. He or she should not want to be a national leader or sit in an institution or in a position that requires simple acts in the national interest of this Republic. This challenge is serious and I commend the three Committees for initiating this process and insisting that the Minister regularises this appointment.

What I have not seen in the Report is that definitely, it was a conflict of power. The Minister had powers and interests and the Board also had certain powers and interests. I have not seen an analysis in this Report where the Committee tells us whether the manner in which the Board made the recommendations were totally above board. What was the composition of that Board? How were the names selected? How were the debates carried out? Was it ruled out that one or two Board members were not too powerful to have insisted that a particular recommendation be forwarded to the Minister? Did the Committees go deep enough into the manner in which that Board has been practicing its business in the management of the Kenya Medical Training College (KMTC)? Since that portion is missing we may have to excuse many of us for getting into these battles because our attitudes are still skewed in the direction of those we know and those we wish to favour.

Mr. Temporary Deputy Speaker, Sir, my contribution essentially, is to convey a surprise that the people who are not very confident that the new Constitution as proposed is overdue to address some of these issues are the ones who have raised the issue of impunity. Please, help this country change and change drastically. Bring new institutions and regulations that will make all of us comfortable with the management of all our institutions. Please, stop being green during the day and red at night.

I support.

**The Temporary Deputy Speaker** (Mr. Imanyara): Ms. A. Abdalla, there is nobody intending to speak. Do you want to respond?

**Ms. A. Abdalla:** Mr. Temporary Deputy Speaker, Sir, I wish to thank all the hon. Members who have contributed. Probably, I will respond only to a few.

Mr. Temporary Deputy Speaker, Sir, I would like to repeat what Mr. Otieno has said that in the spirit of reforms this process states that we should give Kenyans what is theirs and tribal chieftaincy what is theirs.

On the issue of tribal chieftaincy and tribal cocoons, it is one thing to state that your group was marginalized and another to rectify historical injustices. What would happen if every marginalized group has a person trying to rectify historical injustices when they are given an opportunity?

With those few remarks, I urge all Members to adopt this Report and urge the Committee on Implementation to ensure that the regularization takes place within 60 days. I reiterate that we are not talking about the competence of Dr. Onudi. In fact, anecdotal information from the Committee is that he has positively changed the KMTC.

However, that is not what we are arguing about; we are discussing the procedure. My friend, *Serikali*, I hope you have noted that.

With those few remarks, I beg to move.

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Mr. Imanyara): Let us move on to the next Order!

ADOPTION OF REPORT ON RECRUITMENT OF  
KAA MANAGING DIRECTOR

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

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the Recruitment of the Managing Director, Kenya Airports Authority (KAA), laid on the Table of the House on Thursday, 15th April, 2010.

Mr. Temporary Deputy Speaker, Sir, the Departmental Committee on Transport, Public Works and Housing was constituted on 17<sup>th</sup> June, 2009 during the Third Session of the Tenth Parliament pursuant to the provisions of Standing Order 198(1). The Committee executes its mandate in accordance with the provisions of Standing Order 198(3).

The Departmental Committee on Transport, Public Works and Housing comprises of the following Members:-

1. The Hon. David Were, MP - Chairperson
2. The Hon. Isaac Muoki, MP - Vice-Chairperson.
3. The Hon. Walter Nyambati, MP
4. The Hon. Edwin O. Yinda,, MP
5. The Hon. Yusuf Chanzu, MP
6. The Hon. Wilber Otichilo, MP
7. The Hon. Boaz Kaino, MP
8. The Hon. Benjamin Langat, MP
9. The Hon. Joseph Kiuna, MP
10. The Hon. Clement Wambugu, MP
11. The Hon. Mohammed Gabbow, MP

The Kenya Airports Authority falls under the Ministry of Transport which is in the category of physical infrastructure sector, one of the very critical sectors to the socio-economic needs of the country.

Mr. Temporary Deputy Speaker, Sir, in executing its mandate, the Committee considered the matter of allegations of irregularities in the recruitment process of the Managing Director of the KAA upon receipt of reports alleging irregularities in the process. To this end, the Committee held a total of four meetings.

We had a meeting on 9<sup>th</sup> March, 2010; 16<sup>th</sup> March, 2010; 13<sup>th</sup> April, 2010 and 14<sup>th</sup> April, 2010. In these meetings, we met the Assistant Minister, Mr. John Harun Mwau, MP; the Permanent Secretary, Ministry of Transport, Dr. Cyrus Njiru; the Chairperson of

the KAA, Mr. Martin Wambora; the then Managing Director, Mr. George Muhoho; the Ag. Managing Director, Mr. Mathew Wamalwa and the Procurement Manager, Mr. Allan Muturi.

Mr. Temporary Deputy Speaker, Sir, the objectives of considering the matter was that the KAA is a public institution and, therefore, should at all times serve public interest as well as observe the principle of fairness, transparency and accountability, and that all qualified Kenyans should be accorded a fair and equal opportunity to hold positions in the public service and this extends the opportunity to compete for these positions in a fair and transparent manner by according a level playing field to all.

During the inquiry, we were informed that the then Managing Director placed an advert in the newspapers for the appointment of a new Managing Director without the knowledge of the Board. On 2<sup>nd</sup> the Board met and in the process of introducing the new Chairman to the Board, the Managing Director informed the Board members that in a previous Board meeting the members had deliberated on the appointment of a new Managing Director. But the Board members indicated that they were not aware of such a meeting having been held. It was then resolved by the Board that another meeting be held on 3<sup>rd</sup> in which the matter of the appointment of the Managing Director would be discussed. The meeting was held on 3<sup>rd</sup> and the Board decided to restart the process of sourcing for a new Managing Director. In the meantime, they directed that the earlier advertisement be cancelled and a new one placed. A new advertisement was placed in the newspapers on 10<sup>th</sup> February and they amended a bit of the earlier advertisement by inserting a new requirement. For that purpose, I would like to table the first advertisement dated 27<sup>th</sup> January and the one of 10<sup>th</sup> February where a new condition was inserted in regarding the requirement of knowledge of public sector as a necessary requirement. That was not in the first advertisement.

Mr. Temporary Deputy Speaker, Sir, we were informed that Manpower Services were sourced to place the advertisements in the newspapers. Bt when we asked for the documents on how Manpower Services were sourced, it came to light that they were not able to convince us how they were sourced. They were not able to produce the required documents. We informed them that the procurement process was not done correctly. However, the Manpower Services advert that appeared in the newspapers on 10<sup>th</sup> had a closing date of 15<sup>th</sup> February. During those five days, a total of 152 candidates applied. The list of 152 candidates who applied and their qualifications is on this list.

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

Within the five days, 152 candidates applied. Then, Manpower Services was required to submit names of eight applicants who were to be interviewed by the Board within a period of four days. So, by 19<sup>th</sup> February, Manpower Services were supposed to have given out the list of eight candidates who were to be interviewed by the Board. So, Manpower Services---

### QUORUM

**Mr. Bahari:** On a point of order, Mr. Temporary Deputy Speaker, Sir. There is no quorum in the House.

**The Temporary Deputy Speaker** (Mr. Imanyara): It is true! Please ring the Division Bell!

*(The Division Bell was rung)*

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Members, due to lack of quorum, the House is now adjourned until tomorrow, Thursday, 10<sup>th</sup> June, 2010, at 2.30 p.m.

The House rose at 5.20 p.m.