

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 9th December, 2010

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the Departmental Committee on Administration and National Security on its fact-finding visit to Jomo Kenyatta International Airport (JKIA), Nairobi; Moi International Airport, Mombasa; Kilindini Sea Port; and Malindi Airport over alleged security lapses at the entry points from 27th October, 2010 to 29th October, 2010.

(By Mr. Kapondi)

(Mr. M. Kilonzo entered the Chamber with a briefcase)

NOTICE OF MOTION

ADOPTION OF REPORT ON SECURITY
LAPSES AT KENYAN AIRPORTS

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

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on its fact-finding visit to Jomo Kenyatta International Airport (JKIA), Nairobi; Moi International Airport, Mombasa; Kilindini Sea Port; and Malindi Airport over alleged security lapses at the entry points from 27th October, 2010 to 29th October, 2010 laid on the Table of the House on Thursday, 9th December, 2010.

(Mr. M. Kilonzo entered the Chamber carrying a Briefcase)

Mr. Midiwo: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, Mr. Midiwo?

Mr. Midiwo: Mr. Speaker, Sir, I find it rather unusual that Mr. M. Kilonzo has walked into the House with a big briefcase and yet we do not know the contents therein. It could be a gun or a bomb!

Mr. Speaker: Mr. Minister for Justice, National Cohesion and Constitutional Affairs, has your bag been screened by the security?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, it has not only been screened, but I have also been screened. I am surprised that the Government Chief Whip is suspicious of my briefcase and yet hon. Uhuru Kenyatta comes to the Chamber with briefcases all the time during Budget Day.

The material I have is required by the business I am required to deal with today like the Human Rights Report by the Kenya Commission on Human Rights and so on. So, it is not harmful and I am prepared to open the briefcase for Mr. Midiwo, if he wants to look at it.

Mr. Speaker: Order, Mr. M. Kilonzo. You have given adequate information. Please, resume your seat.

Hon. Members, I am satisfied that the bag that Mr. M. Kilonzo is carrying is safe because it has been screened by the Serjeant-at-Arms before the Minister gained entry into the House. Mr. Midiwo, maybe, we will want to hear you with respect to the concern of the Minister that you, as a Joint Government Whip, are doubting your own Minister.

(Laughter)

Mr. Midiwo: Mr. Speaker, Sir, it is just rather unusual. We associate briefcases with money. You can remember the Gor Sungu and Dr. Noah Wekesa mishap at the Kisumu Airport where one picked the other's briefcase and found millions of shillings in the briefcase. Recently, we have heard cases of grenades and bombs. You never know, your House could be in danger and we, as your children, could be in greater danger.

Mr. Speaker: Very well, Mr. Midiwo. However, I want to encourage you that in future, given that you are part and parcel of the top leadership of Parliament to trust your own systems and enhance the level of trust that you have in the Government that you whip.

(Mr. Midiwo stood up in his place)

Mr. Speaker: The matter should rest there, Mr. Chief Whip!

QUESTIONS BY PRIVATE NOTICE

HARASSMENT OF KENYAN FISHERMEN BY UGANDAN SECURITY FORCES

Mr. Mbadi: Mr. Speaker, Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Could the Minister explain why Kenyan fishermen residing in Migingo Island in Lake Victoria are harassed by Ugandan Security Forces?

(b) Could he state whether the Joint Boundary Survey commissioned by the Kenyan and Ugandan Governments was completed and if so, to provide the report to the House?

(c) Could he also explain the steps the Government has taken to implement the resolution passed in the House urging the Government to use all possible means available to reclaim the island, including registering the dispute with the United Nations Security Council?

Mr. Speaker: Is anyone here from the Ministry of Foreign Affairs? Yes, the Deputy Leader of Government Business!

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I beg the indulgence of the House that the Minister and the Assistant Minister are not in the House. We will try to ensure that they are here on Tuesday, next week unless we get them before the end of Question Time.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I have just heard the Deputy Leader of Government Business requesting that this Question be deferred until Tuesday, next week. This is a Question by Private Notice and I filed it two weeks ago. It was deferred last week because the Minister was not in the House to answer it. I think it will be unfair to me if this Question is deferred again.

Mr. Speaker: We will try and revisit the Question a little later if we have time during this sitting. Mr. Deputy Leader of Government Business, please, make an effort to find out where the Assistant Minister is. He was available yesterday.

Let us move on to the next Question by Eng. Gumbo!

Eng. Gumbo: Mr. Speaker, Sir, before I ask this Question, I wish to seek the guidance from the Chair. This Question has now come up twice. I asked the Question and the first supplementary question. Some hon. Members who contributed brought up issues which the Chair undertook to rule on before this Question could proceed. I was wondering if the Chair could give us directions on the same.

Mr. Speaker: First, you ask the Question.

LIST OF EMPLOYEES AT
KENYA AIRPORTS AUTHORITY

Eng. Gumbo: Mr. Speaker, Sir, I beg to ask the Minister for Transport the following Question by Private Notice.

(a) Could the Minister table in the House a list of all employees (excluding the casuals) of the Kenya Airports Authority (KAA) categorized into stations, indicating their respective names, dates of birth, dates of first employment by KAA, academic/professional qualifications, job group/rank, department and home district?

(b) Could the Minister also provide a comprehensive/detailed organogram of the Kenya Airports Authority?

(c) What steps is the Minister taking to ensure equity and regional balance in employment at the Authority?

Mr. Speaker: The Minister will answer and then I will determine if I have to give any directions.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, indeed, I responded to this Question. In the course of the supplementary questions, some issues were raised. The Chair of the day promised to make a ruling on the matter that had arisen as a result of the discussion. I am not quite sure whether or not there was any supplementary question that was not answered at that time. The only outstanding issue

was whether there was going to be a ruling on whether a Member had to substantiate what he had said, which is outside our domain now that the matter is with the Chair. The Question was left at that stage for purposes of facilitating that Communication.

Mr. Speaker: Very well, Mr. Minister! I have been brought up to speed by the Clerk who was then at the Table when this matter arose. The Deputy Speaker, who was presiding at the material time, has not yet finalized his consideration of the matter. We will, therefore, defer this Question to Tuesday, next week at 2.30 p.m. so that the requisite directions – not answers - can be given as to what needs to be tabled and so forth.

Mr. Mbugua: On a point of order, Mr. Speaker, Sir. I rise under Standing Order Nos. 81, 82 and 97. I have risen very many times on points of order and you have always told me to go and read the Standing Orders so that I can understand them. Today, I can authoritatively stand before the House and tell you that I have understood the Standing Orders.

I would like the hon. Member who raised that Question to state if he has any interest in the said Question. Under Standing Order No.82, I have documents which link this hon. Member to the Question he has asked. The spirit with which this Question has been asked---

Mr. Speaker: Order, the Member for Kamukunji! Please, resume your seat. If you want to challenge a Member on whether he has interest in a matter which he wants to raise, then you would do so at the earliest opportunity. Normally, that would be before the Member addresses himself to the matter that he wishes to raise. In this case, you would have challenged the Member as soon as the Question was called out. Before he asked the Question, you would have challenged him to disclose his interest. You do not seem to have done so. I am not convinced that you are raising this matter timeously. If that is so, unless you persuade me otherwise, then I do not see that you have made adequate efforts to learn your Standing Orders.

(Laughter)

Mr. Mbugua: Mr. Speaker, Sir, there is a time you ruled that a Question must be asked before another Member can stand to ask whether the Questioner has an interest in the matter. I was waiting for the Question to be asked. It is as a result of your ruling that I am actually---

Mr. Speaker: Order, the Member for Kamukunji! It would seem that you really have a problem. Go back and acquaint yourself again with the Standing Orders.

(Applause)

Get to know, for example, when this Question first appeared on the Order Paper and what transpired when it did. You will find that my directions to you even this afternoon are still valid.

Please, let the matter rest there, for the moment.

Mr. Mbugua: Mr. Speaker, Sir, I have documents---

Mr. Speaker: Order, Member for Kamukunji! Do not allow this matter to get out of hand, which it could, not by way of a threat. Again, just go and acquaint yourself with

what has transpired this afternoon by getting a copy of the HANSARD and then determine where you are. Determine whether or not, it is safe for you to continue on that line regardless of what the consequences maybe. Are you prepared to accept that now?

Mr. Mbugua: Mr. Speaker, Sir, though I have some documents, I am accepting it. I have original---

Mr. Speaker: Order, Member for Kamkunji. It may very well be that the documents you have are useful and that they are original and informative. However, please, get your procedure right and let the matter rest there for now!

Mr. Mbugua: Mr. Speaker, Sir, I oblige. I am okay with Tuesday.

KMTC ADMISSIONS IN 2010

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

(a) could the Minister indicate the number of trainees admitted into the Kenya Medical Training College in 2010?

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

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

(a) A total of 4,480 trainees have been admitted to the Kenya Medical Training College for various courses commencing in September, 2010.

(b) The administrative unit given consideration during admissions is the district of origin and not the constituency which is an electoral unit.

(Mr. Kambi gestured to hon. Members)

Mr. Speaker: Order, Assistant Minister! You address the Chair. Look at the Chair rather than being distracted by your friends on the other side.

The Assistant Minister for Medical Services (Mr. Kambi): Thank you, Mr. Speaker, Sir. Admissions for 2010 courses were finalized in June this year and in selecting the students, the college worked with 76 districts that had been in existence as at the 1999 Population Census. The number of students admitted from each of the 76 districts broken down into training disciplines is hereby provided and I want to table it.

(Mr. Kambi laid the document on the Table)

(Mr. Keynan's cellphone rang)

Mr. Speaker: Order, hon. Keynan! You are not supposed to have your telephone on ringing mode while in the Chamber. This is a matter that we have addressed many times in the past. But because, perhaps Members had lapsed into a position where they do not remember that, that is the rule and our practice here, I will order you to withdraw from the Chamber for the next half hour. After that, you may return.

(Applause)

(Mr. Keynan withdrew from the Chamber)

Proceed, Assistant Minister!

The Assistant Minister for Medical Services (Mr. Kambi): Mr. Speaker, Sir, in addition to that information, I also table the guidelines and process of admission.

(Mr. Kambi laid the document on the Table)

Mr. Ruto: Mr. Speaker, Sir, we asked the hon. Assistant Minister to come back here with better figures. He is just repeating the answer he gave us the other day, which was not satisfactory. We want an explanation as to why some districts, for example, Nyeri District, had 161 admitted and while Bomet had only 52.

Mr. Speaker, Sir, I had asked the Assistant Minister to come back here with the census figures, which he relied on to indicate that Nyeri deserved three times more than the number for Bomet. Another case is that of Kisii which had 191? How does he justify this? I thought we had asked that and he has not even attempted to answer that question.

Mr. Kambi: Mr. Speaker, Sir, I think the hon. Member is in a hurry, but I have all the documents. I can also table the documents for each district showing the number of applicants, the number of those who qualified and those who did not qualify.

(Mr. Kazungu laid the documents on the Table)

Mr. Njuguna: Mr. Speaker, Sir, it would be in the interest of this House to know nationally how many trainees were recruited by the Ministry. We want the nation updated on the capacity that we have in all the health centres in the country.

Mr. Kambi: Mr. Speaker, Sir, the trainees we recruited this year are 4,480.

Mr. Ruto: Mr. Speaker, Sir, I have just quickly looked at the documents the hon. Minister has tabled. They do not seek or attempt to answer the Question I asked. He is just giving us a list of applicants, those who qualified, those that did not qualify and the grand total. It does not in any way answer the Question I put to him to justify the discrepancy in terms of the number admitted in the various districts. He had told us that the basis was the population in those districts; this determined the numbers of those that would be admitted to the colleges. This document does not in any attempt to answer that question. I seek your guidance.

Mr. Speaker: Very well! Member for Chepalungu, I remember very accurately the Question that you had asked.

Mr. Assistant Minister if you recollect, that is the Question that really the House would want you to answer. You were given figures of Bomet vis-à-vis- those of Nyeri. Then, you were asked what influenced the difference.

Mr. Kambi: Mr. Speaker, Sir, the list I have just tabled has got the number of applicants in each district---

Mr. Speaker: Order, Mr. Assistant Minister! Just restrict yourself to the Question that raises concern here. You were given two districts and the number of persons recruited from each of the two districts, Bomet and Nyeri. You were asked why the difference.

Mr. Kambi: Mr. Speaker, Sir, if we base this recruitment on population, it is simple to explain what happened. Central Province has a population of 4,377,915---

(Several hon. Members stood up in their places)

Mr. Speaker: Order, Order! Let us allow the Assistant Minister to answer this Question.

Mr. Assistant Minister, you have criteria which led you to numbers that you recruited in respect of each district. The Member for Chepalungu cited two districts, Bomet and Nyeri. He gave you numbers of candidates recruited in respect of Bomet and Nyeri. You remember the figures? If you do, why are the figures in respect of Nyeri higher than those for Bomet?

If you say population, then, the way you should go is to tell the House, Nyeri has a population of, for example, one million against Bomet which has 200,000. Then go to the other factors. That is the way to deal with this matter. Do not be too general!

Mr. Kambi: Mr. Speaker, Sir, I will start with the population because we based the selection on population, regional balance and affirmative action in terms of marginalised communities. So, when we talk of population and poverty index for a province like Nairobi, which has 2.8 million people and a poverty index of 22 per cent---

Mr. Ruto: On a point of order, Mr. Speaker, Sir. I just want the Assistant Minister to answer in simple terms. For example, if you multiply 52 by 3, you get Kshs156. Can you now tell me the population of Bomet? Is it 300,000 people? Maybe that of Nyeri is 900,000 people. I want something like that, Assistant Minister.

(Mr. Kambi stood up in his place)

Mr. Speaker: Order! Order, Assistant Minister! Please, resume your seat. Member for Chepalungu, resume your seat.

(The hon. Members resumed their seats)

Assistant Minister, I have tried as much as I can to be helpful to you, to break down the question and put it in very simple terms. This question was put to you even last time before it was deferred. Why do you not just specifically deal with it? Are you able to do that or are you unable? If you are unable, we will give you more time.

Mr. Kambi: Mr. Speaker, Sir, I am able. I have given the statistics to the hon. Member. I have also indicated to him the process of recruitment. We advertised and people applied. I cannot go to Bomet and tell the people that 500,000 of them should apply.

Mr. Speaker: Order! Order, Assistant Minister! I do not think you are helping the House. You are not even being economical with time. I will defer this Question once again. Please, note that this is going to be the last time. Go and come with an answer that is categorical and which is specific to the cases that have been cited to you by the Questioner. Please, do so. If you are unable, look for the services of the Deputy Leader of Government Business. He will assist you on how to frame an answer.

Next Question, Member of Parliament for Konoin!

DELAYED SUBMISSION OF REPORTS
ON PERSONS WITH DISABILITIES

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

(a) Could the Minister explain the inordinate delay in submitting Reports for Assessment of Persons with Disabilities to the National Council for Persons with Disabilities, which has not been done since June 2010?

(b) What measures has the Minister put in place to ensure that Medical Board Reports for Persons with Disabilities are forwarded to the National Council for Persons with Disabilities to enable them apply for tax exemption in accordance with the law?

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

(a) The delay in submission of Assessment Reports for Persons with Disabilities to the National Council for Persons with Disabilities is as a result of a sharp increase in the number of persons with disabilities coming out for assessment against a limited capacity at the Ministry headquarters to verify the assessment and submit them to the Council. However, the Ministry has not stopped submitting the reports to the Council. Out of 5,825 assessment reports received as at 29th November, 2010, the Ministry headquarters has verified and submitted 2,547 reports and a further 105 reports are ready for collection. A special team has been constituted to work on the remaining 3,173 cases to hasten submission of reports to the Council.

(b) In order to expedite forwarding of Medical Board records for persons with disabilities to the National Council for Persons with Disabilities, the Ministry has constituted 89 Medical Disability Assessment Committees in public hospitals, and more will be constituted in the coming months.

Thank you.

Dr. Kones: Mr. Speaker, Sir, may I know from the Minister when the 3,000 reports are expected to be cleared?

Mr. Kambi: Mr. Speaker, Sir, as soon as the committees dealing with the cases are through with their work. That will probably be within two to three weeks.

Mr. Olago: Mr. Speaker, Sir, the Persons Living with Disabilities Act came into operation on 16th June, 2004. That is over six and a half years ago. Why has it taken the Ministry so long to organise how people living with disabilities can be helped?

Mr. Kambi: Mr. Speaker, Sir, it has taken this long because of financial constraints. We have, however, managed, and something is being done.

Dr. Kones: Mr. Speaker, Sir, may I know what measures the Assistant Minister has put in place to ensure that sufficient disability assessment centres have been created in the districts, so that people living with disabilities can be provided with their reports without subjecting them to travelling all the way to Nairobi?

Mr. Kambi: Mr. Speaker, Sir, as I said earlier, we have formed committees which are dealing with the matter. As soon as we are through with this, such delays will be a thing of the past.

Mr. Speaker: Next Question, Member for Kisumu Town West!

FREQUENT WITHDRAWALS/TRANSFERS
OF ELECTION PETITIONS JUDGES

Mr. Olago: Mr. Speaker, Sir, I beg to ask the Minister for Justice, National Cohesion and Constitutional Affairs the following Question by Private Notice.

(a) What are the circumstances surrounding the repeated withdrawals or transfers of Judges hearing election petitions, especially in relation to the petitions for Kamukunji and Kitutu Masaba Constituencies?

(b) What measures is the Ministry taking to ensure that Judicial officers, particularly the Chief Justice and the concerned Judges discharge their Constitutional mandate without fear or favour?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, before I read the reply, I want to apologise to the hon. Member because I only supplied the written answer in the course of the morning due to circumstances beyond my control.

I beg to reply.

(a) The judges who have been dealing with the Kamukunji Constituency petition have not been transferred out of their station. The matter has, however, been handled by several judges following successful applications made to the judges to disqualify themselves for one reason or another. The provisions of the law have been complied with in every such instance.

Concerning the Kitutu Masaba petition, the same is currently being heard by Justice Makhandia. It had previously been placed before Justice B. Musinga, who disqualified himself. His transfer to Nairobi did not have anything to do with the handling of the case.

(b) With regard to the measures for ensuring that judges discharge their constitutional mandates without fear or favour, I am pleased to report to this House as follows:-

(i) A task force under the chairmanship of Justice William Ouko considered and made a raft of recommendations on the question of the independence of the Judiciary.

(ii) Those recommendations have been incorporated under Articles 159, 160, 166, 168, 171, 172 and 173 of the Constitution;

(iii) The recommendations have further been incorporated in the Judicial Service Bill, 2010, which is awaiting the Second Reading in this House.

(iv) The process of appointing an independent Judicial Service Commission is also ongoing. Once implemented, these measures will go a long way in ensuring that judicial officers execute their functions without fear or favour.

Thank you.

Mr. Speaker: Proceed, the Member for Kisumu Town West!

Mr. Olago: Mr. Speaker, Sir, before I ask my supplementary question, may I kindly confirm the position of this Question. I have been approached by Members of this House about the objective of this Question but I want to say that the reason why this Question is on the Order Paper is because, as a Member of this House and an officer of the High Court, I owe it to the country to find out why judges appear to be running away from their cases. The thrust of this Question is not to impute any motive on any Member

of this House. The thrust of this question is to establish why judges are not adhering to their oath of office, to dispense justice without fear or favour. That, in my view, has not been addressed by the Minister.

Could the Minister kindly tell the House why the judges are running away from these cases without adhering to their oath of office to determine cases without fear or favour?

Mr. M. Kilonzo: Mr. Speaker, Sir, my Ministry shares that concern because going by press reports, one would conclude that parties to litigation in Kenya are beginning to do what is famously known as judge hunting. For the benefit of the House, judge hunting is a practice whereby a party who has a matter pending before a judge thinks that they can manipulate the judges by making allegations against the judge thereby forcing the judge to excuse himself. Judges will normally excuse themselves only in circumstances where they feel that by proceeding to preside over the case, then justice will not be done, particularly if there is a serious belief that the judge either has a conflict of interest or has handled the matter before or for that matter, for any reason that may be advanced. I am hoping that the Judiciary is watching this. The country will not accept a situation where parties and litigants who go before judges are allowed to appear to be hunting for judges. It is my belief that our judges must respect the responsibility of ensuring that they do not step down out of cases just to facilitate a party to get a judge who would be favourable to them.

Having said that, I would also like to ask the House to bear in mind that we have a new criteria for vetting and appointing judges. That criteria is awaiting debate by this House. If the House accepts that criteria, it will give further initiative to the Judiciary for being able to withstand the pressure that emerges from the competition in court cases.

Mr. Olago: Mr. Speaker, Sir, I am satisfied.

Mr. Speaker: Very well! Next Question by the Member for Nyando!

CREDITING OF AROMBO PRIMARY
SCHOOL ESP FUNDS TO WRONG ACCOUNT

(Mr. Outa) to ask the Minister for Education:-

(a) Could the Minister state the circumstances under which the Economic Stimulus Programme (ESP) funding to Arombo Primary School amounting to Kshs.1,126,125.00 was credited to account No.0122424364903 at National Bank Limited, Kisumu Branch and not Account No. 0124526731500 forwarded to the Ministry by the school?

(b) Could the Minister reveal the proprietor of the former account, the identity of the person (s) involved and what action(s) the Minister has taken against them?

(c) How many similar situations has the Ministry encountered, how were they resolved and what measures is the Ministry taking to ensure that there is no repeat of such a case in the future?

Mr. Speaker: The Member for Nyando is not here? The Question is dropped.

(Question dropped)

Mr. Olago: On a point of order Mr. Speaker, Sir. You may not be able to see the feet of all the Members in the House from your seat but my good friend the Minister Roads, hon. Bett, appears to me *prima facie* to be improperly dressed because he is in open shoes.

Mr. Speaker: Could we hear the Minister for Roads?

The Minister for Roads (Mr. Bett): Yes, Mr. Speaker, Sir, in the process of inspecting roads, I strained my ankle. On visiting a doctor, he told me not to wear closed shoes.

Mr. Speaker: Order, hon. Members! Yes, the Minister for Roads is actually not properly dressed as per the Speaker's rules but he says he is dressed in the manner that he is in the sense that he has open shoes on without socks because it is a doctor's prescription. So I find that valid but the Minister will have to table that prescription at the next sitting, the immediate sitting after this one.

The Minister for Roads (Mr. Bett): Much obliged.

Mr. Speaker: Very well!

The Minister for Education (Prof. Ongeri): On a point of order, Mr. Speaker, Sir. I know you have dropped that Question but I want to go on record for the interest of the public and state that the money for Arombo Primary School is properly in the account so that we do not have to create anxiety for the recipients of the funds. They can look for other excuses, but I just wanted to make that clarification.

Mr. Speaker: Very well! It will stay on record but otherwise, for all the other purposes, the Question is dropped.

Next Question by the Member for Likoni!

ENCROACHMENT OF MTONGWE LAND BY NYS

Mr. Mwahima: Mr. Speaker, Sir, I beg to ask the Minister for Youth Affairs and Sports the following Question by Private Notice.

(a) Is the Minister aware that the National Youth Service (NYS) has illegally encroached on and fenced off land belonging to 250 families in Mtongwe in Likoni?

(b) Is the Minister also aware that the community has lived in that area for 200 years and that the National Youth Service has only been there for 40 years?

(c) What steps is the Minister taking to ensure that the National Youth Service does not encroach on the community land? Could the Minister assure the House that the fence will be moved to the previous boundary?

The Minister for Youth Affairs and Sports (Dr. Otuoma): Mr. Speaker, Sir, I beg to reply-

(a) I am not aware that the National Youth Service has illegally encroached on and fenced off land belonging to 250 families in Mtongwe in Likoni. On the contrary, I am aware that four squatters and two youth groups who had encroached on the land parcel LR. LMS/0256 belonging to and registered under the National Youth Service were peacefully evicted on 29th April, 2009.

(b) I am also not aware that there is any other group that has ever settled on this said land.

(c) The National Youth Service has not and will not encroach on any community land as the land they occupy in Likoni is legally registered---

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members! Please, lower the level of your consultations.

The Minister for Youth Affairs and Sports (Dr. Otuoma): Mr. Speaker, Sir, the National Youth Service has not and will not encroach on any community land as the land they occupy in Likoni is legally registered in their favour under the Registration of Titles Act, Chapter 286 of the Laws of Kenya, and I would wish to table that registration.

(Dr. Otuoma laid the document on the Table)

Mr. Speaker, Sir, the piece of land on which the four families and the two youth groups had settled was an open land belonging to the National Youth Service which has been fenced off following the Government directive that all public institutions properly secure the land belonging to such institutions through acquisition of title deeds and erection of appropriate perimeter fence.

Mr. Mwahima: Mr. Speaker, Sir, the Minister is misleading the House. As far as I am concerned, I am not aware of any eviction since 2007.

Mr. Speaker, Sir, I beg to differ with the Minister on his reply to “b”. The 250 people mentioned in this matter were on that open space before the National Youth was established there. So the Minister cannot say the open space belongs to the National Youth Service. That is wrong.

Mr. Speaker: Order! The Member for Likoni, you have made your point.

(Loud consultations)

Order, hon. Members! The Member for Likoni, could you now proceed and ask a question?

Mr. Mwahima: Before the National Youth Service was established, the community was there. So they qualify to own that land. In addition, the title deed does not include that space.

Mr. Speaker, Sir, is it in order for the Minister to say that the open space was taken following the Government directive?

Mr. Speaker: Ask the question?

Mr. Mwahima: Mr. Speaker, Sir, who gave the order?

Dr. Otuoma: Mr. Speaker, Sir, as much as I understand the issue of squatter problems in the coastal area, I have tabled a document that shows that this land measuring almost 100 hectares belongs to the National Youth Service (NYS). I have information of the four families namely Mr. Mohamed Omar - a former navy officer; Mr. Mohamed Arafat - a former NYS officer, Mr. Hesbon Mwaura - a businessman and Josing Jokil - a former navy officer. Others are Asali Tamu Youth Group and Jamaica Youth Group. These are the groups which were voluntarily moved out of this land once it was established that it belonged to the NYS. I do not have any other information unless the hon. Member can show here that there have been groups that have been living there for more than 200 years before the NYS went there. The information that I have is that

the title deed belongs to the NYS which I have already laid on the Table. I have also mentioned the individuals who were evicted from that land. I have also established that other than the youth groups, the four families were people who were just working there. I have said that two were working for the Kenya Navy and one was working for the NYS. The other person was a businessman. These people were not living there for more than 200 years. I do not have any other information that I can add on that unless the hon. Member for Likoni furnishes me with information to show that the 250 families have been living there for more than 200 years.

Mr. Mwadeghu: Bw. Spika, ninamwomba Waziri athibitishe katika hili Bunge kwamba huu sio mmoja wa unyanyasaji ambao watu wa Pwani wamepata kutokana na shtuma na vitendo vya watu kama Waziri vya kuchukua ardhi ya wenyewe na kuja Nairobi kuchukua vyeti vya umiliki na kuenda kuwahamisha.

Dr. Otuoma: Bw. Spika, nimetoa cheti cha umiliki wa ardhi hii. Cheti hicho kinaonyesha kwamba Idara ya NYS imekuwa pale zaidi ya miaka 40. Cheti hicho kinaonyesha eneo ambalo walikuwa wametengewa kwa kazi yao. Pia, idara hii si ya mtu binafsi. Ni idara ya Wakenya ambayo inashughulikia vijana wa Kenya. Kwa hivyo, hatuwezi kujaribu kuwasaidia Wakenya na iwe ni sisi tunaenda kuwanyanyasa Wakenya.

Mrs. Noor: Mr. Speaker, Sir, the Minister has said that the people were evicted peacefully. I have never of an eviction which is peaceful. Since those people are now aggrieved because their land has been taken by the NYS, is there any plan to compensate them?

Dr. Otuoma: Mr. Speaker, Sir, as I have said that they were only four families and I have mentioned their names. However, I can repeat. They are Mohamed Omar - a former Kenya Navy officer; Mohamed Arafat - a former NYS officer; Hesbon Mwaura - a businessman, Josing Jokil - a former Kenya Navy officer. These were people who were there in the course of their duties as navy officers. They were not even indigenous people. There is also nothing to show that they had acquired that land. Those were the families that we were dealing with.

Mr. Speaker: Yes, the Member for Tharaka!

Mr. Mwiru: Mr. Speaker, Sir, there is an issue of contention here where one group, the NYS, has been there for 40 years and the other one claims to have been there for 200 years. We know that in our Constitution ownership of land is in three categories. It is either in trust by the county council or the local authority, private or Government hold. Could we know from the Minister whether that plot was held in trust by the people of that place or it was a Government land before the issuance of the title deed so that we can know who has lived there for many years?

Dr. Otuoma: Mr. Speaker, Sir, I need to verify that because the information I have is that the leasehold that was given to the NYS is for 99 years and I am yet to establish when it was issued. I think it is on that title deed. However, it is a leasehold land for 99 years. That means that it either belonged to the municipal council or the Government. I am not very sure about that but I can check.

Mr. Mwahima: Mr. Speaker, Sir, allow me to read Cap. 5 of the Constitution on Land and Environment. Article 63(1) is very clear and it states:-
“Community land shall vest in and be held by communities on the basis of ethnicity, culture or similar community of interest.”

Allow me to also read Chapter 4 on Bill of Rights. Article 21(1) reads:-

“It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.”

Mr. Speaker: Now ask the last question!

Mr. Mwahima: Mr. Speaker, Sir, I would like to ask the Minister to revert back to the old boundaries.

Dr. Otuoma: Mr. Speaker, Sir, I think the title deed that I have furnished Parliament with that belongs to the NYS has not been challenged at all anywhere. So, if it has not been challenged, I assume that it is the legal document of the true ownership of that land. I will go a step further and engage my colleague, Mr. Mwahima, to know if there could be other underlying issues that have not come to my attention.

Mr. Speaker: Very well! The Member for Likoni, you deserve commendation for your performance.

INVASION OF ELAND DOWN FARM BY ADMINISTRATION POLICE

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

(a) Why did the Laikipia East District Commissioner, accompanied by over 400 Administration Police officers, invade Eland Down Farm on 23rd November 2010, burn houses and evict over 300 families in disregard of court orders issued by the High Court in Nyeri on 22nd November, 2010?

(b) Could the Minister explain the circumstances under which an 18 months old Baby, Lekamario, was burnt during the illegal operation; and why did police officers deny the Kenya Red Cross and Human Right officers entry to the farm to assist victims with medication?

(c) Could the Minister withdraw the Administration Police Officers stationed at the disputed land in order to avoid further harassment of the people pending determination of the matter by the High Court?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, this Question had already been dealt with. What was remaining was for the fact of the injunction which was tabled here and I did not agree with its authenticity. As I said, we had never been served with any injunction.

Mr. Speaker: Member for Samburu East, you tabled documents which were not original, nor were they certified. Do you have better documents now?

Mr. Letimalo: Yes, Mr. Speaker, Sir. It is true that I tabled on the Floor of the House the court orders. The argument was that they had no seal. However, I have in my possession the original court orders duly signed by the Registrar of the Nyeri High Court and with a seal. The District Commissioner (DC), Laikipia East, and the Administration Police Officer in charge of the group have been served.

Mr. Speaker: Allow the Assistant Minister a little time to look at them.

Mr. Letimalo: Mr. Speaker, Sir, I provided a photocopy of the same to the Assistant Minister.

Mr. Speaker: Mr. Assistant Minister, have you looked at the document?

Mr. Ojode: Mr. Speaker, Sir, if you look at that document, it has an original seal. That means that document was never served to the police or to the DC. If at all that document was served, then the Questioner should not have had it in his possession. You will agree with me that there was no injunction served to the DC and the police. The Member purports it to be the original and so, he owns the original.

Secondly, I would like to give you the documents which are normally served to the police or the DCs for enforcement purposes for you to compare and see which ones are authentic between his documents and the ones which I am having. You will agree with me those are not original documents.

Mr. Letimalo: Mr. Speaker, Sir, I gave the chronology of events towards the issuance of the court orders for the two parties to maintain the *status quo* until the case is determined by the High Court.

Mr. Speaker, Sir, before the expiry of the court orders on 24th, the AP moved in and evicted one party on 23rd. On 24th, the lawyer of the pastoralists went to the High Court and obtained these orders. On 25th, the court orders were served to the DC and the AP Commandant, and this is indicated in the document.

Mr. Speaker: Mr. Assistant Minister, I have looked at this order and it would seem to me that it was served on the DC on 25th November, 2010. Further, it was served on the AP Commandant on the same day. There is that indication on this court order.

Mr. Ojode: Mr. Speaker, Sir, you will agree with me that, that is a fake document. If at all that court order was served to the DC or the AP Commandant, the hon. Questioner would not have been having the original. It would have been lying with the DC and the AP Commandant. Secondly, if you look at other court orders, and I will give an example which is here with me, it has a seal, a rubber stamp and you can do a photocopy. I want to lay this on the Table for your verification.

(Mr. Ojode laid the document on the Table)

(Loud consultations)

Mr. Anyanga: On a point of order, Mr. Speaker, Sir. The Members are consulting very loudly and we cannot follow the proceedings.

(hon. S. Abdalla and hon. Shaban consulted)

Mr. Speaker: Hon. Members, please, lower the level of your consultations! The Member for Taveta and hon. S. Abdalla, you are out of order as things stand now!

Proceed, Mr. Assistant Minister!

Mr. Ojode: Mr. Speaker, Sir, if the court orders are supposed to be served to two or three people, the copies are normally certified, rubber stamped and signed. In that case, there is no other stamp which certifies the copy as the original document. I will beg the Chair to verify some of these documents in order for you to make a ruling.

Dr. Nuh: On a point of order, Mr. Speaker, Sir. The Assistant Minister alleges that if the court order was served to the police, then the Member could not have been having a copy. There are times when you can make three or four copies of the original.

So, he should not purport that on the basis that the Member has the original copy, then it must not have been served on the police.

Mr. Speaker: You have not quite articulated your point of order properly. Member for Bura, you are now a seasoned Member of Parliament. You can do better than just throw in a statement and you think the Speaker should digest it and do the rest for you. Come again! Try a second attempt!

Dr. Nuh: Mr. Speaker, Sir, the Assistant Minister is misleading the House that on the basis that the Member has the original document---

Mr. Speaker: Order, Member for Bura! Even that, you cannot say. It is the Speaker who decides whether or not the Assistant Minister is misleading the House. You can only put your point of order by questioning if he is in order to mislead the House. Try again the third time!

Dr. Nuh: Thank you, Mr. Speaker, Sir. I stand guided. Is the Assistant Minister in order to mislead the House that because the Member has the original copy of the court order, then it must not have been served on the police?

Mr. Ojode: Mr. Speaker, Sir, it looks like some of us have not been able to go through some of these summonses which are being given. If you are given an original document and you want to serve it to two or three officers, then the copies must be certified as the original. I have given an example here. We are trying to avoid those lawyers who just make copies within their offices, go to River Road, get a seal and put it. That is why I would challenge my colleagues to peruse what I have laid on the Table. These are the original documents and I would request that the Chair peruses them and makes a ruling on them. Otherwise, as at now, what has been laid here as the original document is fake.

Mr. Ochieng: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to continue misleading the House? He knows very well that normally three copies are obtained and given to a process server to proceed and serve on the people who are enjoined in the case. Is he in order?

Mr. Speaker: Order, Member for Nyakach! As it is, the documents we have here do not include any by a process server. So, much as you have a legitimate point there, these documents do not include a process server's documents.

Mr. Letimalo, do you have any document, additional to these, as evidence that these orders were served?

Mr. Letimalo: Mr. Speaker, Sir, the only other document that I have is the first court orders which expired on 24th.

Mr. Speaker: Do you have any evidence of service apart from what you have tabled?

Mr. Letimalo: Mr. Speaker, Sir, I do not have any evidence of service.

Mr. Speaker: Order! I will give you an opportunity to provide evidence of service at the next sitting of the House, if you are able to. As it is now, there is no evidence of service. So, I am prepared to defer this matter to Tuesday, next week for you to table evidence of service.

Mr. Letimalo: On a point of order, Mr. Speaker, Sir. While I go by your ruling, I want to seek the indulgence of the Chair. These people have already been removed from their farm and the police are already stationed there. Yesterday, three young men were

senselessly beaten up by the security personnel. I want to request that the Assistant Minister withdraws the police officers as we sort out this matter of the court orders.

Mr. Ojode: Mr. Speaker, Sir, I cannot withdraw police officers who are not in the farm. The officers who are within the precincts of the farm are there to maintain law and order and provide security even to those squatters.

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. You heard the Assistant Minister. I have been rising on points of order because the Minister's answer is a mass of contradiction. Originally, he said that the hon. Member had an original statement; then he later said that that statement cannot be original. Now he has come to tell the House that he cannot withdraw officers who are not there; then he says there are officers there who are maintaining law and order. Those are the officers we want him to withdraw.

Mr. Ojode: Mr. Speaker, Sir, the hon. Member did not hear me clearly. I said, and I want to repeat, that I do not have police officers within that farm. They are not within the compound and that farm. However, I have regular police officers and Administration Police officers who are doing patrols to provide security for those who are within that area, not necessarily in the farm.

(Several Members stood up in their places)

Mr. Speaker: Order, hon. Members! This matter must rest where it is. I have given direction that the Member for Samburu East tables evidence of service. As the Member for Samburu East, you have an opportunity to push this matter further if you table documents of service and you demonstrate that, notwithstanding this Court order, there has been breach. You could for example, demand for a Ministerial Statement following the documents that you will have. Please, be guided accordingly, otherwise what we are doing is in vain. I am not persuaded by the documents that are before the House now.

Mr. Ruto: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Member for Chepalungu! Some matters really must be allowed to rest.

ORAL ANSWERS TO QUESTIONS

Mr. Ethuro: Mr. Speaker, Sir, I would like to put it on record that when this Question came up on 23rd November, I was at the airport heading to a mission you had sent me. But somehow the Speaker intimated that I was around and had refused to ask the Question. I just wanted to set the record straight regarding that.

Mr. Speaker: Very well, but the matter has actually been settled since. So, just ask the Question and the Minister will reply.

Question No.512

LIST OF HEALTH FACILITIES IN TURKANA COUNTY

Mr. Ethuro asked the Minister for Public Health and Sanitation:-

(a) whether she could table a list of all health facilities in the Turkana County from 1980 up to date stating name, location, level of facility, staffing levels, registration of vehicles assigned and the names of the District Health Management Board members where applicable.

(b) to indicate the number of emergency cases especially victims of motor vehicle accidents and disease outbreaks handled by each facility in the last three years and what the Ministry is doing to equip these facilities to handle such emergencies; and,

(c) what plans the Government has to ensure that each sub-location and location has a dispensary and health centre respectively.

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

(a) I hereby table a list of all health facilities in Turkana County from 1980 to date, stating the name, location, staffing levels and level of facility.

(Mrs. Mugo laid the documents on the Table)

In Turkana County, the Ministry has 85 health facilities and the staffing levels are 120 health workers. This includes clinical officers and nurses. I table the registration of vehicles assigned.

(Mrs. Mugo laid the documents on the Table)

Regarding the names of the District Health Management board members, I would like to state that according to Legal Notice No.79 of 2009 of Kenya Gazette Notice No.37 of 5th June, 2009, the Ministry gazzeted the formed Health Management Committees to replace the District Health Management Boards. At the moment, all the districts, constituencies or health facilities which have formed those management committees have been gazzeted. This is the list as pertaining to Turkana County where the dispensaries are yet to form their lists of management boards.

Mr. Speaker, Sir, I would like to table a list of the emergency cases handled by each health facility in the last three years; 2007 to 2010, that is, victims of motor vehicle accidents and disease outbreak, including gunshot wounds. If need be, I could read out the total otherwise since they are here, and it might take time, I can just table it for the hon. Member.

(Mrs. Mugo laid the documents on the Table)

(b) Mr. Speaker, Sir, some of the plans we have put in place are improving working staffing levels of 20 nurses per constituency and to include an additional 15 nurses as per the budget of this year. We are also strengthening the supply of essential medicines and medical supplies. We also secured funding from the World Bank to strengthen procurement and offer essential medicines. We also secured 90 vehicles to be given to the constituencies. Those will be utilities for our health officers. That will be realized by June, next year. There are plans to secure 300 ambulances. The discussions are ongoing at the moment as to the method of procurement.

As you are aware, the ambulances were proposed to be on lease and that is being discussed between my Ministry and the Ministry of Finance.

(c) Through community strategy, we are emphasizing outreach services whose main goal is to reach the community, closer to their homes. My Ministry had embarked on a programme to systematically ensure construction of health centres and dispensaries to meet the set norms for health facility distribution.

However, this was interrupted after one year to be able to leverage resources towards CDF with the understanding that CDF could be used more appropriately to identify needs, construction of health centres included. It is our hope that this gap will be filled.

I am aware that there are several CDF dispensaries also awaiting to be gazetted and registered as well deploying nurses and staff to operate them. We have put this request to the Treasury so that in the next budget, we can have enough money to open those facilities by way of being able to add staffing and necessary medical kits.

Mr. Ethuro: Mr. Speaker, Sir, I want to thank the Minister for that elaborate answer. If you heard the Minister's answer, I was specifically referring to the Turkana County. This is a county which, at Independence, had only one health centre and it was the colonial rule before independence that no white lady should go into Turkana because they could not be assured of their health. I want to thank the Government for doing something. However, 85 health facilities in an area of 77,000 square kilometers can only give you one health facility per 10,000 people. What will she do to ensure that cases such as the cholera outbreak and gunshot wounds from cattle rustling can be dealt with, and you have facilities in each and every location and sub location, close to where action has taken place and not the district hospitals, as she is claiming? When will she have casualty wards and emergency treatment in those health facilities she has given us?

Mrs. Mugo: Mr. Speaker, Sir, I would like to add that these are only facilities relating to the Ministry of Public Health and Sanitation. We also have facilities like district hospitals and provincial hospitals to add to the need. However, I acknowledge that they are not enough. To begin with, every constituency has a model clinic that is being constructed now. That is not the end. We expect to open many more. I want to encourage that in vast areas, we use CDF money to construct and I will open, give supplies, health workers as well as medicines to operationalize them.

Mr. Affey: Thank you, Mr. Speaker, Sir. Clearly, Turkana County is one of the biggest in terms of its vastness. The hon. Minister has told us that she has 85 members of staff with 120 facilities. Could she confirm the number of qualified medical doctors that are currently working in Turkana County?

Mrs. Mugo: Mr. Speaker, Sir, I am afraid that I do not have the exact number of qualified doctors working currently in Turkana. However, I can make it available. So, I will not give the hon. Member the exact number of doctors in Turkana County.

Mr. Affey: Mr. Speaker, Sir, it is very clear from the Question that the hon. Member is asking about the health staff. There can be no staff without doctors. We did not expect them to be many. How many doctors do we have in Turkana County? I am not asking the number of nurses, clinical officers, but qualified medical doctors? How many are they?

Mrs. Mugo: Mr. Speaker, Sir, when this Question was first put to me, it involved both Ministries of Public Health and Sanitation and the Ministry of Medical Services.

That is the one which would have given you the total number of doctors. However, for the sake of a good reply, it was requested that the two issues be separated. The information required is about doctors. Most of the doctors fall under the Ministry of Medical Services. They work under provincial hospitals and district hospitals.

Dr. Nuh: Thank you, Mr. Speaker, Sir. The Minister, in her answer, said that the Ministry has interrupted the construction of dispensaries and health centres in order to leverage funds from the CDF. She clearly knows that the Central Government cannot abrogate its role on development. The CDF is there to supplement. Why does she want us to believe that the CDF is there, to substitute Government development projects?

Mrs. Mugo: Mr. Speaker, Sir, the CDF is doing very well in this role. Right now, we are waiting to open over 600 health facilities around the country constructed using the funds. We are very happy. In fact, some of them are very close to each other. That is why we are taking audit as we open, because we must also look at availability of health workers and medical kits and see where we should supply them. I do not think there is shortage of health facilities. We have not abdicated our role to construct more health facilities. I think it is the same Government which does the construction and gives out the CDF money. The CDF money is better utilized.

Mr. Ethuro: Mr. Speaker, Sir, if you look at the staffing the Minister is talking about in Turkana, it is 125 for 85 health facilities. Surely, being a hardship area, that means that it is difficult for the Government to attract people to work in these areas. What measures has the Government put in place to ensure that the people who are willing to work in the hardship areas are given hardship allowance and other facilities that would motivate them to continue working in these areas?

Mrs. Mugo: Mr. Speaker, Sir, I know it is a hardship area. Personally, I visited some areas in the north rift and Turkana North. I know it is a hardship area. So, I will address this question. We will look into it and see what can be done. However, if there are any hardship allowances, they will apply to all hardship areas. I believe that we have such a scheme. The other thing we can do is to see if we can post more staffing than the 35 per every constituency. I believe we should do better in those vast areas just as I promised with ambulances. We will give at least one to every constituency and the hard to reach areas will get the rest. So, I am doing the best that I can.

Mr. Speaker: Member for Wajir South!

Mr. Sirat: Mr. Speaker, Sir, I have just received the answer now and it has a lot of data.

Mr. Speaker: First ask the Question.

Question No.640

AMOUNT OF DEVELOPMENT FUNDS
ALLOCATED TO NORTHERN KENYA

Mr Sirat asked the Minister for the Development of Northern Kenya and other Arid Lands:-

(a) whether he could state how much funds the Ministry has received since its inception;

(b) whether he could provide a list of all projects undertaken in Wajir South , Wajir East, Wajir North and Wajir West, respectively, from 2008 to date; and,

(c) if he could also state the budget allocation for the sewerage project in Wajir East and apprise the House on its implementation framework and status.

Mr. Sirat: Mr. Speaker, Sir, as I said, I have just received the answer and it has a lot of data that I need to digest. I would request that you allow me to digest the information and we revisit this Question on Tuesday, next week. That will be fine with me.

Mr. Speaker: Mr. Minister, the Member requires a bit of time to internalize the information you have supplied.

The Minister for Development of Northern Kenya and other Arid Lands (Mr. Elmi): Mr. Speaker, Sir that is okay.

Mr. Speaker: I will defer this Question to Wednesday, next week at 2.30 pm.

(Question deferred)

Question No.562

FORMULA USED BY KSB TO PAY
SUGAR-CANE FARMERS

Mr. Washiali asked the Minister for Agriculture:-

(a) what formula was used by the Kenya Sugar Board (KSB) to pay sugar cane farmers; and,

(b) whether Mumias Sugar Company (MSC) is in compliance with the formula.

Mr. Washiali: Mr. Speaker, Sir, I have not received any form of an answer, whether verbal or written.

The Assistant Minister for Agriculture (Mr. Mbiuki): Thank you, Mr. Speaker, Sir. This Question was on the Floor of this House three weeks ago. In consultation with the hon. Member, we decided to hold a consultative meeting between the Ministry of Agriculture, the millers, the growers and the KSB, so that we could come up with a comprehensive answer. However, as of now, the concerned parties have not yet signed the MOU which we need to enforce. Therefore, I would like to seek the indulgence of the House, so that we revisit this Question next week on Tuesday in the afternoon.

Mr. Speaker: Member for Mumias, do you agree with that?

Mr. Washiali: Mr. Speaker, Sir, indeed, I had a briefing from the Assistant Minister and I am encouraged on the progress they are making. However, the amount involved is huge.

Mr. Speaker: Order! If we are deferring this Question to Tuesday, next week, then we will deal with it on that date.

Mr. Washiali: Mr. Speaker, Sir, I have no objection.

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

(Question deferred)

Next Question, Member for Eldoret South!

Ms. Chepchumba: Mr. Speaker, Sir, I ought to have asked this Question yesterday afternoon. However, it was deferred. I seek your indulgence to explain why I came in late.

Mr. Speaker: You are seeking my indulgence to explain why you cannot ask a Question?

Ms. Chepchumba: Mr. Speaker, Sir, I am seeking your indulgence to explain why I came late and could not ask the Question.

Mr. Speaker: Very well, explain!

Ms. Chepchumba: Mr. Speaker, Sir, of late, I have not been sleeping full nights because of fear from a mysterious dream concerning the International Criminal Court (ICC).

(Laughter)

Mr. Speaker, Sir, I have been in great fear because of speculation that there is a list. I have been having a dream that I am in this list. Most of the dreams I have, come true. For this, I wish it does not come true because I am an innocent lady.

Mr. Speaker: Is that the reason you were not here yesterday?

Ms. Chepchumba: Yes, Mr. Speaker, Sir, I overslept because---

(Laughter)

Mr. Speaker: Order, hon. Members! The Member for Eldoret South has explained her reasons for being unable to be here yesterday to ask this Question to be attributable to her having dreams, or nightmares for that matter. Although it appears strange to me, I will accept that reason because I do not know what nightmares entail!

Ask your Question, Ms. Chepchumba!

Dr. Khalwale: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Member for Ikolomani!

Ms. Chepchumba, please, proceed!

Question No.546

SENSITIZATION PROGRAMME FOR CITIZENS
ON MAJOR ROAD PROJECTS

Ms. Chepchumba asked the Minister for Roads:-

(a) whether the Government has a policy on sensitization of citizens on major projects it undertakes throughout the country;

(b) to inform the House whether there has been a sensitization programme by the Government on how the international superhighway will impact on the lives of the people living next to the road; and,

(c) what percentage, in the cost of the projects, the Government is lobbying investors to undertake in sensitization of residents.

The Minister for Roads (Mr. Bett): Mr. Speaker, Sir, I seek the indulgence of the House to request the bishop of my church in Kericho to pray for Ms. Chepchumba.

Mr. Speaker: You may do that and the Member for Ikolomani may also want to offer some services to the Member for Eldoret South.

(Laughter)

The Minister for Roads (Mr. Bett): Thank you.

Mr. Speaker, Sir, I beg to reply.

(a) Yes, the Government has a policy on sensitization of citizens when major projects are undertaken throughout the country. I mean major projects in terms of roads.

(b) My Ministry plays a supervisory role, in collaboration with the Contractors, in conducting sensitization programmes on environmental and social impact on the communities living next to the superhighways. This includes posting posters in project sites, holding public meetings with the affected parties and communities, making radio announcements with a nationwide coverage in consultation with the NEMA. We also ensure a qualified coordinator is appointed to receive both oral and written comments from members of the public.

(c) Currently there is no legal provision on the percentage of the cost of projects which investors are to use in undertaking sensitization of residents.

Ms. Chepchumba: Mr. Speaker, Sir, does the Ministry have enough trainers to carry out the sensitization programme?

Mr. Bett: Mr. Speaker, Sir, most of this is the responsibility of NEMA and the contractor and not the Ministry of Roads, directly. However, on the contract sum, for example, on HIV/AIDS, depending on the cost of the road, there is up to between Kshs2 million and Kshs4 million to be set aside by the contractor to be used for the sensitization on issues of HIV/AIDS.

Ms. Chepchumba: Mr. Speaker, Sir, I am satisfied with the answer and I do not wish to interrogate it any further.

Mr. Speaker: Very well! We wish you well. Please, stop dreaming.

Next Question by the Member for Kitui West!

Question No.601

MINISTRY'S EXPENDITURE ON MAINTAINANCE
OF KABATI-TULIA-MBONDONI ROAD

Mr. Speaker: The Member for Kitui West is not here! The Question is dropped!

(Question dropped)

Next Question by the Member for Cherangany!

Question No.521

POSTING OF CIVIL SERVANTS TO
TRANS NZOIA EAST DISTRICT

Mr. Kutuny asked the Minister of State for Provincial Administration and Internal Security when he will post a District Development Officer, District Procurement Officer and District Personnel Officer to the newly created Trans Nzoia East District.

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

District Development Officers are deployed by the Ministry of Planning, National Development and Vision 2030. However, I have been made aware that a District Development Officer was posted to the district on 17th September 2010. A Human Resource Management Assistant III was posted to act as the District Personnel Officer in the district and two Procurement Officers were posted in the district. A Procurement Assistant was posted on 2nd December 2008 in an acting capacity and the other one; a Procurement Officer II was posted on 26th July 2010.

Mr. Kutuny: Mr. Speaker, Sir, I want to agree with the Assistant Minister that the Government has acted accordingly within a very short time to post these personnel. We have had a serious problem particularly when it comes to coordinating Government activities and development activities in this newly created district.

Is the Assistant Minister aware that all these people who have been posted to Trans Nzoia East are not based in Trans Nzoia East but are based in Trans Nzoia West? When is the Government going to push these people to come and settle in Trans Nzoia East where they are supposed to operate?

Mr. Lesrima: Mr. Speaker, Sir, I am not aware that these officers are in Trans Nzoia West and not Trans Nzoia East. That was not part of the Question but if it is the case, then they are causing overstaffing in West and should be moved to their respective stations.

Mr. Kutuny: Mr. Speaker, Sir, the Minister is saying that he is not aware. Now that I have informed him, when is he going to take action to make sure that these people are moved immediately?

Mr. Lesrima: Mr. Speaker, Sir, I will find out whether the District Development Officer, a Ms. Pamela Cheruitich, the Human Resource Officer, a Mr. Moses Luvane and the Procurement Officer, a Mr. David Liheretse, are indeed in West and not East. I can confirm that with the hon. Member either through this House or through my office at any time. I am traveling to my constituency now. So I would appeal that I confirm this early next week.

Mr. Speaker: Very well! That must rest the matter, Mr. Kutuny!
We will go back to Question No.1 by Private Notice.

QUESTION BY PRIVATE NOTICE

HARASSMENT OF KENYAN FISHERMEN BY
UGANDAN SECURITY FORCES

Mr. Mbadi: Mr. Speaker, Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Could the Minister explain why Kenyan fishermen residing in Migingo Island in Lake Victoria are harassed by Ugandan security forces?

(b) Was the Joint Boundary Survey commissioned by the Kenyan and Ugandan Government completed and if so, could the Minister provide the report to the House?

(c) Could the Minister also explain the steps the Government has taken to implement the resolutions passed in the House urging the Government to use all possible means available to reclaim the island, including registering the dispute with the United Nations Security Council?

Mr. Speaker, Sir, this is the second time I am asking this Question today.

Mr. Speaker: Deputy Leader of Government Business, the Minister for Foreign Affairs does not seem to be here yet!

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I have established that the Assistant Minister is out of the country and the Acting Minister is engaged in another function that he cannot disengage from within the time that we have in Parliament. I would, therefore, like to seek the indulgence of the House that we have this Question appearing again on Tuesday.

Mr. Mbadi: Mr. Speaker, Sir, before this sitting of Parliament started, I got a call from the Office of the Assistant Minister telling me that they have made necessary arrangements and that the Acting Minister for Foreign Affairs was going to answer this Question. As I said earlier, this Question was filed two weeks ago. Last week, it was deferred and it is a Question by Private Notice. Further, I had already raised the same issue in form of a Ministerial Statement and the Ministry deliberately failed to issue that Statement, until I was advised now to file it in the form of a Question. I feel frustrated by this Minister and I ask if the Chair could invoke Standing Order No.46 and find him grossly out of order and face the necessary action, because I cannot be frustrated and my constituents are suffering. If it were, probably, his constituency – Kajiado North - he would have acted, but because it is Gwassi, there is no interest from him.

Mr. Speaker: Deputy Leader of Government Business, this Question obviously by its nature is urgent and the public interest component in it is fairly heavy. So, what shall we do?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I appreciate the sensitivity and importance of this matter. The Migingo issue has been discussed quite extensively. Like I said, the Assistant Minister is away and the acting Minister is engaged in another function that he could not disengage himself from. But I will undertake to discuss with the two of them. Even if they are not here, we will organize how the matter can be responded to on Tuesday next week.

Mr. Speaker: Very well! I order that this Question appears on the Order Paper on Tuesday next week at 2.30 p.m., and that it be answered without fail by you or any other Minister, in the absence of the Minister for Foreign Affairs. We will take up the rest with regard to the request by the Member for Gwasi in relation to Standing Order No.46. We will deal with the Minister then.

(Question deferred)

COMMUNICATION FROM THE CHAIR

STATUS OF HON. OJODE'S UNDERTAKING TO TABLE INQUIRY REPORTS IN PARLIAMENT

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

Yesterday, Wednesday, 8th December, 2010, during the afternoon Sitting, you will recall that I made a ruling on a request by the Member for Gichugu, hon. Martha Karua, that certain reports of Commissions of Inquiry be produced in this House by the Minister of State for Provincial Administration and Internal Security. After I had delivered my ruling, a number of points of order were raised seeking certain clarifications on the effect and ramifications of my ruling.

Hon. Members, I wish to assert for the record that it is not the intention of the Chair or a practice that I want to encourage that the Chair explains the meaning and implications of rulings made. I have, however, chosen to clarify the points raised in this particular case because of the important constitutional questions which are in issue.

Hon. Members, the first of the clarifications sought was by the Member for Gichugu who sought directions about whether the import of my ruling was that Questions of this Parliament will henceforth be addressed to the courts of law. The Member argued that she had sought information as a Member of the House and on behalf of Kenyans with the force of Article 35 of the Constitution and wondered whether Parliament will henceforth, extend its Questions to another arm of Government, namely, the Judiciary. It was her point of view. She was not seeking interpretation of the law, but merely demanding information from the Government, which the Constitution enjoins her to audit.

Hon. Members, the second point of clarification was sought by hon. Gitobu Imanyara, the Member for Imenti Central, who sought to know what will become of an undertaking allegedly made by hon. Orwa Ojode, the Assistant Minister, Ministry of State for Provincial Administration and Internal Security, to produce the reports in issue in the light of my ruling. The Member sought to know what would become of the undertaking under circumstances where hon. Ojode stood on the Floor of the House and undertook to bring these reports to the House, and having failed to do so, sought to hide behind the cover of Presidential prerogative.

Hon. Members, on the request for clarification sought by the Member for Gichugu, I invite Members to peruse the HANSARD and study closely my ruling and in particular, the closing words of that ruling in which I indicated that, and I quote: "Apart from the remedies available in the courts, this House, as Members are aware, is not short of lawful avenues to enforce compliance with the Constitution and the laws by the Executive."

My ruling draws a distinction which, to my mind, is crucial between those constitutional rights for which the procedure for vindication is specifically provided for in the Constitution and other constitutional rights whose procedure is not similarly ordained and which can be vindicated and addressed in a multiplicity of ways and by various state organs.

Hon. Members, I will pose for a minute to allow the Members at the door to walk in.

(Mr. Speaker resumed his seat as several hon. Members walked into the Chamber)

Order, hon. Members! My ruling draws a distinction which to my mind is crucial between those constitutional rights for which the procedure for vindication is specifically provided for in the Constitution and other constitutional rights whose procedure is not similarly ordained and which can be vindicated and addressed in a multiplicity of ways and by various state organs. The crux of my ruling is that where there is provision in the Constitution or the law specifically requiring that a document be produced in this House, the Speaker shall so rule and so require. However, where reliance for the document or information sought is on provisions of the Constitution, which themselves have inbuilt mechanisms for enforcement, those mechanisms must be allowed to operate. That distinction is important and hon. Members ought to follow that.

Hon. Members, where the Constitution specifically recites a right of freedom and specifically provides for the manner, place and the functionary responsible for providing a relief when such right has been transgressed or is threatened with transgression, there is no place for the Speaker of the National Assembly or Senate for that matter or any other person, to usurp that mandate on the ground only that a constitutional right is at stake. Such usurpation will itself be a violation of the Constitution. In particular, I had made it clear in my ruling that the Bill of Rights, which is Chapter 4 of the Constitution, is clear at Articles 22 and 23 about how the rights contained in the Bill of Rights are to be enforced; and that it is in the authority of the courts to uphold and enforce the Bill of Rights.

Hon. Members, in the circumstances, the closing words of my ruling must be understood in perspective. They mean no more than that whereas there is a province for the courts of law, Parliament is not left without recourse. The recourse available to Parliament has been enhanced rather than constrained by the new Constitution. All the traditional avenues through which information is sought from the Executive remain available and open to this House and to individual hon. Members. All that I have said in my ruling and which I reiterate is that this House and the Office of the Speaker are not substitutes for the jurisdiction of the courts clearly stipulated in Chapter Four of the Constitution. The courts remain available but so are the constitutional devices open to the Legislature. I trust this should lay this matter to rest.

Hon. Members, on the point raised by the Member for Imenti Central on the status of the undertaking by the Assistant Minister to table these reports, I have found that this matter has already been disposed of by the Chair by a ruling delivered in this House on 29th July, 2009, which I invite Mr. Imanyara to revisit. In that ruling, the Chair, while expressing dissatisfaction that the Assistant Minister had been unable to honour his undertaking, determined that no interest would be served in holding the Minister to his word in a situation where it was not legally possible for him to fulfill the undertaking. The Chair, in that ruling, discharged Mr. Ojode from the undertaking and vacated previous orders requiring him to produce the reports and barring him from conducting the business of the House until the reports are produced. As matters, therefore, stand, there is

no subsisting undertaking which Mr. Ojode owes this House. With these clarifications, the Chair rules that the matter of the tabling of the reports of commissions of inquiry has been adequately addressed now and in previous communications from the Chair and stands fully disposed of.

Thank you.

(Applause)

MINISTERIAL STATEMENTS

Mr. Speaker: Hon. Members, we were expecting some Statements this afternoon from the Minister for Transport and the Minister for Sports, if he will be here on time. I also see the Minister for Justice, National Cohesion and Constitutional Affairs.

ROAD ACCIDENTS ON KAPSABET-CHAVAKALI ROAD

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I wish to make the following Statement on the road accidents on Kapsabet-Chavakali Road as requested by Mr. Chanzu.

On Sunday, 20th November, 2010, a road crash occurred along the Kapsabet-Chavakali Road at a place known as Shiru, involving a Nissan matatu Reg.No.KAX 509G and an Eldoret Express Bus, Reg.No.KBE 233E traveling from Nairobi to Kakamega. The Eldoret Express Bus was overtaking while traveling down a hill when it had a head-on collision with a matatu. The matter was reported to Mudete Police Station and the cause of the accident was human error as the bus was speeding, implying that the speed governor had been tampered with and that the road is in good condition. The police have not been able to establish whether the matatu had a functional speed governor due to the extensive damage. However, it could not have been speeding at the time of the accident since it was moving uphill.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, any motor vehicle driven on our roads, whether public or private must have third party insurance and we should, therefore, leave the question of compensation to the families to the insurance companies involved. Investigations into the accident are progressing and charges will be brought against the driver on the wrong. The Ministry recently held a road safety week that began on Monday, 15th November, 2010 to 21st November, 2010. During the week, there were a series of awareness activities on road safety across the world. These activities were aimed at sensitizing all citizens and the motoring fraternity on road safety. The climax of these activities was the World Remembrance Day which is dedicated by the United Nations to remember the victims of road crashes.

Since 2003, the Ministry has adopted several measures aimed at enhancing road safety and these include the gazettelement of regulations covering aspects of safety such as the use of seat belts, speed governors for public service vehicles, uniforms for drivers and conductors, among others. I wish to state that contrary to perceptions, none of these rules have been suspended. It is still mandatory for the PSVs to install speed governors. We have, however, noted that a number of PSVs have tampered with these speed governors thus allowing the vehicles to be driven at excessive speeds. Police check units and patrols still enforce the Traffic Act on our roads. However, hon. members will agree with me that we cannot have every vehicle policed.

The Ministry is, therefore, turning increasingly towards drivers and pedestrians, road safety awareness and education sensitization because we know that over 80 per cent of road crashes are caused by human error and it is this that we need to target.

Mr. Temporary Deputy Speaker, Sir, in view of this, the Ministry has taken a different approach to road safety. We have revamped the National Road Safety Council as one of the initiatives aimed at improving road safety. The Council organized a one-day stakeholder conference on 19th October, 2010 at the Bomas of Kenya and the recommendations of the conference, when implemented, are expected to tackle the many challenges facing road safety initiatives in the country. The recommendations include encouraging the use of high occupancy vehicles, especially within our CBD and other major cities; the development of a national driving school training and driver curriculum, undertaking road safety audit and black spot analysis with a view to developing appropriate mitigation measures and establishment of the National Road Safety Authority, which Bill will be presented to this august House for enactment when ready.

In addition, the Ministry has launched a transport information management system code-named “Teams” that will integrate and automate road safety agencies for information sharing.

The Ministry remains committed to reducing the fatalities on our roads by undertaking the actions stated above and generally creating awareness amongst drivers on the need to be responsible while behind the steering wheel of any vehicle.

As I conclude, I wish to appeal to hon. Members of this House to help in sensitizing their constituents, especially as we approach the holiday season where we expect more travel as people travel to meet their loved ones. As hon. Members, if we could do that and take the same responsibility that we have taken for the awareness on HIV/AIDS, we will save a number of lives.

Thank you!

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for the brief but comprehensive Statement which has covered most of the issues that I had raised. However, it appears that the issues I raised about speed governors have not been addressed because since that time, we have had very serious accidents in Naivasha, Nakuru and Nairobi. It appears as if there is an aspect of human error which seems to be the predominant factor in these accidents. I would like the Minister to consider reviewing the issuance of driving licences to matatu and bus drivers so that---

The Temporary Deputy Speaker (Mr. Imanyara): Seek your clarification!

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, could the Minister consider reviewing the issuance of driving licences? Could these people go for regular tests to ensure that they comply with the grade that they have been given in driving?

Secondly---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Chanzu, you are experienced. You know that you seek one clarification at a time!

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I thought they were three!

The Temporary Deputy Speaker (Mr. Imanyara): It is one!

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, can I just do the second one?

The Temporary Deputy Speaker (Mr. Imanyara): Since you have started, I will allow you!

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I would also like to request the Minister to facilitate speedy investigations into the cause of the accident.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, thank you for those comments. Indeed, in terms of the issue of driving licenses for public service vehicles, every driver of a public service vehicle is obligated to obtain a special license on an annual basis to ensure that they are still eligible to drive a public service vehicle. We are even going one step further in terms of review, and we would be proposing to this House to even have annual tests for people who are driving the public service vehicles. The important thing to note is that as a country, the main causes of our accidents are poor road conditions. About four per cent are attributable to road conditions, which the Ministry of Roads is working on. About 11 per cent is attributable to the conditions of the vehicles, which, again, the Vehicle Inspectorate is working on. The balance which is 85 per cent is attributable to human behaviour. I believe this is where we all need to take up the responsibility and create the necessary awareness and sensitization, so that people stop killing our people on the roads because of our behaviour.

Mr. Temporary Deputy Speaker, Sir, in terms of investigation, it is going on very well. I indicated that the police will then be charging the driver, who would have been found to be culpable in this case, and indeed, on all the accidents that are taking place. It is very unfortunate that we are losing people on our roads when we should not, especially with the good roads that we now have. I believe we, as a House, can do something to sensitize our people.

OFFICIAL GOVERNMENT POSITION ON TJRC

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, allow me to thank the hon. Member for Ikolomani Constituency hon. Dr. Khalwale for the request that he made for a Ministerial Statement on 17th November, 2010, regarding the official Government position on Truth, Justice and Reconciliation Commission (TJRC) and specifically, his request touched on five items. Let me repeat them for the record.

(i) He wanted to know the official position of the Government towards the TJRC, in view of the happenings that bedevilled this Commission since its inception.

(ii) Whether statements attributed to Cabinet Ministers on funding or disbanding of the TJRC is mirror reflection of the Government's position on the way forward.

(iii) He wanted us to clarify the amount of money so far extended to that very important Commission.

(iv) He wanted to know whether the TJRC is on course in discharging its mandate.

(v) Whether there is a deliberate strategy by some influential and powerful people either within the Government or with strong connections to high echelons of power to cripple and eventually collapse the TJRC, so as to cushion themselves against some of the crimes they fear, they might have committed against Kenyans.

Mr. Temporary Deputy Speaker, Sir, allow me to respond as follows:-

(1)The official position of the Government of Kenya towards the TJRC is as follows. In order to promote national reconciliation and healing, the Government of Kenya made a commitment to establish a transitional justice mechanism that would facilitate the country's transition from repression to democracy and seek to address human right violations, divisions of the past and address historical injustices.

In this regard, the TJRC was established by the Truth, Justice and Reconciliation Act to deal with some of the transgressions against the people of Kenya that could not properly be addressed by other judicial institutions. The Commission was expected to provide a forum that would enable Kenyans to deal with historical injustices in a free and reconciliatory manner. You will recall that shortly after this Commission was established, there was a campaign, mainly by the civil society organizations, that challenged the credibility and legitimacy of the TJRC. The credibility questions as we all know were mainly targeting the person of the Chair of the TJRC. Subsequently, and as a sign of protest, two Commissioners resigned, citing the credibility question around the Chair.

Mr. Temporary Deputy Speaker, Sir, on 9th November, this year, vide gazette notice No.13/202 of 2010, the hon. Chief Justice of Republic of Kenya appointed members of a tribunal to investigate the conduct of the Chairman of the TJRC, Ambassador, Bethwel Kiplagat. You recall with me that these are difficult circumstances to deal with especially arising from a Commission that is supposed to instil public confidence in the governance institution and that is mandated to deal with impunity.

Mr. Temporary Deputy Speaker, Sir, I hasten to add that speaking as line Minister, I was a little disappointed by the delay in the Chief Justice making up his mind whether to appoint this tribunal or not.

From the onset and despite these challenges, the Government has continued to offer unwavering support to the Commission. These commitments for support have not changed as the Government holds the firm belief that the TJRC is one of the key institutions, if not the key institution for the social renewal, reform of the state and creation of a better nation.

In this regard, the Government has continued to respect the functional independence of the Commission and has allowed the Commission to discharge its duties without any interference.

The Government does not intend to renege on its support to the Commission and would continue to provide support, provided the Commission continues to conduct its affairs with integrity, transparency and fairness to all intents.

Mr. Temporary Deputy Speaker, Sir, let me again say as the line Minister that I have called on the Right Hon. Chief Justice to reduce the period of this tribunal from five months to three months. I have not yet received a response, but I am sure he has heard me.

(2) Whether statement attributed to Cabinet Ministers on funding or disbanding of the TJRC is mirror reflection of the Government position on the way forward for the TJRC.

As cited above, TJRC has gone through many challenges and there have been moments of serious frustrations, particularly for myself and sometimes irritation. However, the Government reiterates its very firm commitment to an effective TJRC that conducts itself with integrity, promotes accountability of perpetrators, redress for victims and guards against impunity, therefore preventing future violations and promoting unity and national reconciliation.

The Government firmly believes that in order to deal with the wounds of the victims and reconcile the nation, we must dig into the past, recognise victims, provide justice and promote national unity and recognition.

In this pursuit, only yesterday, I had opening communications with the State of Columbia because she has emerged in the world as one of the countries that has been able to deal with the issue of victims. It is too early for me to say to this House how this conservation that has opened would emerge. However, we intend to borrow from the very best and those who have been successful in receiving and providing reconciliation for their country, particularly the issue of victims.

(3) To clarify the amount of money so far extended to the TJRC. During the 2009/2010, the Government allocated Kshs150 million to the TJRC. The actual expenditure for the same period was Kshs149,990,655.55. During the first half of the current financial year, the printed Budget of the Commission was Kshs93,958,151, and has been disbursed to the Commission as at 19th November. I have no hesitation in stating clearly that this money is not enough. It is this honourable House that has approved this particularly allocation. I am in discussion with the Treasury to see whether we can get more funding. Even if we cannot get it out of what has been approved, I would be making recommendations during the supplementary estimates.

(iv) Whether the TJRC is on course in discharging its mandate.

Mr. Temporary Deputy Speaker, Sir, Section 5 of the Truth, Justice and Reconciliation Act sets out the functions of the Commission, which includes establishment of an accurate, complete and historical record of violations and abuses of human rights and economic rights, inflicted on persons by the state, public institutions and holders of public office, both serving and retired between 12th December, 1963 and 28th February, 2008.

The Commission is further mandated to establish as complete a picture as possible of the causes, nature and extent of the gross violations of human rights and economic rights which were committed during the period 12th December, 1963 to 28th February, 2008.

The Commission started its operations on 3rd August, 2010. It developed a work plan to guide its work and activities and ensure timely and efficient implementation of these mandates. The activities involved statement-taking, receipt of memoranda from individuals and institutions, interviews and reports of previous commissions.

Mr. Temporary Deputy Speaker, Sir, it is fair that I also, in the spirit of full disclosure, say that I have received complaints from some Members of Parliament and other members of the public as to how the statement-taking process is taking place. That matter is on the table. I have raised the issues with the Commission.

In order to effectively discharge its mandate, the Commission has recruited both technical and administrative personnel to facilitate efficient implementation of its activities. The Commission has further recruited 300 statement takers who have been deployed across the country. The Commission projects that by the end of the five months, they will have collected approximately 50,000 statements.

Mr. Temporary Deputy Speaker, Sir, the Commission has also initiated preparatory work of the initial phase of hearings in Mt. Elgon District and North Eastern Province as those are also areas in respect of which I have, as Minister, received complaints.

The Commission has also developed tools which will be used to solicit submissions from the public, and which will form the basis of the institutional and thematic hearings.

Further, the Commission has developed and published its internal policies and rules. It has also developed policies on gender, children, reparations and reconciliations.

Mr. Temporary Deputy Speaker, Sir, based on the work-plan developed by the Commission, and the activities undertaken this far, the TJRC, as far as I can tell, and subject to the complaints that I have received, which are receiving attention; the Commission is delivering its mandate. That is also subject to the outcome of the findings of the Tribunal that the Chief Justice has appointed.

However, the Commission will require more financial support, and I would like to appeal to this House to support us when we request for further funding in the next Supplementary Estimates. I have also appealed to donors and well wishers to support this Commission through funding and the matter is under debate.

Mr. Temporary Deputy Speaker, Sir, another clarification sought is whether there is a deliberate strategy by some influential and powerful people either within the Government or with strong connections to high echelons of power to cripple and eventually collapse the TJRC so as to cushion themselves against some of the crimes they fear they might have committed against Kenyans.

The Ministry is unaware of any such strategy but if there is, I want to tell those who might be interested in formulating such a strategy that they are wasting their time. As indicated, the Government is interested in the success of the Commission. The Government has no intention whatsoever to cushion anyone who may have committed crimes against people. In fact, if it emerges that there are weaknesses in the mandate of the Commission, I will not hesitate to come to this House to seek an amendment to the law to give them more teeth.

Mr. Temporary Deputy Speaker, Sir, the Government is dedicated to deal comprehensively with impunity. Further, we need to remind ourselves that this Commission does not belong to the Government, but to the people of Kenya. All Kenyans, including the private sector, civil society, political parties, Members of Parliament and religious organisations need to support the work of the Commission.

I want to say that I deeply regret the false start that the Commission had, but I am now satisfied that if we get the funding we require, this Commission will be able to deliver.

Thank you.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, when I spoke of Ministers sending mixed signals about TJRC, I had in mind two Ministers: Hon. James Orengo,

who demanded that the TJRC be disbanded and hon. Mutula Kilonzo, who has repeatedly sent clear signals that he was not too much in a hurry to allow the TJRC to have the kind of funding it needed.

In view of these facts, and in view of the fact that hon. Mutula Kilonzo was a very senior lawyer in the 24 years of the Moi's leadership of this country, could he clarify whether he is uncomfortable with the possibility that some of the wrong things that were done in those 24 years - when he was advising from the background - could eventually catch up with him, and whether this is not the reason as to why has not been very supportive to the TJRC?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I heard the Minister indicate that he is going to request for more funds. For the information of this House, the Kenya Women Parliamentary Association (KEWOPA) has just done its gender audit of the work of the TJRC. One of the things that have come out is that the TJRC does not have enough resources to enable them employ qualified persons to take into account issues of sexual and gender-based crimes, especially in areas where, because of religious and other issues, there are issues which are not easily spoken of.

Could the Minister consider, in the budget that he is going to request for, prioritising issues of persons with special expertise to deal with those issues?

Mr. Affey: Mr. Temporary Deputy Speaker, Sir, I thank the Minister for that Ministerial Statement. Of course, he said that there are two Commissioners who resigned, but he has not given us their names. Perhaps he is going to give us those names.

What I want to raise is a point of fact; that the TJRC was established to investigate historical injustices, as he has just said, and that the Government is serious in terms of getting to the bottom of these issues, so that the country can truly reconcile. I want the Minister to know that as long as the Government does not do away with The Indemnity Bill, which this House passed and the Government took custody of---

That goes against the current Constitution. It goes against the Bill of Rights. It also goes against the old Constitution. The people of northern Kenya will not be happy, and they will not reconcile with this country unless the Indemnity Act is completely removed from our statute books. Why has the Government refused to repeal this very "important" Act, which goes to the root of what the TJRC is expected to investigate?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, let me start with the issues raised by hon. Affey and assure him that, speaking as line Ministry, I have never believed that The Indemnity Act (Repeal) Bill as framed would facilitate proper functioning of the TJRC. Having said that, I have also seen the memorandum that has come from His Excellency the President, and I think it is up to Parliament to deal with it, so that the people of North Eastern Province, and other areas of the country, can know that The Indemnity Act would not be a hindrance to finding the truth.

I must reiterate that the new Constitution, anyway, will not permit a situation where somebody is hiding behind an Indemnity Act if a crime has been committed. I would also like to say that there is no time limit on crimes. The country must come to terms with the fact that any indemnity conferred would actually be limited to, perhaps, only damages, civil awards and things like that. If somebody has committed a crime, they cannot hide behind this sort of provision. I agree entirely with hon. Odhiambo-Mabona and I would like to say, yes, I will prioritize to the extent that I can get special expertise.

It will also be up to this House to help me. Should I bring any amendment to the Act to facilitate this because right now, that provision is lacking? I think I will be seeking an amendment to the Act.

Dr. Khalwale should not have any fear at all. In fact, among other things, I was a member of the Serena Team and if I had any reasons to fear a TJRC, speaking for myself, I would have done so from the very beginning. I only acted as a lawyer as I have acted for a lot of people, including some Members of Parliament and Ministers. Therefore, when I was saying the TJRC should be disbanded and I said so, I was not the only one. Even the Committee on Justice and Legal Affairs when I appeared before them and even now, there are members of the legal committee who feel that the TJRC was not pulling its way. I was saying so out of the frustrations I had knowing as I do that nothing else, no court process, no other process can ever reconcile Kenya except our own processes like the TJRC. So, you have no fear; absolutely, there is nothing to fear. Unlike Ambassador Kiplagat, if you raised any issues about Mutula, I would come up and own up completely.

Therefore, I am satisfied that I have responded to those clarifications.

The two commissioners who resigned are; Prof. Ron Slye from America and the other one is my good learned friend, Ms. Betty Murungi, a distinguished lawyer and a person of high standing in this area. The resignations were related, as I have said, directly to the credibility of the Chair. Now that a Tribunal has been appointed, I am satisfied that as soon as the report comes out, we will deal with it.

With regard to the issue raised by hon. Orenge, I can also speak because he is my friend. I think that was the reason driving his argument.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to mislead the House that Prof. Slye is one of the commissioners who resigned when he appeared before the Committee on Justice and Legal Affairs and informed us that he had given a notice or an indication to resign if the issues were not resolved and if they were resolved, he would continue and he gave an assurance that he would continue now that the issues are resolved.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I am afraid I am not misleading the House. As far as the Ministry of Justice, National Cohesion and Constitutional Affairs is concerned, Prof. Slye resigned because on the morning that he announced his resignation, the TJRC made a visit to my Ministry in my boardroom and he repeated his resignation. I do not need anything else. I do not think I have a shortage of people to serve in the TJRC; so as far as I am concerned, he has resigned. I am waiting for his Excellency the President to accept that resignation.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. One of the things the country is waiting for when the TJRC will be running is to hear the circumstances leading to the death of Dr. Robert Ouko. It is only yesterday that you tabled here the findings of a Committee of this House about the same. Since the Minister has confessed that he was actually giving legal services to President Moi like he would do to any other client, could the Minister---

The Temporary Deputy Speaker (Mr. Imanyara): Order! You are standing on a point of order!

Dr. Khalwale: Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): What is the point?

Dr. Khalwale: I was dealing with the point of order. Since the Minister has confessed that indeed---

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): On a point of order, Mr. Temporary Deputy Speaker, Sir. I have not confessed to anything.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, since the Minister has confessed that he was giving advice to the retired President, is it in order for the Minister to still insist to be the one to be midwifing the TJRC when he knows that he has got conflict of interest? The House would like to know what advice you gave retired President Moi in respect of the death of Ouko.

The Temporary Deputy Speaker (Mr. Imanyara): I am not satisfied that is a valid point of order.

Mr. Muthama: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Dr. Khalwale to imply that---

The Temporary Deputy Speaker (Mr. Imanyara): You are out of order, Mr. Muthama. I have already ruled on that issue.

Mr. Koech: On a point of order, Mr. Temporary Deputy Speaker, Sir. In my understanding, the TJRC was formed to investigate historical injustices and it is not indicated anywhere that it was meant to look at the Moi's regime. Is the hon. Khalwale in order to mislead this House to the extent that the work of TJRC is to investigate retired President Moi?

I thought it was supposed to investigate everything, even up to the NARC Government.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Who has the next statement?

CIRCUMSTANCES LEADING TO DISMAL PERFORMANCE OF HARAMBEE STARS IN CECAFA TOURNAMENT

The Minister for Youth and Sports (Dr. Otuoma): Thank you, Mr. Temporary Deputy Speaker, Sir. I beg to give this Ministerial Statement on the circumstances that led to Harambee Stars dismal performance in the recently concluded CECAFA Senior Challenge Cup.

I wish to inform the House that Harambee Stars was not well prepared for CECAFA Senior Challenge Cup held in Dar-es-Salaam. The team was in the camp for only four days before they departed for Dar-es-Salaam.

The team had also assembled nine new players who had just joined the team. So, they had not trained with the team before, meaning there was no adequate time for the team to interact and blend together as a team. I also would like to inform the House that Harambee Stars was facing a very stiff competition from other countries that were playing in this tournament, notably Malawi and Uganda who are currently ranked above Kenya. Malawi is ranked 17th in Africa and 74th in the world; Uganda is ranked 13th in Africa and 69th in the world and Kenya is currently ranked 30th in Africa and 116th in the world. So, that is the ranking of Kenya.

It also came to my notice that the players were not very well motivated, especially when it came to issues of the allowances which they received before they played with Uganda Cranes.

Mr. Temporary Deputy Speaker, Sir, on whether the Kenya Football Federation (KFF) and the technical staff are adequately addressing the development of soccer in the country at the national and the club level, I wish to inform the House that the KFF is not the one running the football tournaments in Kenya and even managing Harambee Stars. This is being done by Football Kenya Limited (FKL) which is recognized by FIFA. It is the FKL that currently runs soccer in the country. I also wish to inform the House that the FKL has not adequately addressed the issues of soccer development in the country because we are all aware that you cannot develop soccer by playing just in Nairobi. You must have a clear development plan for the youth in the rural areas so that you can develop talents and utilize them to make it to the national team. That should be done from the grassroots.

Mr. Temporary Deputy Speaker, Sir, on how much the Government has spent preparing the Harambee Stars, including paying for their air tickets, accommodation and allowances, I wish to state that the Government normally undertakes this function but in this case, FKL which was responsible did not engage the Government on this undertaking. So, we did not provide anything in that case because the FKL did not engage the Government. So, we were under the impression that they must have had adequate funds to be able to undertake those activities.

On the cause of poor performance by the team at the tournament, I have already indicated from the first question on some of the reasons that were there. That was poor preparation of the team. The team was not jelling because nine of the players were completely new. I have also said that you cannot just wait for players to play at the national level without a clear plan on how to develop them to be taken up by the national team.

On what I intend to do for Harambee Stars in their future performance, you are aware that as a Ministry, we re-launched our sports policy which adequately addresses the issues that we need to do. We have also finalized the Sports Bill that is supposed to come to this House so that we can have legal framework on how to engage sporting federations. Because many of these federations are registered under the Societies Act and yet we have the Sports Department which was established under some legal notice, which I do not have but my technical people will give me, we think that all the issues to do with sports should now be addressed towards the Sports Department. This should apply to any sport. Many federations are engaged in things and activities that are not sportish.

Mr. Temporary Deputy Speaker, Sir, if you look at soccer in particular, you will find that the federations and the leaderships that have been involved, have spent more time quarrelling than coming up with concrete plans. Sometimes, the Ministry's hands are tied when they say that they are private federations and are registered under the Societies Act. Therefore, my predecessors were previously taken to court to overrule some of the decisions that they had made. With the Bill which will be brought to this House, and which is ready, we will have the legal framework on how to engage sporting federations that are not engaged in sports. These are just people who are engaged in leadership wrangles which have nothing to do with sports.

In short, next week, I will be forming Harambee Stars Management Board to take care of Harambee Stars as an interim measure as we organize for grassroots elections. We will only have one federation to run soccer in this country and not two federations as it is.

I have made it very clear that people who will be engaged in leadership of this sports federation must be men and women of integrity as it is envisaged in Chapter Six of our new Constitution which talks about leadership. I want to repeat here once again that sports is supposed to be something that brings people together. It is supposed to bring out the best in the society and show true leadership in our people. So, I do not think that people who are quarrelling and have other desires should be involved in sports. They can find other places where they can practice the kind of things they are practicing but not in our sporting federations.

The Temporary Deputy Speaker (Mr. Imanyara): Is there any clarification? We will start with the Member for Webuye.

Mr. Sambu: Mr. Speaker, Sir, first of all, I am happy that the Minister admits that it is because of poor preparations that Harambee Stars did very badly in Tanzania. I would like the Minister to look at the issue of coaches. Over the last two years, Harambee Stars has had about six different coaches and each coach comes with his own squad. The first one was Kimanzi, and Bobby Ogola who served for two weeks. Then there was Twahir, the famous Mr. Hey, then back to Mr. Twahir and now Mr. "Ghost" Mulei. You can see the confusion of each coach coming up with different squads of players. Could the Minister tell us the professional policy he has put in place to ensure that coaches are recruited in a professional manner? This is because Harambee Stars is a national team and property and we cannot have coaches being recruited in a very unprofessional and haphazard manner. Let the Minister tell us how coaches will be recruited in this country.

The second clarification---

The Temporary Deputy Speaker (Mr. Imanyara): It is only one clarification, Mr. Shakeel!

Mr. Shakeel: Mr. Temporary Deputy Mr. Speaker, Sir, I would like to thank the Minister for giving us that brief. We have great hope now that our football will re-emerge. I urge the Minister to take certain things on board. I urge him to stay away from the powers that be because we know that FIFA gives this country over Kshs150 million per year. This money is used to corrupt the officials and certain people in the Government.

The Temporary Deputy Speaker (Mr. Imanyara): What clarification are you seeking?

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I am coming to it. The Minister has said that he will set up an interim board to manage Harambee Stars. Could he concentrate on the people who have had success in the past? We have Joe Kadenge who has a wealth of knowledge of football---

The Temporary Deputy Speaker (Mr. Imanyara): Order! I am allowing you to seek a clarification.

Mr. Shakeel: Mr. Temporary Deputy Speaker Sir, could the Minister kindly inform us the sort of people he will be looking for the board? Could he look at other successful organization of sports like rugby and see whether he can learn some lessons from them? I am sure the Minister can learn some lessons from those organizations. Could the Minister clarify whether he has looked at those organizations?

Mr. Muthama: Mr. Temporary Deputy Speaker, Sir, I seek a clarification from the Minister because we have two bodies that manage football in this country. The first one is KFL and the other one is KFF. The problem is that there is no single organization that is known to be in charge of football. Unless that problem is solved, it will not be easy to retain coaches because one coach is hired by this body and another one is hired by that body.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Muthama, please seek clarification.

Mr. Muthama: Mr. Speaker, Sir, I will stop with the clarification of the existence of the two bodies.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Minister, respond to those three clarifications first and then I take the next three clarifications.

The Minister for Youth and Sports (Dr. Otuoma): Mr. Temporary Deputy Speaker, Sir, the hon. Member for Webuye has asked what policies we have put in place in terms of professionalism when it comes to recruiting the coaches. I have already said that we have a very comprehensive sports policy. We also have a Bill which clearly stipulates how our federation and our national teams should run. I want to assure this House that so long as I am still the Minister in charge of sports, we will implement this to the letter.

The Temporary Deputy Speaker (Mr. Imanyara): When is the Bill expected? That is what Members want to know.

The Minister for Youth and Sports (Dr. Otuoma): Mr. Temporary Deputy Speaker, Sir, he just asked me what I was going to do. The Bill was ready, but we were clearing with the Treasury because of some financial implications. We have already finished that. So, the Bill will soon be tabled before the Cabinet and then it comes here. I want to assure you that there will be professionalism when it comes to recruiting coaches, so that there is continuity. I totally agree with you that when you have got a very high turn-over, already that is an indicator of some problems somewhere. The problem may not be the coaches. The problem has been the leadership in the federations that you recruit somebody today and tomorrow he is gone. Even Ghost Mulei, I do not think he is hardly two months old and he has already resigned.

On the issue of the people we will appoint to the Board, I just want to emphasize where sports have reached in this country, it is now a very large industry. There are a lot of livelihoods that depend on sports and sports related activities. So, it is my wish that as we formulate this Board to take care of Harambee Stars, it will be made up of men and women of integrity and achievement. People who can really look at sports in a completely different perspective and run it the way sports are supposed to run. Sports are supposed to be making money. It is not a net consumer of money. In fact, it is a net provider to the economy. That is the kind of a Board that I will be looking at.

On the issue of the two federations, I have addressed myself to this. We will have only one federation in the country. If you look at Article 10 (6) of the FIFA Statutes, you will find that it recognizes a country and one federation. The only exemption is the United Kingdom where they recognize Scotland and Wales. Otherwise, for the rest of the world, it is one country, one sporting federation. That is the way we will go; we will not have two federations running football in this country.

Mr. Sambu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to mislead the House by saying that we have Football Kenya Limited, when, in fact, FIFA knows that it is Football Kenya and not Football Kenya Limited? When you put the word “limited” there, then you disqualify yourself from being a member of FIFA.

The Minister for Youth and Sports (Dr. Otuoma): Mr. Temporary Deputy Speaker, Sir, currently, the federation running football in this country is called the Football Kenya Limited (FKL). These are some of the issues that we have been saying are problems in this country. We cannot have a limited company at the same time masquerading as an association. If you look at the FA League, which they were trying to copy, in those places, they do not normally elect the officials. Those are honorary positions. You saw the FA Chairman just resigning because of London not being considered for World Cup. Some of these officials have been around for more than ten years despite these problems. However, they still insist on being around. I am very happy that the Member was once an official and he is no longer an official. He is serving us in other areas. I hope those who are there will also think the same.

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

The Temporary Deputy Speaker (Mr. Manyara): Member for Webuye, I have given you a lot of time.

Mr. Ochieng’: On a point of order, Mr. Temporary Deputy Speaker, Sir. Could the Minister tell us when the Government is preparing to have a team that will be on its payroll, so that Harambee Stars can be paid directly from the Government and we have boys who can really represent this country?

Mr. Langat: Mr. Temporary Deputy Speaker, Sir, it is unfortunate that the Government has been a spectator to the problems in the football sector in this country for a very long time. I want to thank the Minister because he has indicated that the Government is coming in to bring order to the football sector. Is there a policy of giving opportunities to the youths from all the corners of this country to participate in football? The national team has always been appointed in unclear manner.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, while recognizing the important role the new Minister is playing in this Ministry, I would like him to indicate to this House what measures he is taking to motivate the athletes and the footballers in this nation in terms of allowances. What happened was a real fiasco, shameful and unacceptable.

The Minister for Youth and Sports (Dr. Otuoma): Mr. Temporary Deputy Speaker, Sir, on the issue of how our national teams operate, be it Harambee Stars or our athletes who go out there and bring glory to this country, the Government is trying to see how best we can create enabling environment, so that as much as we give them allowances--- As I said, sports is a very big industry that attracts a lot of money. In fact, in most places, sports are a net giver to charity organizations. Sports contribute to other national functions. However, because of poor leadership in terms of our federations, they cannot attract any sponsorship. Nobody can invest his or her money in a place where you are not sure about your returns.

If you look at football in this country, it has more spectators than any other sport. But you will find that athletics attract more funding. Rugby is attracting a lot of funding until they have surplus. The issue is not the way we are thinking that we should run to the

Government. The Government is supposed to create an enabling environment, namely, a structure, give seed money, provide stadia and the infrastructure required and enact an enabling legislation. Then it is the captains of the industry to drive it forward. That is where we are going to go.

On the issue of how people are recruited to Harambee Stars, this goes back to what I said that we must be able to recruit and develop talents. My Ministry has already started nine talent academies in the now defunct nine provinces. We have already started those talent academies that will work with the school programmes to catch up our youngsters and channel them to the national level. Of course, that means working with other stakeholders like the federations. Then the coaches and the technical bench will identify which people should play in the national team and also even represent the country in other sporting events.

On issues of motivation, you are aware that next week, we will be returning almost four flags from our athletic teams that have been representing Kenya. In New Delhi, you are aware that we got over 12 Gold Medals. Our athletes in the marathon and our rugby team have been doing very well. So, on motivation, the Government has been giving some allowances. Even this time, we will be giving awards, depending on whether you got a gold, silver or bronze metal when we will be taking back the flags to the Head of State next week.

The Temporary Deputy Speaker (Mr. Imanyara): The Leader of Government Business, it is your turn now.

BUSINESS TO BE BOUGHT TO THE HOUSE BY HOUSE BUSINESS COMMITTEE

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I rise pursuant to Standing Order No.36 (4) to be able to make the following Statement with regard to the business that the House Business Committee proposes to bring before the august Assembly.

Mr. Temporary Deputy Speaker, Sir, at the Committee Stage, we do have the Insurance Motor Vehicle Third Party Risks (Amendment) Bill, Bill No.10 of 2010. We also have the Tea (Amendment) Bill, Bill No.12. We propose that this could perhaps find primacy of place on Tuesday.

We also expect to get a report from the departmental committee on Justice and Legal Affairs, further to the consultations that took place at the KIA. We are all aware that unless this happens, we may not even be able, as the House Business Committee, to continue to propose that the House debates the Motion that was adjourned on the Committee on Implementation of the Constitution as well as the Revenue Allocation Commission.

Mr. Temporary Deputy Speaker, Sir, it was evident last evening when we had the House Business Committee that hon. Members are tired. But even as they are tired, they also want to be able to make sure that they do not act in a manner that will make the country not realize that this is a serious assembly.

Therefore, if hon. Members will agree unless you want to spend Christmas period in the House, we will be proposing an Adjournment Motion by Thursday next week. Of course, this will depend to a large extent on whether we will have done the business that I have just highlighted.

Mr. Temporary Deputy Speaker, Sir, the House has also slotted for debate, consideration of the Motion to adopt the Report on the Public Accounts Committee on the Government of Kenya accounts for the year, 2006/07 laid on the Table of the House on Thursday, 25th November, 2010. We hope we can actually also get this slotted in by Thursday. We are anticipating that we will have to come up with procedural Motions on Wednesday and Thursday in order to be able to cover as much ground as we can.

Finally, the House Business Committee will meet on Tuesday at the rise of the House.

Mr. Affey: Mr. Temporary Deputy Speaker, Sir, I rise to thank the Vice-President and Minister for Home Affairs. There is a matter that perhaps the House Business Committee might have just forgotten and this is the matter of the Indemnity Repeal Act by the President who submitted the memorandum. We had a problem with the Attorney-General's absence for a while. I now realize that the Attorney-General is in the country and we would be very glad if the Leader of Government Business can bring this matter to the House fairly quickly so that we can dispose of it.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, the House Business Committee has not forgotten, neither has it overlooked the importance of bringing before the House the matter of discussion on the Presidential Memorandum with regard to the Indemnity Repeal Act. We have actually received notification from Mr. Affey once or twice but he was not available. He was out of the country. The House Business Committee Members who are here will bear me witness; they were able to be accommodating to Mr. Affey.

I think the best thing to do, I can see Dr. Khalwale here who is a Member of the House Business Committee, is that we can now seriously consider this matter on Tuesday, subject only to Mr. Affey being present if we put it on the Order Paper.

The Temporary Deputy Speaker: (Mr. Imanyara): Next Order.

MOTION

ADOPTION OF REPORT ON CHARTERHOUSE BANK

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

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

Mr. Temporary Deputy Speaker, Sir, the matter of Charterhouse Bank has been with us for a long time. In fact, it goes as far back as the Ninth Parliament when the matter was brought before this House and the Finance Committee then deliberated on it, wrote a Report and tabled the same. Unfortunately, that Report after being tabled was never debated. Therefore, no resolution of Parliament was there, either to adopt or not to adopt the Report.

The matter resurfaced again this year in July when there were 35 petitioners on whose behalf Mr. C. Kilonzo presented the petition to the House with prayers basically to re-open the bank because the depositors and creditors did not have access to their money, securities and the title deeds that they had given to the bank. Therefore, they were

praying for Parliament to pass a resolution to urge the Central Bank of Kenya to re-open the Charterhouse Bank.

Mr. Temporary Deputy Speaker, Sir, the Committee sat and undertook to invite relevant witnesses to appear before it and we had 23 meetings during which we interviewed and sought evidence from a variety of players. The CBK Governor, the Statutory Manager, the Director of Inspections, the PricewaterhouseCoopers partners, the Attorney-General, the Kenya Anti-Corruption Commission Director-General and his deputy, the Commissioner-General of KRA and many other witnesses. We got evidence from each and every one of them.

Basically, what we were looking for is to address specific allegations that had been made against the Charterhouse Bank. One of the accusations was violation of the Banking Act and Prudential Regulations. The other was the allegation of tax evasion. Another was allegations of money laundering and siphoning of money to off shore accounts. The other was drug trafficking and terrorism.

Mr. Temporary Deputy Speaker, Sir, I will not go into the details of the evidence because it is all contained in the report which hon. Members have. The sum total of it for the violations of the Banking Act, the evidence given points to the source of these allegations, as regular banking inspections undertaken by the CBK at various intervals. Specifically, I want to refer to four inspections which followed one another.

One was done some time in August, 2004. Another one was done in October. Another one followed in April. All of them pointed out that there were some violations which were pointed out to the bank and the bank was given the opportunity to redress them.

After each and every inspection, you will find that the CBK actually granted the banking licence to Charterhouse Bank. The same CBK could not therefore, come back and say that Charterhouse Bank violated the Banking Act and the Prudential Regulations and at the same time, they granted them the banking licence.

So, by implication, we believe that Banking Licences were given with the recognition that they had fulfilled the conditions of the issuance of the licence.

Sometime in 2004, the Kenya Anti-Corruption Commission (KACC), Central Bank of Kenya (CBK), Kenya Revenue Authority (KRA) and the Ethics and Governance Permanent Secretary put together an inter-agency taskforce which was to look at suspected suspicious activities that were going on at the Charterhouse Bank.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Mr. Okemo, are you satisfied that you should be addressing the issues concerning the CBK in the complete absence of the Government Side, including the Treasury?

Mr. Okemo: Mr. Speaker, Sir, I am extremely surprised, particularly, in view of the fact that this is a subject that has been so widely covered; both in the electronic and print media; and, in view of the fact that this issue has been pending for the past four years. I am surprised that the Office of the Deputy Prime Minister and Ministry of Finance which should have been here to listen to the findings of this report is not here. No single Member of Front Bench is present.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, indeed, I was consulting with hon. Mututho on raising that point of order which, gladly, you have brought up. In view of that, could you consider ordering specific sanctions against the Deputy Prime Minister

and Minister for Finance, especially, in view of the fact that in the last three days, when we were debating the important Public Accounts Committee Report, he never sat in, he never listened or commented?

The Temporary Deputy Speaker (Mr. Imanyara): I see the Chief Whip, Mr. Muthama here. Would you be in a position to shed some light as to why there is no Government representative, and particularly from the Treasury on this important issue?

Mr. Muthama: Mr. Temporary Deputy Speaker, Sir, I walked out to get hold of the Deputy Prime Minister and Minister for Finance, but unfortunately, I could not reach him on phone. However, since this debate will not be concluded today, I am sure we will get the Government response later.

The Temporary Deputy Speaker (Mr. Imanyara): I am not satisfied with that response.

Mr. M'Mithiaru: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am a Member of the Departmental Committee on Finance, Planning and Trade. What we are seeing here is the kind of circus we experienced, as a Committee, where the Government agencies were not ready to face the Committee and give it the information they had. We would like you to rule that if we have to debate this report any other day apart from now, that the Finance Ministry and the CBK be in attendance.

Mr. Kathuri: On a point of order, Mr. Temporary Deputy Speaker, Sir. It is very strange to expect that we can contribute to this important Motion when those who are expected to respond are nowhere here. Yes, we may raise very pertinent issues. Who will be taking notes? How would they respond on matters that they did not listen to and prepare answers? When we look at what is befalling the directors and shareholder of Charterhouse Bank, you will see that some of the damages are irreparable. How do we expect this to continue? I would like to request that if we have to discuss this matter when the Government side is not here; you make sure that this Motion becomes a priority in the next sitting, so that no other business will be transacted when this Motion is outstanding.

Mr. Muthama: Mr. Temporary Deputy Speaker, Sir, I want to cite a case that took place at the beginning of this week, if I am not wrong. The PAC Committee brought its report here and Dr. Khalwale realized that first, the number of MPs who were in the House, were not enough to attend to the serious issue. The Bell was rung to alert hon. Members to come back, including the Ministers. When quorum was not realized and adjournment was decided, we revised the matter later. All efforts have not been exhausted. We could still have the Bell rang if there is no quorum, so that we raise the quorum which will include Ministers back to the Chamber.

The Temporary Deputy Speaker (Mr. Imanyara): Are you raising the issue of quorum?

Mr. Muthama: Mr. Temporary Deputy Speaker, Sir, I am not raising the issue of quorum. I am only concerned about the absence of the Cabinet Ministers. That is the only means I can use to get them here.

Mr. Koech: On a point of order, Mr. Temporary Deputy Speaker, Sir. While I concur with my colleagues, I have looked at page ten, information from the Attorney-General, which reads as follows:

The petitioners humbly beseech Parliament to consider the petition expeditiously and resolve the matter since the Report of the Departmental Committee on Finance,

Planning and Trade of the Ninth Parliament was tabled and was not debated. Therefore, there was no resolution made by Parliament to either adopt or not to adopt the Report.

It seems as if there are other underlying issues. Therefore, there is no reason apart from people not wanting this report not to be debated. So, in your ruling, there is a petition that reads that the people of Kenya beseech and want Parliament to debate this Motion and either adopt or reject it.

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, we had about six Members of the Front-Bench a few minutes ago. However, as soon as the Order for the Motion was read out, they all walked out. That cannot be accidental. This is a scheme to avoid dealing with this issue, a long outstanding issue which we must deal with and come to a conclusion. I think hon. Members are prepared to debate it. Let us debate it and hon. Members will either adopt it or not adopt it. This is frustrating. We have put a lot of time and work preparing it. I think it would---

The Temporary Deputy Speaker (Mr. Imanyara): Continue!

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, the various allegations that have been made, some of them which are coming from outside the Government and even from foreign governments have not been substantiated up to today. If you talk about the violation of the Banking Act and tax evasion, the various relevant Government institutions that are responsible have appeared before our Committee and all of them, in very clear terms, have absolved the Charterhouse Bank Limited. They all stated that the customers of the Charterhouse Bank Limited, even if they have issues concerning the allegations, that cannot stop the bank from being reopened and carrying out its normal banking functions. Indeed, today, we are hearing many allegations regarding drug trafficking. These alleged drug dealers have bank accounts. The bank accounts are in banks which exist and that are operating today. Are we, therefore, suggesting that because of these allegations, we should go ahead and close all the banks in Kenya?

Hon. Members: No!

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, therefore, the fact that allegations are being made about customers of the bank, that cannot make a bank be closed. Indeed, there is no law in the land which provides for a bank being closed based on those allegations. Having found evidence that does not hold on those allegations, our Committee has recommended that we go ahead and restructure the bank on the following terms and conditions which have already been agreed between the CBK and the Charterhouse Bank Limited. As I talk now, there is an executed restricting agreement which has already been signed voluntarily between the two parties. The agreement is dated 31st August, 2009.

The question is; since 31st August 2009 to date, what happened? We are talking of more than a year. A contract has been executed and yet no action has been taken. There is no evidence of any action or any kind of step forward to ensure that the bank is reopened to carry out normal banking services.

Mr. Temporary Deputy Speaker, Sir, it is, therefore, our recommendation that in order to give a bit of courage and a bit of force to the Governor so that he can execute to conclusion this restructuring agreement, Parliament should pass a resolution to adopt this Report.

With those few remarks, I beg to move.

I would like Mr. Shakeel to second.

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I stand to second this Motion.

I will take one minute only. I want to stress one thing; that the same allegations that were used to close down Charterhouse Bank are the same violations that 38 banks had. Charterhouse Bank is one of them and is No.13 on the list. Why Charterhouse Bank? It appears that the Central Bank of Kenya (CBK) is no longer trying to be a regulatory authority. It seems to have something against a particular bank. Is it the CBK or a particular person who has put the CBK on the spot? Justice delayed is justice denied. The bank has been put under receivership since 2004. There was a restructuring arrangement that was not carried out.

Mr. Temporary Deputy Speaker, Sir, I am going to be very brief because I know Members are concerned. I am going to say one thing; there was another bank that was put under receivership but its case was dealt with properly. I was at that bank today. It is called the Consolidated Bank. The CBK and the regulatory authorities did the right thing in that case. In the case of the Charterhouse Bank, they did not do the right thing. Was this driven by personal ambition or personal greed? I do not know.

However, if there is anything wrong or they are accusing the directors of any misdeeds; if they have done anything criminal, they should be taken to court. I do not see the reason why they have to jeopardize and kill the bank. I think what happened is a travesty of justice and impunity of the highest order.

I beg to second.

(Question proposed)

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I will be very brief. I brought this petition some months back on behalf of depositors purely because it had become very difficult for the depositors to access their funds. There appeared to have been a stalemate in this matter.

Allow me to refer to an opinion which was given by the Senior Deputy Solicitor-General, a one Muthoni Kimani, regarding the matter of Charterhouse Bank. This was a legal opinion which had been forwarded to the Attorney-General and the Government. The issues in question were whether the decision to appoint the Statutory Manager was done in accordance with the provisions of the Banking Act and, if so, did the Statutory Manager perform her duties, and what were the legal options open to the CBK?

Mr. Temporary Deputy Speaker, Sir, the Banking Act gives the CBK powers to regulate business of banking within the country. The primary role of the CBK has been to protect the interests of institutions, depositors and creditors of the institutions to ensure good governance. The power of the CBK is to intervene in management of a banking institution as contained in Section 34 of the Banking Act.

In the case of Charterhouse Bank, the CBK applied Section 34(1) (d) (ii) which gives the CBK powers to appoint one person as a manager to assume management and control and conduct of the affairs and business of an institution to the exclusion of the directors.

Mr. Temporary Deputy Speaker, Sir, in the words of the Solicitor-General, she was of the opinion that the reason advanced by the Ministry of Finance then for the appointment of a Statutory Manager were not backed by any virtual basis because there was no evidence of customers having a run on the bank. The matters contained fell in the

realm of criminal law which required investigations under the relevant criminal law. That was the opinion in as far as number one was concerned.

The Solicitor-General goes on to say:-

“When the Statutory Manager was appointed, instead of doing her job as the Statutory Manager, she appointed PriceWaterhouseCoopers to conduct investigations of the bank”.

PriceWaterhouseCoopers produced a report alleging evasion of tax and money laundering not very different from the inter-agency task force report which had been laid in Parliament then.

Mr. Temporary Deputy Speaker, Sir, the options which the CBK was recommending of liquidating the bank, in the words and opinion of the Solicitor-General:-

“Liquidation of a bank by the CBK is provided for under Section 35 and is only available where an institution is insolvent, is unable to pay its debts and a winding up order has been made against it or a resolution of voluntary winding up by creditors is passed. In this case, the bank is not insolvent under the Companies Act”.

According to the Solicitor-General, liquidation is not an option. To cut the long story short, the opinion of the Solicitor-General was that the decision by the CBK in administrative law can be termed as irrational, under Wenesbary’s Principle of unreasonableness. She concludes to say:-

“In my view, the CBK does not have any other option but to terminate the term of the Statutory Manager and amicably resolve the matter and the cases in court”.

Mr. Temporary Deputy Speaker, Sir, basically, that is the recommendation of the Committee. So that we do not punish the depositors, it is very important that this matter is addressed.

Finally, what the foreign missions have been asking us to do is not done in their countries. In the United States of America (USA), we had the Rigsburg which was involved in money laundering. In this Report, you will somewhere see where this bank was under investigation by the Congress in the USA. It was found that the funds which were used in the 9/11 attacks were from that bank. The bank was never closed. The American ambassador is telling us to do what is not done in his country and that which cannot be done in his country.

Mr. Temporary Deputy Speaker, Sir, the list is long. You will be able to see the practice. Very many banks have similar cases; money laundering, corruption--- I will give one example; this is Britain. The BAE Systems was found guilty of corruption, money laundering and arms trade in a court in the United Kingdom (UK). However, the banks which this company was dealing with were not closed. They were allowed to continue running.

With those few remarks, I beg to support.

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

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

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I rise to support the adoption of this Report in its entirety.

Mr. Temporary Deputy Speaker, Sir, I have been a Member of the Committee on Finance, Planning and Trade now for eight years. Since the beginning of this saga of Charterhouse Bank, I have sat in those meetings. What is out there in the media is nothing new from what we had in the Ninth Parliament. We have sat as a Committee and listened to the evidence from the Government; from the Governor of Central Bank of Kenya (CBK) and the then Acting Head of Kenya Anti-Corruption Commission (KACC), Dr. Mutonyi. We also heard from the Kenya Revenue Authority (KRA). None of these people are saying anything that they have against this bank. We have been agonizing about what this bank could have done so wrong that everybody who initially said everything was wrong with it is now saying nothing is wrong with it.

Mr. Temporary Deputy Speaker, Sir, to take the cue from hon. C. Kilonzo, the reason for closure of any bank is insolvency. Evidence was adduced before the Committee that this bank is more solvent than most banks in the country. There is nowhere in the Banking Act that anybody – even the Governor of CBK – has any iota of power that they can close any bank under any circumstances other than the reason of insolvency, and it is stipulated in law. Therefore, that a Government could wake up one morning and send people to go and close a bank is puzzling. If there were any criminal acts by this bank – and I am not saying there is none – they have nothing to do with banking. You cannot close a bank simply because Nakumatt banks there or Nakumatt has not paid taxes. Banks do not collect taxes. Banks do not file tax returns for business. The American Ambassador keeps telling Kenyans that there is no evidence. Last week, we asked the current head of the KACC to give us evidence before we wrote the Report so that he does not embarrass us after we do the report. I flew from here to Sand N Sand, Mombasa, with evidence which was already before the Committee. There was nothing new. They go and take checks of what is already there and say they have new evidence just to spice up. I have always wondered what this bank could have done that nobody is telling this country. If you are talking about money laundering, this country just passed the Anti-Money Laundering Law and it came into effect this year. If that be the case, why would a foreigner be saying that the bank is involved in money laundering, something which was not a crime in our country as at the time when the bank was closed?

Mr. Temporary Deputy Speaker, Sir, just for the record, the Chairman, hon. Okemo, was in the other Committee with me in the Ninth Parliament. If you read communications between embassies, they said that we were corrupted to absolve the bank and when we say: “Give us the evidence---“ You may wish to know that Kenyans have put their money in this bank and for all that time, they cannot assess it.

Mr. Temporary Deputy Speaker, Sir, because there may be other contributions, I beg to support the adoption of this Report.

Mr. Langat: Thank you very much, Mr. Temporary Deputy Speaker, Sir. From the outset, I want to say that I strongly support the Report with its recommendations.

Mr. Temporary Deputy Speaker, Sir, this country has been fighting for investments, increasing the levels of employment, yet since 2006, in excess of Kshs3 billion is held because this bank cannot operate. When you look at the issues that the Committee has dealt with, there was no criminal activity by this bank or the directors.

Regarding the issue of drugs, there was no evidence to show that anybody in the bank or the customers, were dealing in drugs. Even if they were dealing in drugs, people deal in drugs but they take money to the bank and not drugs. So, it is not possible that the bank can know that you are dealing in drugs. If the other agencies of Government have failed, we should not allow other people to take responsibility for them.

Mr. Temporary Deputy Speaker, Sir, this bank should be reopened. I realize that among all the issues that this bank has been accused of, there is none which has any merit. We are only being told that there is an issue that the United States of America (USA) Ambassador has raised. So, maybe, we should ask the Deputy Prime Minister and Minister for Finance to go and kneel down and pray so that the USA Ambassador can allow him to open this bank. This is because that is the only thing that is between the operations of this bank and its opening.

Mr. Temporary Deputy Speaker, Sir, I support.

Mr. Chepkitony: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to support this Motion.

Mr. Temporary Deputy Speaker, Sir, from the outset, I must say that we investigated this bank in the Ninth Parliament. I was also in the Committee during the Ninth Parliament and I am still in the same Committee. I was surprised when the allegation was made that Members of the Committee were given money. I got very upset and said that I must stand for the truth. Let us ashame the devil or those who are talking ill of the Members of the Committee. This is because we have sincerely gone to all the lengths; we have listened to all the people who appeared before the Committee and presented evidence and have not seen any merit. The only issues that this bank had were the violations according to the Banking Act, which are mainly, know-your-customer regulations and the bank was fined Kshs1 million, like other banks at the same time, around 2005. They were given three months in 2006 to rectify that. Even before the three months ended, the bank was put under statutory management and was not even given a chance. So, there is no other violation this bank committed. At that time, there was no money laundering. The Central Bank of Kenya (CBK) cannot liquidate this bank because this bank is not insolvent. So, there is no way the CBK can liquidate this bank.

Mr. Temporary Deputy Speaker, Sir, there is a lot of impunity with regard to this bank. When the statutory manager went there, the Act provided that she should be there for 12 months. They went to the High Court and it was extended for another 12 months which ended around August, 2008. However, since August up to now, they are there illegally. So, they are there with impunity. They are not supposed to be there.

(Applause)

So, the shareholders, depositors, the innocent and poor Kenyans who went and opened accounts are suffering because their money is there but they are unable to get it. These Kenyans have suffered a lot. So, the best compensation, although very late, is to open this bank. It has been expensive for the bank and shareholders to close the bank for over the last four years. They have incurred enormous losses and we cannot allow the bank to remain closed forever. We also cannot be dictated by an ambassador of a foreign country. The ambassador is not a central bank of the country. We have investigated as the

Parliament of Kenya and we have come to the conclusion that this bank must be restructured and opened.

Thank you.

Mr. Muthama: Mr. Temporary Deputy Speaker, Sir, I also rise to support the adoption of this Report.

(Applause)

Our country is a country of wonders. This is the first case I have seen in my life where you have the accused and there is no accuser. In this Report, the regulator which is the CBK has signed an agreement with the bank to reopen it. In this Report, all concerned authorities have been invited. They have given their testimonies and not a single group has raised a question on this issue. As a businessman, if it is tax evasion, you cannot go and accuse the bank.

(Applause)

You should follow Mr. Muthama. The taxman should take his bank's statements, audits them and if at all I am unable to pay the money, the taxman will freeze my accounts. That is the bottom line. Is this bank being closed because of the instructions of Rannerberger? If that is the position, do we have a free country or are we being ruled by foreigners?

There is no single evidence here of a complainant. This is the question that lingers in every Kenyan's mind. Under whose instruction is the bank being closed? We want to know. We want to be told that this is the person who is keeping the keys of the bank. We want to walk to that person and tell him to release the keys for the bank to be reopened. If there is drug trafficking, is it the responsibility of the bank to arrest those who are dealing with drugs or is it the work of the police? The police have their work to do. So, if there are people who peddle and sell drugs and keep the money in the bank, it is up to the police to arrest them.

The other issue which I saw raised here was the accounts with coded numbers. If those accounts are there, it is up to the regulator to ask the owners of the account and if they cannot be identified, the money is taken to the Central Government and given to Kenyans. So, let us not waste time here discussing an issue where there is no accuser. It is very plain.

So, I support the reopening of the bank and the adoption of the Report.

Mr. Mbugua: Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion. The question which lingers in my mind is why this bank was closed. Perhaps, I would ask a rhetorical question: Is Kenya sovereign? This is a bank which was closed as a result of malice, rumours and witch hunting. Perhaps if we go to *wiki leaks*, we will find one of the reasons for closing this bank which is drug trafficking. This is the case and yet there is no evidence of anybody who has been operating those accounts who has been accused or taken to court as a result of drug trafficking. If there was any problem with the account holders, then we should have dealt with them.

There is no difference between the people who raided *The Standard* and those who descended on this bank and closed it.

(Applause)

In order for justice to prevail in this country, the *mama mboga* who used to sell her *mboga* and take her Kshs20 or Kshs30 to that bank, this bank should be opened like yesterday. I appeal to hon. Members that tomorrow, because this Report will be adopted, we go and open the doors of this bank because there is no reason for the closure of this bank.

With those remarks, I beg to support this Motion.

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

[Mr. Deputy Speaker took the Chair]

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Deputy Speaker, Sir, I rise to support the adoption of this Report. For the first time, I want to speak as a member of the private sector. The world over, financial institutions work in the same way where accounts of individual customers and companies are monitored by the banks under the banking regulations through the central bank.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. We have been debating this Motion for slightly more than an hour and going by the mood of the House, would I be in order to call on the Mover to respond?

(Applause)

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

(Mr. Okemo moved to the Dispatch Box)

Mr. Deputy Speaker: Order! Mr. Duale, it is the presumption of the Chair that you are from the Government. Do we have somebody from the Government to respond?

Hon. Members: Mr. Duale!

Mr. Deputy Speaker: Indeed, Mr. Duale, respond on behalf of the Government!

Hon. Members: Yes!!

Mr. Deputy Speaker: Fair enough! There is no compulsion from the Chair but nonetheless, proceed and then the Mover will be called upon to reply.

(Mr. Duale remained seated in his place)

Mr. Okemo: Mr. Deputy Speaker, Sir, all the hon. Members who have contributed to this Motion are concerned about one very important thing; the fairness and the treatment of all institutions in Kenya in accordance with the law. It is very clear that the reasons that led to the closure of Charterhouse Bank do not hold today. The evidence suggests that the reason why Charterhouse Bank was put under statutory management

was the fear to have a run on the bank because of the adverse publicity, which had been generated by a statement that was issued by hon. Billow Kerow in this House.

There is no indication from either Central Bank of Kenya (CBK) or the former Minister for Finance that the bank was closed because of violations of the Banking Act or drug trafficking or tax evasion. Those were not the reasons. These were side issues which emerged after the bank had been put under statutory management. I would like to add that it would be very unfortunate for any other bank in Kenya to be dealt with in the manner in which Charterhouse Bank has been dealt with.

Mr. Deputy Speaker, Sir, there have been numerous allegations against Charterhouse Bank. I do not think any Member of Parliament here suggests that drug trafficking, tax evasion and violation of the Banking Act should be encouraged. What we are saying is that if those allegations are indeed strong enough to be prosecuted in a court of law, the Government should go ahead and do so. If drug trafficking has taken place and customers of the bank have been involved, let them be dealt with in accordance with the law. There is no law which says that if a customer of a bank is involved in a criminal activity, you close that bank.

As I said in my earlier comments, if that were to be the case, every bank then should be closed because you will see that a lot of those violations – and we found a whole list of them – have been committed by other banks, and they have been punished by monetary penalties. What we are saying is that the relevant Government agencies should apply the same punishment to Charterhouse Bank.

Mr. Deputy Speaker, Sir, mine is, therefore, to plead to hon. Members that we all support the rule of law. Let us act according to the rule of law. Even if there is external pressure, we should not bend to external pressure to break our own laws, which we make in this House.

With those remarks, I beg to move.

(Question put and agreed to)

ADOPTION OF REPORT ON CATTLE RUSTLING IN KENYA

Mr. Kaino: Mr. Deputy Speaker, Sir, I wish to thank you for this opportunity. You have enabled me to move this Motion after waiting for some time. On behalf of Members of my Committee, it is my pleasure---

Mr. Deputy Speaker: Order! Order! Hon. Boaz Kaino, you are an old Member of the House. So, move the Motion by reading the terms verbatim. You are the Chairman of the Committee.

So, move the Motion!

Mr. Kaino: Mr. Deputy Speaker, Sir, I beg to move:

THAT, this House adopts the Report of the Select Committee appointed to investigate the Root Causes of Cattle Rustling in Kenya laid on the Table of the House on Thursday 4th November, 2010.

Mr. Deputy Speaker, Sir, it is my pleasure and duty to present the Report of the Committee to the House. Cattle rustling was defined by a protocol on the prevention, combating and eradication of cattle rustling in Eastern Africa. These people defined cattle rustling as means of stealing, planning, organizing, attempting, aiding or abetting the

stealing of livestock by any person from any country or community where the theft is accompanied by dangerous weapons or violence.

Mr. Deputy Speaker, Sir, cattle rustling has been with us for a long time. Historically, the whole of the Horn of Africa and Southern Africa has experienced cattle rustling for along time. This has caused poverty to many families, many communities and many regions because many people have lost their lives, a lot of properties have been lost and families have suffered quite a lot because of this problem. Traditionally, cattle rustling is mainly considered among pastoral communities as a cultural practice and was sanctioned and controlled by elders. Currently, the phenomenon of cattle rustling is causing a great deal of concern owing to the emerging new trends and dynamics leading to commercialization and internationalization within communities of those who practice cattle rustling. It is one of the painful situations in some of the communities where this practice is on.

Mr. Deputy Speaker, Sir, when we were selected by the House, we went to several places and made several observations. We went to Trans-Nzoia, Turkana, Garissa, Ethiopia, Uganda, Tanzania and many many districts in this country where we have this problem and we saw the sufferings of these people. The Government has really let these people down to the extent that even after 40 years, Kenyans are still killing themselves. Even today as I speak, in Samburu and other areas, people were killed yesterday. Today, they are still being killed and they continue dying just because of cattle rustling.

During those trips, we also saw where the Government has gone wrong in some areas. The Government does not respond immediately. We do not know why the vehicles are there. The police officers and the Provincial Administration are there and you do not find these people on the ground. When you get to the police quarters, they say they have sent people and that they are on the ground.

Mr. Temporary Deputy Speaker, Sir, when we go to the Police Headquarters, they tell us that they have sent officers on the ground and yet we do not see them. So, we do not know where they are and people continue to suffer.

The biggest problem is between Samburus and Turkanas, Samburus and Merus, Turkanas and other neighbouring communities from other countries like Sudan and Ethiopia. We were privileged to go to Ethiopia where we found Kenyans had died because of the way we have organized our security systems in the country. In Ethiopia, the chief is the one who posts and monitors the KPR. This group is then sent to this country to take animals. So, you find that our people are at the mercy of God when these people mount a raid. They come in their hundreds. They are not police but ordinary people who are armed to the teeth. They have terrorized these communities and taken their animals. There is nobody who thinks about school because you cannot think about school when there is death at your doorstep. You only think about your safety first. In other areas, some animals have been taken from Kenya by Kenyans to Uganda and nobody follows them. Day-in, day-out, animals are driven to Uganda and sold and then the money is brought back to Kenya.

Mr. Temporary Deputy Speaker, Sir, it is very important that this report is debated and passed so that these recommendations can be implemented, so that these people can live like other Kenyans. For many years, since this practice has been on, those Kenyans have not engaged themselves in any meaningful development because they have been

struggling to eliminate cattle rustling. This important Committee has come up with numerous recommendations. I will briefly highlight the important ones because all of them are in this Report.

The first recommendation is infrastructure. You will find that there are no roads but we expect the police to track down the cattle rustlers. The police see people driving away animals but since there are no roads, they cannot risk their lives. So, they refuse to track down the rustlers and the animals are driven away. Security will be improved if the Government sympathizes with the pastoralists and constructs roads in those areas. People are dying and animals are being taken away in those areas. There is also no learning facilities and development in those areas.

We sympathized with the Samburu on 22nd August, 2010. We went there and we found women crying because their children had died and all the animals had been driven away. We had to contribute some money to them. The hon. Members had to give some money so that those people could buy some things. The relief food which is disbursed to those areas does not reach them. The ones who are supposed to distribute the food eat the maize. So, animals are driven away and the maize does not reach them.

Mr. Temporary Deputy Speaker, Sir, the relief maize which is sent there does not reach the ground. Even if it is 1,000 bags of maize, it does not reach the ground. We want the Government to do something about this.

Mr. Deputy Speaker, Sir, one of the recommendations that the Committee has made is that the Government should dig boreholes at strategic points to curb the migration of cattle from the cattle rustling prone areas. This should be prioritized. The Government should initiate an all inclusive annual meeting to discuss the mechanisms of dealing with the cattle rustling menace. The meeting should be attended by political, religious, administration, civil society and other opinion leaders from the affected regions. The Government should set up provincial, district committees up to the sub-location level. This is another very important area that the provincial Administration should look into. We should have peace committees from the sub-location. The NGOs should be encouraged to venture into the arid areas for peace building and advocacy campaigns in order to supplement the Government efforts. The Government should encourage corporate entities to contribute to economic development in this region.

The Government should give commercial incentives to industrialists setting up industries in cattle rustling prone areas, especially meat processing plants. It should also encourage investments in community projects that reduce poverty, generate income and provide employment. It should construct irrigation schemes along the rivers like Turkwel, Dam Stream, Aror, Kerio Valley, Kerio River, Weiwei and Tot, among others. There is a lot of water in those areas and irrigation should be encouraged, so that the youths who engage in cattle rustling will cease and venture into meaningful activities. For example, the Sigor Irrigation Scheme under the Italian Government has become very successful. The Pokots of Sigor have stopped cattle rustling because they have something to do. They are engaged in irrigation all the time. At the end of every month, they get some money. That has helped them. If such projects are initiated in all the areas where there is water, these people will stop engaging in this outdated activity and venture into other activities. I urge the local leaders, the Local Government and other stakeholders to encourage the application of range management. They should initiate, at least, one training institute per constituency on best practices and principles in range management.

The youth should be trained in livestock husbandry, disease management, pastoral sociology and ecology, range, soil and water management.

The Kenya Meat Commission (KMC) should build regional abattoirs to regulate the livestock industry and marketing, especially at Lodwar, Pokot, Barwesa in Baringo, Marigat, Arror, Wamba, Marakwet, Samburu County, Isiolo, Kangeta, Meru County and Marsabit Town. There is need for the Government to operationalize the Lokichoggio abattoir. We do not know why it was stalled. Probably, this project stalled because of the activities of those cattle rustlers. This thing seems to be connected to the highest level of the Government. Why was a project like that, which should have reduced cattle rustling, allowed to stall and yet it would have helped those communities establish tea along Trans Mara, Gucha border and Cherangany to create a buffer zone and generate employment. Its creation will curb this menace of cattle rustling from spreading to tea zones. Once they drive animals through tea zones, it is possible to stop them because it is an open place and the animals can be seen. These people believe in doing these practices in the night.

Mr. Deputy Speaker, Sir, we recommend that the Government should carry out regular comprehensive livestock census and health centres after every 10 years. The records should be kept and updated by the administration up to locational level.

Another issue we mentioned is branding of livestock. This was done by the colonial government many years ago. We used to have animals being branded such that every community knew their own type of branding. But, today, animals are not branded; so, you can even get animals that could have been prevented from crossing to Uganda border doing so because they do not have marks at all. Everybody should know the marks of his animals when they are branded. You will know that these animals are from Nyandarua, Nyahururu or Samburu so that people can return those animals back. When you leave animals unmarked, these animals are the same. Unless we brand them and give every animal in every regions its own different mark, it will be very difficult to control cattle rustling. How do we control cattle rustling if we do not control it by branding?

Mr. Deputy Speaker, Sir, we should encourage cultural exchange amongst communities. We should encourage the people of Turkana, Marakwet and Baringo to meet once in a while so that the young men and women can meet, sing and understand their traditional roots. We also recommend that schools be built even in these communities. In other areas, you cannot even get one graduate in a location in these pastoral areas. How do we ensure that we are actually equal when education is still far away and we cannot even get graduates in those areas?

Mr. Deputy Speaker, Sir, the Government must be serious if they want those people to come up. They must take education down to the grassroots, build primary and secondary schools along the border of each community so that those communities that are still practicing cattle rustling can stop that. This will give the children from Pokot, Marakwet, Samburu and Baringo a chance to meet with other children in school. When they meet together in school, they will have serious communication. It will be a positive communication to the Government and also to themselves for creating peace.

If we only sing peace in Nairobi without doing anything meaningful on the ground especially in pastoralist areas, we are joking and these communities will lag behind for many years. Even after 40 years, these communities are still lagging behind.

We have serious problems. The Government must be serious. If Members of Parliament really want these communities to come up, we have to stop other things from

happening and give priority to those areas. We have to put this peace in place so that the pastoralist communities can come up and catch up with others. Otherwise, forever and ever amen, they will never catch up. There will be a very big gap in terms of development between the developed areas and undeveloped areas. The Government has left its people to die every year. As I was trying to go through my Report, I got a message that about three Samburus had died today and yesterday, many of them died. How long will we do this? How long will we accept this vice to continue? This can be achieved if we build roads, dams and provide security, schools and water points in those areas, and also get communication---

ADJOURNMENT

Mr. Deputy Speaker: Order, hon. Members! Mr. Kaino, you will have 40 more minutes to conclude moving the Motion.

It is now time for the interruption of business. The House, therefore, stands adjourned to Tuesday, 14th December, 2010 at 2.30 p.m.

The House rose at 6.30 p.m.