

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 16th March, 2010

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

OVERCHARGING OF ELECTRICITY CONSUMERS BY KPLC

Mr. C. Kilonzo: Mr. Speaker, Sir, I beg to ask the Minister for Energy the following Question by Private Notice.

(a) Under what circumstances did the Kenya Power and Lighting Company (KPLC) make a pre-tax profit of Kshs.2.8 billion for a six month-period ending December, 2009, and yet power consumers across the country are complaining of being overcharged?

(b) When will KPLC lower its charges to the consumers?

The Assistant Minister for Energy (Mr. Keter): Mr. Speaker, Sir, I beg to reply.

The correct position is that the KPLC made a profit before tax of Kshs2.863 billion from July to December, 2009. Over the same referenced period, the profit of the Company after tax was Kshs1.873 billion.

Hon. Members may wish to note that there had been gross under investment in the transmission and distribution capacity in the country from as early as 1990s to June, 2003. This contributed to poor quality of electricity supply in the country. Despite substantial investments over the last six years made by the Company, with the support of the Government, the quality of power is still below the expected standard. This has been due to lack of adequate funds to upgrade obsolete equipment and hardware in the network including system expansion. The current rate of electricity connectivity is 20 per cent which means that 80 per cent of Kenyans are in darkness. This is not consistent with the aspirations of all of us in this House.

In order to reinforce the network for improved delivery of quality of power, and concurrently expand the electricity infrastructure to meet the ever rising demand, the KPLC must undertake heavy investments. These investments will require the KPLC to generate substantial funds from its operations in order to be in a position to borrow the balance.

Lending institutions, as we are all aware, require any borrower to contribute a portion of the required capital funds from their operations and this is usually set at 30 per cent of the investment cost. However, the KPLC, with the support of the Government, has been able to borrow up to 75 per cent of capital expenditures, thus reducing pressure

on the electricity tariffs to raise the needed own contribution. It is good to note that with this borrowing we have been able to cushion the tariff.

Between 31st December, 2008 and 31st December, 2009, the fixed assets rose by Kshs12 billion mainly in form of investments of upgrading and extending the electricity infrastructure. In the six months period, June to December, 2009, the additional assets in distribution infrastructure, including works in progress and loans repayments were in excess of Kshs6.6 billion. The Kshs1.873 billion after tax profit was, therefore, just about the required internally generated funds (25 per cent) to enable the KPLC undertake these important works and service the loans under payment.

Mr. Speaker, Sir, you may wish to note that in the same period under review only Kshs237,384,000 of the profit was paid out as dividends to the shareholders, with the bulk of the profit retained and ploughed back to upgrade and expand the power distribution network.

The KPLC has already begun to reduce the charges as evidenced by the drop in the fuel cost charge from Kshs7.90 per Kwh in November, 2009 to Kshs7.49 per Kwh in March 2010. The level and pace of further reduction by the KPLC will be determined by the intensity of the expected long rains in the Tana River catchment. If we do not get sufficient long rains, these slight gains may be reversed. On the other hand, if we receive heavy long rains, we will further reduce the emergency power capacity with the resultant reduction in the cost of electricity to consumers.

Finally, I would like to inform this House that the entire emergency power which is about 250 megawatts is programmed for removal from our power generation system by March, 2011. This measure will result in a substantial fuel cost charge reduction as cheaper plants will have been commissioned by then.

If you have a look at your electricity bill, you will notice that the cost of fuel is more than the cost of consumption. Therefore, as a Ministry, in this year's Budget, we apportioned Kshs 5 billion for the development of geothermal power. At the end of this year, geothermal power will generate almost 60 megawatts which will reduce the cost of fuel.

With regard to transmission, we allocated Kshs5 billion in the Budget. For distribution through the Rural Electricity Authority (REA), we allocated another Kshs5 billion. That means that from the Exchequer we have spent Kshs15 billion so that we can improve on the generation and save on fuel, which is very high. This is what has made the tariff to be high. Had electricity been mainly generated through hydro plants, it would only cost Kshs5 per megawatt.

Mr. C. Kilonzo: Mr. Speaker, Sir, it is only yesterday that the Minister for Energy while addressing the same issue said as follows: "The Government does not have control over the KPLC which is a private company."

He advised consumers to continue praying and those who can fast to do so because if this country does not discover oil then the charges for electricity will continue being high. The Minister said that less than 12 hours ago and yet the Assistant Minister has come with a different answer. We are aware of who the owners of the KPLC are. They are 20 entities and I do not want to mention them.

The Kenya Power and Lighting Company (KPLC) gives very important service to this country. Without electricity, we cannot say that we have a growing economy. If the

Government has no control over the Kenya Power and Lighting Company, why not nationalise the company?

Mr. Keter: Mr. Speaker, Sir, the answer I am giving is the Ministry's position. Therefore, I do not know what my colleague is saying. I am giving an answer that reflects the position of the Ministry of Energy. I have put it very clear that we started by investing in geothermal generation---

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. The substantive Minister has been quoted verbatim, and what has been quoted is in direct contradiction to what is now being claimed to be the official Ministry's position. Is it in order for Keter, who is an assistant to the substantive Minister, to contradict him?

Mr. Keter: Mr. Speaker, Sir, the answer that I have read out is signed by hon. Kiraitu Murungi, the Minister for Energy. So, there is no contradiction whatsoever.

Mr. Speaker: Order! Order, hon. Members! As far as the House is concerned, the official and operational position would be as communicated to the House.

Mr. Namwamba: Mr. Speaker, Sir, it is obvious that most of the power supplied by KPLC is from a hydro-electric supply with a considerable portion coming from geothermal and yet the Assistant Minister wants us to believe that the main reason as why the cost of power has escalated to unmanageable levels is substitution because of fuel costs. Secondly, when KPLC was posting these astronomical profits, the agency that generates power; KenGen, was posting astronomical losses, which raises the question of the connection between the cost at which KenGen generates and supplies power to KPLC and the cost at which KPLC supplies that power and charges the ordinary Kenyan.

What is the Government's position on the question of overpricing - which is so obvious here - that the agency that generates and supplies power to KPLC makes losses and yet KPLC is the chief consumer of the power generated by KenGen? We cannot allow the Assistant Minister---

Mr. Speaker: Order! Order, Mr. Namwamba! This is Question Time!

Mr. Namwamba: Mr. Speaker, Sir, could the Assistant Minister give the Government's position on the obvious immoral overpricing that has made the cost of electricity to become unbearable to the ordinary Kenyan and which is pushing investors out of this economy because of escalation of the cost of production?

Mr. Keter: Mr. Speaker, Sir, KPLC is a power utility company which signs what we call "Power Purchase Agreements" with power generating agencies, including KenGen, Emergency Power and the independent power producers. So, when such producers commit themselves by signing such an agreement, for example, Mumias Sugar Company commits itself to produce power at the rate contained in the agreement, they cannot complain. When they say that KenGen made a loss, it is okay because when they were signing the agreement, it was based on the hydro power plants which were generating about 724 megawatts. With the failure of rainfall on the Aberdare Mountains, we had a problem with hydro power production. I remember that last year, Masinga Dam had to be closed down, which impacted negatively on KenGen. They resorted to using Kipevu I and Kipevu II power plants which are run on diesel.

I have said IBERAFRICA Africa generates about 100 megawatts of electricity using diesel, and AGGREKO, which is emergency power producer, which is part of what we bought last year, generates almost 250 megawatts. Rabai, which is a new project, generates about 65 megawatts. All these power producers are based on diesel. If you see

where the diesel element is, you will realise that it is very high. As I said, if we were only using hydro electricity, the cost of electricity would be about Kshs5 per megawatts per kilowatt, but right now, with the diesel element, it is almost going to Kshs8 per megawatt per kilowatt.

However, we have invested on geothermal. The current capacity of geothermal is 167 megawatts. By the end of this year we are going to have additional 60 megawatts. This will lower the cost of electricity arising from the use of diesel plants. So, the situation is going to improve. By March, 2011, we will not be using emergency power which is 210 megawatts. So, the cost of electricity will drastically come down to about Kshs5 per megawatt per kilowatt, which will be okay.

Mr. Bahari: Mr. Speaker, Sir, if I heard the Assistant Minister well, he has just confirmed the worries of the hon. Member who brought this Question. The Ministry is more concerned about infrastructural development as opposed to the impact the pricing of electricity has on employment and consumer welfare, including the purchasing power of consumers right now. Can he then revisit that issue – because they are sacrificing a lot presently – and look for resources from outside to inject into this sector, so that they can put the infrastructure in place without affecting consumers and employment in this country?

Mr. Keter: Mr. Speaker, Sir, I have said clearly that we have resources from the Exchequer, amounting to about Kshs15 billion, intended for enhancing the transmission and distribution networks, which involves the Rural Electrification Authority (REA), which, as we are all aware, is about Kshs5 billion, as well as generation. Last year, we voted about Kshs5 billion to geothermal companies. So, if we say that we are going to use Exchequer money only to fund the existing transmission lines, we will not be able to improve connectivity from 20 per cent to the required standard or even to 100 per cent. Currently, our connectivity is at 20 per cent.

Mr. Olago: Mr. Speaker, Sir, when the Government offloaded part of its majority shareholding in KPLC, it effectively made KPLC a monopoly. In order to make sure that, that monopoly is not misused, the Kenya Electricity Regulatory Authority (KERA) was created. What is the role of this Authority in ensuring that electric power is available to ordinary Kenyans at an affordable price?

Mr. Keter: Mr. Speaker, Sir, I did not get the question.

Mr. Olago: Mr. Speaker, Sir, when the Government offloaded part of its majority shareholding in KPLC, it effectively made KPLC a monopoly in distribution of electricity. This exposed the ordinary Kenyan to overpricing by the monopoly. So, the KERA was created. What is its role in making sure that electricity is available to ordinary Kenyans at an affordable price?

Mr. Keter: Mr. Speaker, Sir, what was created is called Electricity Regulatory Commission (ERC), which regulates the electricity tariffs. Electricity tariffs are not fixed by the KPLC but by the ERC. I was explaining that what affected the adjustment of the electricity tariffs is the diesel element. So, until we do away with emergency power generation using diesel plants by March, 2011, we will still be paying about Kshs7 per megawatt.

Mr. Njuguna: Mr. Speaker, Sir, although the Assistant Minister has explained why there is high fuel cost, this will continue to antagonise and frustrate Kenyans in terms of meeting their consumption needs. Why does the Ministry not liaise with the fuel

marketers and change from our traditional suppliers to our neighbouring countries, for example, Uganda and Sudan that produce crude oil?

Mr. Keter: Mr. Speaker, Sir, the cost of diesel cuts across the board. These plants are supplied by all the companies that are here. When we say Uganda, it has not come into the market. For the case of Sudan, we are still talking with them. More importantly, you are all aware that our exploration of oil is on-going in Isiolo. They will complete the exercise by the end of next month and then we wait for the results. We hope to embark and put our resources on the exploration so that as a country we can get oil and lower the cost of diesel.

Mr. Yakub: Mr. Speaker, Sir, this is a very serious issue for the whole country. Twenty years ago Kenyans were told that electricity would be in every home. Right now it is completely a different picture. The charges of electricity have increased by between 350 and 800 per cent. The Assistant Minister has told us that they do not have control over the Kenya Power and Lighting Company (KPLC) Ltd. I know that the Government is the single majority shareholder with 48 per cent shareholding, and that is subject to correction.

Mr. Speaker, Sir, KenGen is generating power---

Mr. Speaker: Please, come to the question!

Mr. Yakub: Mr. Speaker, Sir, could the Assistant Minister assure this House of three things? Could he reduce their profit margin, operation costs and make sure that KenGen reduce their charges to the KPLC Ltd.?

Mr. Speaker: Mr. Assistant Minister, the question is all about reduction!

Mr. Keter: Mr. Speaker, Sir, as I said earlier on, the profit which was made by the KPLC for the six months is about Kshs1.8 billion. Out of that amount, Kshs1.6 billion goes back to network expansion and improvement. That is why we need to improve the transmission lines. Otherwise, with the improvement of distribution, we will have poor quality of power and numerous blackouts.

Mr. Speaker, Sir, this profit is about 25 per cent. The KPLC gets funds from the World Bank, the African Development Bank (ADB) and other international institutions which require it to raise equity of up to 30 per cent. The Kshs1.8 billion profit I have talked about is only 25 per cent, and yet the loans repayment and expansion of network cost is about Kshs6.6 billion. Therefore, if we reduce the charges the KPLC will automatically go under.

Mr. Sambu: Mr. Speaker, Sir, one of the reasons for the collapse of the Pan-African Paper Mills was very high electricity bill of Kshs200 million. In view of the fact that the KPLC Ltd. has made a huge profit, could the Assistant Minister consider writing off the amount owed by the Pan-African Paper Mills?

Secondly---

Mr. Speaker: Order, Mr. Sambu! Ask one supplementary question!

Assistant Minister, would you reply?

Mr. Keter: Mr. Speaker, Sir, with due respect Mr. Sambu was the Chairman of the KPLC at the time the tariffs were increased. He knows very well that if the profit margin of the KPLC is reduced, the company will not be able to operate.

The negotiations between the Pan-African Paper Mills and the Ministry of Energy through the Ministry of Industrialization are on-going. I am unable to say that we will

write-off the Kshs200 million. Both Ministries will work out the modalities and we will announce that when the time comes.

Mr. Mbadi: Mr. Speaker, Sir, the Assistant Minister knows the multiplier effective that the high cost of energy has on this country. The profit that is being ploughed back of Kshs1.6 billion in six months gives us about Kshs3.2 billion in a year. Could the Assistant Minister tell this House why the Ministry cannot consider reducing tariff to the extent of reducing that profit margin? If the Ministry would like to expand the infrastructure it can do it through budgetary request in the formal way.

Mr. Keter: Mr. Speaker, Sir, I have listened to what the hon. Member has said. He has said that, instead of using the profit to expand the network, we can use the budgetary request. Bearing in mind that, we will cut down on other organs of power, that means that we will reduce the rural electrification funds, the funds that are allocated to the transmission company and geothermal funds. I have said---

(Mr. Mbadi stood up in his place)

Mr. Speaker: Order, hon. Member for Gwassi! That is disorderly conduct! Continue, Mr. Assistant Minister!

Mr. Keter: Mr. Speaker, Sir, we will look into that. We are not saying we are not listening to---

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

Mr. Speaker: What is it, the Member for Gwassi?

Mr. Mbadi: Mr. Speaker, Sir, I think the Assistant Minister did not get my argument clearly. I wanted to inform him that if you reduce tariffs---

Mr. Speaker: Order! That is a point of information and you know the rules! The Assistant Minister must agree that he wants you to inform him.

Mr. Mbadi: Mr. Speaker, Sir, I thought he accepted.

Mr. Speaker: Mr. Assistant Minister, do you want to be informed by the Member for Gwassi?

Mr. Keter: Well, let me continue with what I was saying. I do not want any information.

(Laughter)

Mr. Speaker: Proceed!

Mr. Keter: Mr. Speaker, Sir, I have listened to the wishes of the Members. The Energy Regulatory Commission (ERC) will work out the modalities. Where it is possible to reduce, we will do that and where it is not possible, we will not. I have said that we will do away with emergency power. This will automatically reduce the cost of electricity.

Mr. C. Kilonzo: Mr. Speaker, Sir, what the KPLC is charging the consumers is criminal. Manufacturing companies which employ thousands of people are relocating to neighbouring countries. Tenants are paying two rents; one to the KPLC Ltd. and another to the landlords. Landlords have become tenants in their own houses. If you are a landlord who pays the KPLC between Kshs30, 000 and Kshs40,000, you are actually a tenant.

What the Assistant Minister has told the House---

Mr. Speaker: Come to the question, the Member for Yatta!

Mr. C. Kilonzo: I am getting there, Mr. Speaker, Sir.

Mr. Speaker: Do not explain why you are asking the question. Ask it!

Mr. C. Kilonzo: Mr. Speaker, Sir, what the Assistant Minister has said that they will move from thermal power generation by March when the rains will be enough is not logical. Those are almost perennial!

Mr. Speaker: The Member for Yatta, you are an intelligent man. Just ask the question!

Mr. C. Kilonzo: Mr. Speaker, Sir, this is an emotional thing. The only place I can express that emotion is here. I am not speaking on my behalf---

Mr. Speaker: I know you are but these matters are about logic and not emotions!

Mr. C. Kilonzo: Mr. Speaker, Sir, I hear you and stand corrected.

Could the Assistant Minister consider removing the Value Added Tax (VAT) on power charges? Could he also consider removing the Customs Tax and the VAT on solar energy products?

Mr. Keter: Mr. Speaker, Sir, I would like to tell my colleague, Mr. C. Kilonzo that by March, 2011, we will have put in place the geothermal plants. We are buying what we call "well heats". After drilling one well, we are able to generate about five to ten megawatts instantly. In our projection, we will have put about 60 megawatts to our grid by December, therefore, relieving us the use of emergency power.

Mr. Speaker, Sir, the VAT is negligible. It is levied on the fixed charges and any consumption which is above 200 units. Therefore, it is not a major element in the billing. The major element is the fuel cost and that is what we are targeting.

We will look into his proposal on solar energy products because it is good.

Mr. Speaker: Member for Isiolo South! Mr. Bahari!

CROP FAILURE IN ISIOLO IRRIGATION SCHEMES DUE
TO INAPPROPRIATE SEED VARIETY

Mr. Bahari: Mr. Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that there was a total crop failure in Kinna, Rapsu and Gafarsa Irrigation Schemes in Isiolo South Constituency due to the inappropriate seed variety supplied by the Ministry?

(b) What urgent steps will the Minister take to compensate the farmers for the immense loss incurred?

The Assistant Minister for Agriculture (Mr. Ndambuki): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that there was total crop failure in Kinna, Rapsu and Gafarsa Irrigation Schemes in Isiolo South Constituency due to the inappropriate seed variety supplied by the Ministry. But I am aware that in Kinna and Rapsu the rains were below average due to other production factors that are being addressed by the Ministry.

(b) The Ministry has no plans to compensate farmers for crop losses due to natural calamities like drought. However, more seeds were sent to them for planting this planting season.

Mr. Bahari: Thank you, Mr. Speaker, Sir. This Assistant Minister admits on one side that there was a crop failure and tries to give reasons of drought and on the other side he is saying he is not aware that there was a crop failure. In the same area when different seed varieties were used from the ones distributed by the Ministry, there was a bumper harvest by the farmers, yet from the seeds the farmers got from the Ministry there was a poor harvest. Therefore, it cannot be drought; it can only be by deduction the results of inappropriate seed varieties. Could the Assistant Minister undertake to take up this matter, go down to these farms and investigate thoroughly what the real cause was, as this answer is misleading?

Mr. Ndambuki: I do not really agree with the hon. Member that other maize seeds grew well. There are things which go with the highbrid seed; these are things like manure and fertilizer. When we analysed the soil of the area, we found that it had a very low nitrogen and organic carbon and also phosphorous. This could have been corrected by using fertilizer. Now what we have done--- In the last season, farmers did not have a depot where they could get subsidised fertilizer from, but now we are making arrangements for them to get fertilizer at Kinna.

Mr. Speaker: Mr. Bahari!

(Mr Chachu stood up in his place)

Order, hon. Chachu! You stood up too late!

Mr. Bahari: Thank you, Mr. Speaker, Sir. I am happy that the Assistant Minister says he is going to provide fertilizer and the rest, so that these farmers can do better. It took us a long time to convince the people in the area to go into farming, because of food shortages. Can the Assistant Minister ensure that the fertilizer is available at the nearest point within that area, because the nearest available source of fertilizer is 50 kilometres away?

Mr. Ndambuki: I would like to thank the hon. Member for encouraging his constituents to start farming. Today their acreage has increased and that is why we are taking the initiative to bring fertilizer closer to them. We are even organising to see whether the local manure, which is left to go to waste around there, could be used. We are also planning to bring the area into another programme, where we want to encourage the farmers to get into the Kinaya programme. That will really improve farming in that area.

CANCELLATION OF 2009 KCSE CHEMISTRY PAPER
IN KAPLONG SECONDARY SCHOOL

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

(a) Could the Minister explain the circumstances that led to the cancellation of the 2009 KCSE Chemistry Paper 3 (practicals) examination results of Kaplong Girls' Secondary School?

(b) What is the fate of the students concerned?

Mr. Speaker: Minister for Education! Who will hold brief for the Minister for Education? Minister for Industrialisation!

The Minister for Industrialisation (Mr. Kosgey): Mr. Speaker, Sir, I undertake to get the Minister to come and reply. I happen to be privileged that when the House next meets---

Mr. Speaker: Order! Hon. Members! I will defer this Question to Thursday next week. Member for Nyakach!

(Question deferred)

OPERATION OF KAA WITHOUT BOARD
CHAIRMAN IN 2009

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

(a) Could the Minister explain why the Kenya Airports Authority operated without a chairman to the Board for the entire 2009 and also failed to hold any Board meeting during the period?

(b) How did the Authority run its affairs without the Board's approval during the period?

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

(a) I am aware that the former chairman of the Kenya Airports Authority Board of Directors contract expired on 19th July, 2009. Subsequently Board meetings were held on the following dates: 24th September, 2009; 27th October, 2009 and 14th December, 2009. The meetings were held in line with the laid down procedures for meetings, which allow members present to nominate one member to act as chairman and preside over the meetings where the chairman is late, absent or indisposed.

(b) The Authority at all times, therefore, ran its affairs with the Board's approval. The appointment of the chairman of the KAA is a prerogative of the Head of State under the State Corporations Act, Section 6(1)(a), which provides for appointment for a period of two years. A chairman was appointed on 8th January 2010.

Mr. Ochieng: Mr. Speaker, Sir, the KAA is a very important institution in this country and you have seen here that for the last six months it did not have a chairman of the Board. Why did the Board fail to hold its meetings between January and August last year?

Mr. Mwau: Normally, the Board is limited to four meetings in a year, and does not have to hold a meeting every month. The necessary meetings were held. Therefore, the Board did not fail to perform its statutory duties.

Mr. Chanzu: On a point of Order, Mr. Speaker, Sir. Before the Assistant Minister continues, is he in Order to mislead the House that the Board is limited to four meetings? It is a minimum of four meetings; so, they can hold more meetings. Is he in Order?

Mr. Mwau: I said a minimum of four; I did not say only four, the minimum of four meetings were held, not to mention actually that they were more than four.

Mr. Ruto: Thank you, Mr. Speaker, Sir. Can the Assistant Minister tell us what the qualifications are for one to be chairman of the KAA and possibly tell us the age brackets? Is a candidate supposed to be of the Assistant Minister's age or younger? Could he tell us the qualifications for one to be the chairman of the KAA?

Mr. Mwau: Mr. Speaker, Sir, today, the maximum age that is prescribed by the Government is 60 years. But for political conveniences, some people have exceeded the maximum age limit. Therefore, when the President or any other person exercises his or her discretion to appoint a person who is above 60 years, that is his or her prerogative.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead this House that the maximum age for chairmen of boards of parastatals and, more particularly, Kenya Airports Authority (KAA) is 60 years?

Mr. Mwau: Mr. Speaker, Sir, I said that within the Government, the maximum age a civil servant can work is 60 years. I said that for the age of a chairman of a board, it is the discretion of the President. Usually, the chairman is appointed by the President. That is a discretionary decision of the Head of State.

Mr. Pesa: Mr. Speaker, Sir, the Assistant Minister has just told this House that it is the President who appoints the chairmen of those boards. Could he tell this House what he has done to inform the Head of State that, that appointment has taken too long?

Mr. Mwau: Mr. Speaker, Sir, immediately! Usually, the procedure that the Ministry follows is that three months before the expiry of the term of a chairman, it informs the Head of Public Service who then informs the President. From that position, the Ministry becomes *functus officio*. It becomes the decision and the discretion of the Head of State.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. I believe you heard the Assistant Minister say that for political reasons, the age limit can be varied. Could he tell us whether the appointment of a chairman depends on political reasons? If there are political reasons, could he itemize what those political reasons are? How do we measure them?

Mr. Mwau: Mr. Speaker, Sir, I did not say a political question. I said a political discretion.

Mr. Ochieng: Mr. Speaker, Sir, could the Assistant Minister give us the names that were forwarded to the appointing authority for appointment?

Mr. Mwau: Mr. Speaker, Sir, I would like, once again, to repeat that the discretion of appointing a chairman of a State corporation lies with the President. The names do not emanate from the Ministry. The only names that are given to the Ministry are the ones that are selected by the Board for the appointment of a Managing Director. But the appointment of the chairmen is the discretion of the Head of State.

ORAL ANSWERS TO QUESTIONS

Question No.096

NON-IMPLEMENTATION OF PROJECTS UNDER DEVELOPMENT VOTE IN ELDAMA RAVINE

Mr. Speaker: Hon. Members, Question No.096 is deferred to ten days away from today. That is because the hon. Member is away on parliamentary business.

(Question deferred)

Question No.072

COMPENSATION TO MR. JORAM OCHENGA

Mr. Chanzu asked the Minister for Forestry and Wildlife:-

(a) what plans he has to compensate Mr. Joram Ochenga, who was attacked and seriously injured by a lion at Maragoli Hills on 3rd September, 2002; and,

(b) what measures he will take to protect the residents of the area from such attacks in future?

Mr. Speaker: The Minister for Forestry and Wildlife? Mr. Kosgey, will you hold brief for the Minister?

The Minister for Industrialization (Mr. Kosgey): Yes, Mr. Speaker, Sir. Once again, I will tell the Minister to come and answer it next week on Tuesday.

Mr. Speaker: It cannot be once again because the Minister was absent last week as well, when he was expected to answer a Question.

(Mr. Onyonka consulted loudly)

Order, Mr. Onyonka! That is not the way we conduct business here!

Mr. Chanzu: Mr. Speaker, Sir, the other time when I asked a Question, I said that because of collective responsibility, another Minister could undertake to answer a Question like this one. That is because it is taking a lot of time and causing a lot of anxiety. So, could the Minister who has just undertaken to inform the substantive Minister, undertake to answer the Question himself on Tuesday, now that the Minister for---

Mr. Speaker: Order, hon. Members! I will expect the Minister for Forestry and Wildlife to be here to answer this Question himself and, for the moment, as things stand, the absence of the Minister amounts to disorderly conduct and so, the Minister will not transact any business in this House beginning now until an explanation is offered as to why he is not here. The Minister was not here last week and he is not here today.

The Minister for Energy (Mr. Murungi): On a point of order, Mr. Speaker, Sir. Just before you pass that harsh judgment on the Minister, I thought we should give you some information that the Minister is out of the country because of the ivory trade conference which is taking place in Doha. He is there with the permission of His Excellency the President.

Mr. Speaker: Order, Mr. Murungi! Is he accompanied by his Assistant Minister?

The Minister for Energy (Mr. Murungi): I do not know that one, Mr. Speaker, Sir.

Mr. Speaker: If you do not know, then the punishment must stand! Hon. Members, the Minister for Forestry and Wildlife will not be allowed to transact any business in this House until such time that an explanation is offered as to why he is absent and, therefore, unable to answer this Question. That covers the Assistant Minister as well or any other Minister that may be instructed to act on behalf of this Ministry! Otherwise, the Question is deferred to Tuesday next week!

(Question deferred)

*Question No.078*NUMBER OF CASUAL EMPLOYEES
AT MULTIMEDIA UNIVERSITY

Mr. Letimalo asked the Minister for Higher Education, Science and Technology:

(a) to inform the House how many casual employees are currently employed by the Multimedia University College of Kenya and state how long each of the employees has worked as a casual; and,

(b) what plans she has to ensure that they are employed in compliance with the labour laws?

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

(a) The number of employees currently employed by the Multimedia University College is 138. Of those, as of 26th February, 2010, 117 were casual employees who had worked for 46 days. Twenty one casual employees worked for 24 days each.

(b) The institution, as you know, is in transition. It has just been formed. But they are now trying to regularize their employment according to the laws of Kenya. They have assured us that they will follow all the regulations.

Mr. Letimalo: Mr. Speaker, Sir, the information that I have is that the number of casual employees at the Multimedia University College is 149 and not 138. But I will leave that to the Minister to verify. But my concern is that those casual employees who have worked between three months and two years are 98. Could the Minister explain, how long does an employee work as a casual before he or she is permanently employed? Under what circumstances have the 98 employees worked as casuals?

Dr. Kosgei: Mr. Speaker, Sir, I am not aware that 98 people are still casuals. I have given their number as 138. We did not call them. We went to the university, conducted an audit and came up with that number. The law says that if you work for three months, you must be confirmed. I have already said that there are 117 who have worked for 46 days. There are 21 casuals who have worked for 24 days. When any of them gets to three months, they will be deemed to be permanent and they will have to be hired according to the law. In this context, the Ministry has taken a further step of notifying the university - in writing under my own signature - that, they should quickly move ahead and hire people on permanent basis starting with those who have been there the longest.

Mr. Bahari: Mr. Speaker, Sir, could the Minister confirm that some of those employees were allowed to work for only a few months and then laid off and re-engaged again to beat the labour laws? If yes, can they now be confirmed?

Dr. Kosgei: Mr. Speaker, Sir, I have the names of all the people who are employed as casuals. What is being said is probably speculation but in any event, I have said that the Ministry has taken the steps under my signature to the Acting Principal to hire the people who have been there on permanent basis. I cannot, therefore, hire them permanently on the Floor of the House.

Mr. Letimalo: Mr. Speaker, Sir, I appreciate the action being taken by the Minister. However, I would like her to explain what privileges are these casual employees entitled to with regard to working overtime, housing and medical care as per

the terms and conditions of service? Are they entitled to any allowances because that is one major complaint?

Dr. Kosgei: Mr. Speaker, Sir, the details being sought are outside the work of the Ministry. Those fall under the Ministry of Labour. We can confirm to the House that they will be treated according to the laws of Kenya that govern casual workers and all the labour laws of the country.

Question No.101

NON-PAYMENT OF COMPENSATION
TO VICTIMS OF TORTURE

Mr. Baiya asked the Attorney-General:-

(a) to confirm that the High Court issued a decree for compensation of Messrs Dominic Arony Omolo, Alex Okoth Ondewe, Naftali Karanja Wandui, Joseph Gichuki Karanja, Rumba Kinuthia, Andrew Muriithi Ndirangu and Njuguna Mutahi and Margaret Wangui Gachau, all victims of torture in Kisumu HCCC 366/95, Nairobi HCCC 384/053, 85/85, 386/05, 1408/04, 1409/04, 1410/04 and 1412/04; respectively, and that no appeal was filed by the Government against the decree within the stipulated period;

(b) why the Government has acted in contempt of the Court orders by refusing to settle the decrees; and,

(c) what measures the Government has taken to settle the decrees.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir---

Mr. Baiya: On a point of order, Mr. Speaker, Sir. I wish to point out that I have not received any written answer from the Attorney-General.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I am surprised that he has not received a written reply when I am aware that the written reply was sent to Parliament this morning. He is a learned colleague, I know he will follow my response.

Mr. Speaker, Sir, I beg to reply.

(a) I can confirm as stated, except in the case involving Mr. Dominic Arony Amolo. The Attorney-General is yet to receive a certified copy of the proceedings to enable an appeal to be filed.

(b) The Government has not acted in contempt of the court orders by refusing to settle the decrees.

(a) The Government has taken the following steps:

1. In the case of Dr. Odhiambo Olel versus the Attorney-General, HCC No. 336, the decretal amount of Kshs25,657,996.30 was paid vide cheque dated 28th May, 2009 in favour of Koroyola Olel and Company Advocates. I believe the advocate is a son of the plaintiff who is a doctor.

2. Seven cases HCC No.384/85, Alex Okoth Ondewe versus the Attorney-General HCCC No.385/05 Naftali K. Wandui versus the Attorney-General; HCCC No.386/08, Joseph G. Karanja versus the Attorney-General; HCCC No.1408/04, Rumba Kinuthia versus the Attorney-General; HCCC No.1409/04, Andrew Muriithi Ndirangu versus the Attorney-General; HCCC No.1410/04, Njuguna Mutahi versus the Attorney-General;

HCCC No.1412/04, Margaret Wanjohi versus the Attorney-General; all these seven cases were consolidated and judgment given on 28th May, 2008 in favour of each claimant for Kshs1.5 million plus costs and interest.

The total amount of Kshs11,632,484 was paid by remittance on 24th December, 2009, to Messrs Gitau, JH Mwara and Company Advocates who were acting for all the seven plaintiffs.

3. As to the claim of Dominic Arony Amolo, the Office of the Vice-President and the Ministry of Home Affairs have stated that they have exhausted the budget allocation for legal expenses for the present financial year and provision will definitely be requested for in the next financial year and the claim will be paid.

Mr. Baiya: Mr. Speaker, Sir, I would like to thank the Attorney-General for the answer he has given, particularly confirming that the various cases have been settled as he has stated. I confirm that is the position. For the remaining one for Dr. Dominic Amolo, could he confirm when he will be paid? Why does he have to wait. There is always a miscellaneous account in the Government to settle this decree if there is no appeal.

The Attorney-General (Mr. Wako): I must admit that there has been a bit of delay in this particular claim mainly occasioned by the fact that up to today, the court has not given a certified copy of the proceedings to file the appeal. In view of the fact that the court has taken a long time, I have recommended that the claim be paid. That is why the Office of the Vice-President and Ministry of Home Affairs has stated that this claim will definitely be paid in the next financial year.

Mr. Imanyara: Mr. Speaker, Sir, I thank the Attorney-General for his answer. I happen to have been a lawyer for Dominic Arony and the judgment was entered on 11 March, 2005 by a three bench constitutional court. When the Attorney-General says they have been waiting for an appeal, is he not misleading the House given that there has been a stay and that neither the Ministry nor the Attorney-General has applied for a stay of the execution. Why has it taken successive years from 2005 up to this year without making any financial allocations in the successive budget? Could the Minister give an assurance to this House that this money will be paid among the very first claims, as soon as the budget is passed in June 2010?

The Attorney-General (Mr. Wako): The fact of the matter is that the judgment was given on the date that it was given. On the same day, my officers filed a notice of appeal and applied for a certified copy of the ruling to enable an appeal to be filed. As I have already admitted, it has taken an inordinately long time for this record to be made available. I can confirm that the Registrar of the High Court is now carrying out an investigation into why there has been this inordinate delay in the preparation of the record of
appeal.

Mr. Speaker, Sir, the Permanent Secretary, the Office of the Vice-President and Ministry of Home Affairs has undertaken to take care of these payments in the next financial year.

Mr. Olago: Mr. Speaker, Sir, when parties go through the legal process and litigants secure judgment against the Government, it is expected that the Government will honour the decrees of the court. That is why the Government Proceedings Act was enacted to ensure that the Government is shielded against irregular attachments. But in view of the fact that the office of the Attorney-General is making successful litigants

literally beg for decrees to be discharged, what is the Attorney-General doing to ensure that Ministries which are supposed to discharge these decrees put financial considerations in their Budgets, so that there are no delays like the ones we are experiencing now?

Mr. Wako: Mr. Speaker, Sir, I agree with the hon. Member and I have advised all the Ministries to ensure that judgment entered against them should be paid promptly. At the end of the day, the Government pays more than was ordered in the judgment because of the issue of interests and costs. The hon. Member has referred to the Government Proceedings Act. I believe that the Office of the Attorney-General can be considerably helped in this regard. As you know, the Attorney-General himself or his office is not responsible for payments. It is the Ministry concerned which is responsible for payments. Section 21 of the Government Proceedings Act states that whoever has obtained judgment against the Government should obtain a certificate against the Government, which hon. Imanyara did in this particular case. The Government Proceedings Act does not state that you come to Parliament to demand payment through the Attorney-General who is not really responsible for the payment. The Government Proceedings Act gives responsibility and this is the way it is done---

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. The Attorney-General says the procedure is not to come to this House to demand for payments when he knows that Members of Parliament are here to represent the interests of Kenyans. Asking Questions in this House is part of the responsibility of a Member of Parliament. Is he in order to tell us that the procedure is not to come to this House? He has admitted that I even obtained the certificate against the Government and he has not paid this money.

Mr. Wako: Mr. Speaker, Sir, I said that we shall be considerably helped if the Members of Parliament insisted the procedure laid down under the Government Proceedings Act was followed. Where a certificate has been obtained against the Government, the procedure is that an application is filed for a *mandamus* to direct the Accounting Officer to pay on the pain of being committed to civil jail. If these applications were filed to commit the Accounting Officers to civil jail if they do not honour court decrees, I am quite sure more efforts will be made and there will be fewer Questions in Parliament.

Ms. Karua: Mr. Speaker, Sir, the Attorney-General has told us that his office has done its part in communicating with the relevant Government offices, but my experience is to the contrary. Could he table the letters with which he communicated to the relevant Government Ministries in this case, so that we can see on what dates and we can apportion the delay? Secondly, could he also tell us whether he has advised the Government that failure to pay is actually a case of impunity? The rule of law means that the Government must obey the law like all citizens.

Mr. Wako: Mr. Speaker, Sir, definitely, a circular has already been sent to all Accounting Officers by the Head of Public Service. It is a long circular dealing with the issue of how to deal with summons which emanate from Ministries. One of the problems was summons are served and the first time the Attorney-General comes to hear of them, is after judgment has been more or less entered. This is because Ministries have not taken those summons seriously. The second problem is that even where it is served and forwarded to the Attorney-General, the Accounting Officers normally think that because they have forwarded them to the Attorney-General, the Attorney-General knows all about it. He has to file the defence, enter appearance and so on. Obviously, without instructions,

we cannot do so. Even where that has happened and we have now come to the hearing of the matter---

(Loud consultations)

Mr. Chanzu: On a point of order, Mr. Speaker, Sir. We cannot hear the Attorney-General properly because hon. Members are consulting very loudly.

Mr. Speaker: Order, hon. Members! Please, lower the level of your consultations, so that we can hear the Attorney-General!

Hon. Attorney-General, proceed.

Mr. Wako: Mr. Speaker, Sir, even where summons have been taken to the Accounting Officers, the Ministries have failed to give proper brief to the Attorney-General for various reasons. Even where a brief has been given and the defence has been filed, when the case comes up for hearing in court, the Ministries have failed to make witnesses available maybe, because of various difficulties, for example, some officers have been transferred, resigned and so on. When we come to executing the decree, it will be extremely useful if after obtaining the certificate against the Government, which is provided for under the Government Proceedings Act--- That certificate is against the officer of the Ministry--- If that authorized officer fails to pay in accordance with the Act, then the procedure there is to apply for a *mandamus* to direct the officer to pay. Failure to which, he is committed to civil jail.

Mr. Baiya: Mr. Speaker, Sir, the Attorney-General is aware that the cases referred to in this Question relate to the victims of the Nyayo Torture Chambers. Could he tell this House why he cannot pay them and leave this matter to rest? If the appeal has been filed, of what purpose is it when he has already confirmed that the problem is with the relevant Ministries? Could he also confirm that he will not proceed with the appeal and he will make these payments immediately?

Mr. Wako: Mr. Speaker, Sir, I think I did state that in the interest of justice, the decree holder had waited for such a long time to get the fruits of his labour in court, through really no fault of his. I stated that the appeal will not be proceeded with and I will now focus on the payment. In fact, I have already received a positive response from the Ministry of Home Affairs, but we shall try to see how that response can be expedited.

Mr. Speaker: Order! Hon. Members, because we have many requests for Ministerial Statements that are going to be made and we have two Ministerial Statements which will be delivered, I want to defer Question No.087 and Question No.126 to Tuesday next week, at 2.30 p.m.

Question No.087

STAFFING LEVEL AT DEPARTMENT OF
REGISTRATION OF PERSONS IN NEP

(Question deferred)

Question No.126

DECISION BY KEBS TO INCREASE
PERMISSIBLE FLUORIDE LEVEL

(Question deferred)

Mr. Speaker: We will now proceed in the following order. First, we will take requests for Ministerial Statements and then we will take a Statement which is fairly urgent and, perhaps, one more.

Member for Gichugu!

POINTS OF ORDER

MURDER OF PEOPLE IN KIRINYAGA DISTRICT

Ms. Karua: Mr. Speaker, Sir, I wish to request the Minister of State for Provincial Administration and Internal Security to issue a Ministerial Statement on the circumstances surrounding the murder of four people last night in Murinduku Location of Mwea Constituency, in the land more particularly known as South Ngariama Ranch. Could he also give us an account of the people killed in that area since 2008 and tell us what measures he is taking to ensure there is security in the area and that the culprits are brought to book? Could he also tell us what he is doing to secure the larger Kirinyaga District in view of the recent murders in and around Kerugoya Town?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I will be able to give a Statement on Thursday, next week.

Mr. Speaker: It is so ordered!

PROTECTION OF WITNESSES

Mr. Imanyara: Mr. Speaker, Sir, I wish to seek a Ministerial Statement from the Attorney-General, as the protector of witnesses, particularly the witnesses who will be giving evidence at the ICC.

Mr. Speaker, Sir, last night, the offices of the International Centre for Policy and Conflict Resolution (ICPCR) headed by Mr. Ndung'u Wainaina were raided. Fortunately, Mr. Wainaina had left the office, but computers and other data that he had been keeping in relation to witnesses and witnesses particulars were taken away. Could the Attorney-General, as a matter of urgency, give a Statement assuring this House that witnesses will be protected and that measures will be taken to investigate and find the real cause for this raid, the circumstances under which these computers were taken and also give assurance for the safety of Mr. Ndung'u Wainaina?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, on the issue of witnesses being protected, I want to inform this House that I published a Bill, which I believe has now matured. It should really be on the Order Paper as a matter of priority. When it comes here, I hope that hon. Members will be able to enact it quickly so that we can have an effective structure in place to protect witnesses.

As to what happened to the ICPCR, headed by Mr. Wainaina, this is the time I am hearing it. But I can take this opportunity, in this Parliament, to direct the Commissioner of Police, under the powers conferred upon me under Section 26(4), to carry out investigations comprehensively and immediately---

Mr. Olago: On a point of order, Mr. Speaker, Sir. The issue that has been raised by hon. Imanyara is so grave and the Attorney-General has admitted in this House that he is hearing about it for the first time. Is it in order for him to address it having heard of it for the first time now?

Mr. Speaker: Order, Member for Kisumu Town West! I think some patience pays. The Attorney-General was just doing, I believe, a preliminary part, and he ought to be heard really. He has not concluded.

Proceed, Mr. Attorney-General!

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, as I was saying, I am using the powers conferred upon me under Section 26(4) to order immediate investigations which will be carried out comprehensively and expeditiously. I am, in fact, glad that the Minister who is responsible for the police is here and that my instructions will be carried out.

Mr. Speaker: Will you then deliver a Ministerial Statement to the House on Wednesday next week?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I can deliver a Statement on witness protection, but the Minister responsible for the police is here. He should be able to deliver that but he can answer for himself.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, we can give a Statement on Thursday next week.

Mr. Speaker: Fair enough! It is so ordered!

BANNING OF CANDIDATES FROM SITTING
EXAMS FOR CHEATING

Mr. Ruto: Mr. Speaker, Sir, I wish to request, as a matter of national importance, for a Statement from the Minister for Education. We understand that it is wrong and terrible for candidates who are sitting for exams to actually cheat; we would like to know the basis for the ban on such candidates not to sit for exams for two years. We would like to know from the Minister whether that is not excessively draconian and if he based it on any law or some subsidiary legislation. What was the basis for that decision? What powers did the Kenya National Examination Council (KNEC) have to actually ban those candidates from sitting for such exams for the next two years?

Mr. Speaker: Minister for Higher Education, Science and Technology, can you hold brief for your counterpart, to deliver a Statement on why the Ministry has banned candidates from sitting for examinations because of cheating?

The Minister for Higher Education, Science and Technology (Dr. Kosgei): We shall do so, Mr. Speaker, Sir.

Mr. Speaker: On Wednesday next week?

The Minister for Higher Education, Science and Technology (Dr. Kosgei): On Wednesday next week.

Mr. Speaker: Fair enough!

MISREPORTING BY *THE STAR*

Mr. Chanzu: Mr. Speaker, Sir, I am rising on a point of order. *The Star* Newspaper today, has reported in its headline that Members of Parliament are blocking the New Constitution making because they want to be compensated for the time between August and December 2012. I attended the caucus meeting yesterday and that issue did not arise. We listened to the Speech by the Head of State when he was opening this Session of Parliament and the first item was the Constitution. I also listened to the President and Prime Minister over the weekend and they were saying that Members must come together in order for us realize the new Constitution.

Mr. Speaker, Sir, the new Constitution is a very sensitive issue which touches the hearts of every Kenyan. As much as we appreciate what the media is doing now – they are very much interested in what is going on – and giving us coverage, they should report sensibly and accurately on matters pertaining to Constitution making. That is my plea.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Even though I agree with my brother, hon. Chanzu, on his concern, are some of the Ministerial Statements that we ask not going to interfere with the freedom of the Press and media? If the media reports some information from some of us, should they be victimized? Should we ask for explanations in this House?

Mr. Speaker: Hon. Members, the matter which is raised relates to a report carried in one of our daily newspapers. The substance of it would appear to be referring to a meeting which took place outside this House.

The Chair or the Speaker has no way of ascertaining what transpired in a meeting that took place elsewhere. I have no record of it. I do not have the benefit of the HANSARD. So, I will not be able to deal with that matter or give any directions on it, because they fall outside my purview. What I will urge the hon. Member for Vihiga to do, and indeed, other hon. Members who feel aggrieved by that story, is that immediately after the House rises or at the earliest opportune moment, convene a Press conference at the Media Centre and state the truth as it maybe. But if it was something that transpired in this House and, perhaps, it is misreported, then I would have had the powers to deal with it. I would have dealt with it very firmly because I would have had a record, a point of reference on which to rely. This, I am afraid, I cannot be helpful.

Further hon. Members, this is now taking advantage of my professional qualifications; those aggrieved, are at liberty to prefer action against *the Star* newspaper. You can file proceedings fort libel.

Mr. Speaker: Let us proceed. Minister for Provincial Administration and Internal Security!

MINISTERIAL STATEMENTS

ALLEGED KILLING OF SEVEN TAXI DRIVERS
IN KAWANGWARE

The Minister for Internal Security and Provincial Administration (Prof. Saitoti): Mr. Speaker, Sir, I do stand to make a Ministerial Statement on the unfortunate killing of seven taxi drivers by the Administration Police officers on 11th March, 2010 at about 1.00 a.m. along Naivasha Road, Dagoretti, near K-Rep Bank.

The names of the deceased persons are as follows:-

- (i) James Mugweru Mwangi
- (ii) Harry Gedion Thuku Mbogo
- (iii) Joseph Maina Mwangi
- (iv) William Gitonga Njau
- (v) Joseph Thiong'o Njoroge
- (vi) George Ng'ang'a Thairu
- (vii) Joseph Ngugi Chege

Mr. Speaker, Sir, on receiving news about the killings, I instructed both the Commissioner of Police and the Commandant of the Administration Police to provide information to me on the circumstances surrounding the killing of the seven people. I received conflicting information ranging from the fact that the officers in question shot in self defence to the fact that, indeed, there was no such a provocation. Nevertheless, I considered that information unsatisfactory. To that extent, I directed that the seven police officers involved be arrested and interdicted forthwith following investigations.

Pursuant to my directive that thorough investigations be carried out, I wish to update the House as follows:-

(i) All administration police officers involved were immediately apprehended and are in police custody. The officers in questions are:-

1. Ahmed Mohammed, No.228978, APC
2. Alex Mutisya, No.228992, APC
3. Ahmed Abdalla, No.228213, APC
4. Nelson Too, No.222298, APC
5. Moses Lochichi, No.226518, APC
6. Eric Ebere, No.233608, APC
7. Michael Lewa No.228739, APC

(ii) All the suspected administration police officers have recorded statements under inquiry.

(ii) The statements have been recorded from 17 other witnesses as of yesterday 15th March, 2010 and the process is ongoing.

(iii) The post-mortem to ascertain the cause of death of each of the deceased is being carried out on all the seven bodies, today 16th March, 2010. The post-mortem is being done in the presence of the doctors of the families of the deceased persons. The date of the post-mortem was arranged in consultation with the families of the deceased. The delay in conducting the post-mortem was occasioned by the demand by the family members to be given time to engage their independent doctors and lawyers to witness the exercise and make it as transparent as possible.

Mr. Speaker, Sir, the outcome of the post-mortem report, including any bullet heads, which may be traced from the bodies, together with the cartridges collected from the scene of the accident, will assist in the forensic examination of the firearms held by the police at the time of the unfortunate incidents. The firearms have already been submitted to the ballistic expert for examinations. Arrangements have also been made for the

suspects to undergo medical examination, which includes the physical condition and state of mind together with their blood samples for the purpose of comparison with the blood traces collected from the scene of the incident and from the bodies during the post-mortem.

Mr. Speaker, Sir, I would like to inform this House that thorough and expeditious investigations be carried out in this case and have the suspects arraigned in court tomorrow.

Mr. Speaker, Sir, the issues emerging from the incident that took place at Kawangware highlight the need to address the issues of police accountability. Indeed, the ongoing comprehensive police reforms have identified police accountability as one of the most critical and urgent areas of reforms. The recently appointed Police Reforms Implementation Committee has finalised the drafting and validation of a Bill to establish an Independent Policing Oversight Authority (IPOA). The Bill will soon be presented to the Cabinet and later to this Parliament for debate and enactment into law. The establishment of the IPOA will provide Kenyans with an independent mechanism for addressing complaints by members of the public against the police. Whereas the IPOA will serve as an external accountability mechanism, strengthen internal accountability of the police is also priority in the ongoing reforms. A team of experts on policing have been seconded to the Police Reforms Implementation Committee to assist the police to audit their internal accountability mechanism and recommend the necessary changes.

Another area that is being given priority in the ongoing reforms is the review of the training curriculum of the police to incorporate human right issues and other modern policing practices. The review is expected to be completed in the month of April this year to ensure that the next recruits who will join the police training colleges after July, 2010 undergo training on the new curriculum. I strongly believe that with the right training curriculum and effective oversight mechanism, that will hold police accountable, such incidents will greatly be reduced.

The ongoing police reforms will be carried out to weed out the bad elements that are denting the image of the police service. I want to report that the Police Reforms Implementation Committee has embarked on this exercise in line with the recommendations of the National Taskforce on Police Reforms.

Mr. Speaker, Sir, I would like to state that the killings at Kawangware has been a matter of great concern and, indeed, embarrassment, coming at a time when we are in the process of implementing police reforms. However, I would like to inform hon. Members that despite this setback, we will make sure that reforms will be implemented with speed in order to change the police culture of arbitrariness, harassment of members of the public, abuse of office and the use of excessive force, including extra judicial killings.

Finally, Mr. Speaker, Sir, I want to assure hon. Members and, indeed, the general public that thorough investigations will be carried out expeditiously and action taken against officers implicated in accordance with the law.

Mr. Speaker: Any hon. Members seeking clarification?

Proceed, hon. Njuguna!

Mr. Njuguna: Thank you, Mr. Speaker, Sir. The Minister has very ably given a very lengthy statement; I note that this is a very serious and unique case; I am of the view that these Kenyans were brutally murdered or eliminated by the security forces; what

immediate humanitarian assistance is the Government giving to the families affected, aware that they have members to feed, clothe and educate?

(Applause)

Mr. Ruto: Mr. Speaker, Sir, listening to the Minister, the Statement he has just given to us is just the usual “No stone will be left unturned”; “Thorough investigations will be done.” This is a very serious matter! In the last one week, ten Kenyans have been killed by the same police force. There was another one in Kericho the other day; there are several others. Can we trust the police to investigate themselves? Can you, Mr. Minister, possibly consider getting even a magistrate to lead the investigations, so that there is, at least, some hope that something else can be unearthed? I do not believe that we really have faith in the same people investigating themselves. Can the Minister clarify?

Mr. Speaker: Hon. Ruto, you are now becoming repetitive!
Proceed, Dr. Khalwale!

Dr. Khalwale: Thank you, Mr. Speaker, Sir. My condolences to family members of the men and women who were murdered by the police.

Mr. Speaker, Sir, I would like the Minister to tell the country what action he is contemplating to take against the high command of the Administration Police, because this indiscipline we are seeing is duplicated across the country. The indiscipline is accompanied by lack of respect and observation of the public service regulations by the Administration Police high command as evidenced in a case in Malaba on 20th February, 2010, where two Administration Police officers also attacked *bodaboda*. They were overpowered by the public, arrested, taken to the police station, arraigned before court and the court released them on bond of Kshs8,000 each. Today, these officers are back on duty and they are working against the provisions of the regulations of the Public Service Commission.

Mr. Speaker: The hon. Member for Kiharu!

Mr. Muturi: Thank you, Mr. Speaker, Sir. We have all listened to the Minister narrating the old stories we have heard. Nairobi has become a butchery for young people from Central Kenya. Every weekend, there are burials and when the burials are taking place, the relatives are harassed by the same police. Could the Minister assure this House that these kind of killings will not continue, and that relatives will not be harassed during burials, where nobody tells us who kills these boys?

Mrs. Noor: Mr. Speaker, Sir, I would like to know from the Minister what long term measures he has in place for the ten Kenyans who lost their lives this week? What is in place for the women and the children who were left behind? What measures is he putting in place to care for those loved ones that were left by the sole bread winners?

Mr. Speaker: Order! Mr. Minister, because of the interest in this matter and because it pertains to life, we will take all the clarifications. So, just keep your notes and then you will respond.

Proceed, hon. Member for Gwassi!

Mr. Mbadi: Thank you, Mr. Speaker, Sir. The first time this incident occurred, the Minister addressed the nation and gave a position. Today, listening to him, I realize that things have changed. It appears that the Minister is getting scanty information from his Ministry. Is it that the Minister is being sidelined in his Ministry and, by extension, in

this Government and, maybe, in People's Democratic Movement (PDM), or is it that he is being sabotaged in his Ministry?

Finally, Mr. Speaker, Sir, in 2003, a number of people were removed from the streets to join the National Youth Service (NYS) and they subsequently found their way into the Administration Police. Could this be some signs of indiscipline carried over from the streets to the police force of this country?

(Applause)

Ms. Karua: Mr. Speaker, Sir, I want to begin by saying that we should not use this opportunity to demonize the Administration Police. I believe there have been more extra judicial killings by the regular police than the Administration Police.

But, Mr. Speaker, Sir, the Minister has talked about the police reforms. The Waki Report came out in late 2008. It recommended police reforms. When we are told of police reforms, almost a year-and-a-half later, we may not believe it. Could the Minister tell us, instead of promising us about police reforms that have not been forthcoming, that he will now order that any police officer who, in the course of duty, kills a civilian or who kills anybody, will have to file a report within a week and that, henceforth, there will be inquiries into all killings by the police to determine whether such officers should face the law or not? Could he consider using the Kenya Human Rights Commission to help him check this trend?

Mr. Imanyara: Mr. Speaker, Sir, like my colleagues before me, my condolences go to those Kenyans who lost their beloved ones just the other day.

Mr. Speaker, Sir, many, many times, we have heard Ministers speak and give this House assurances that investigations will be carried out. Even with Prof. Alston's Report on extra judicial killings, we were told the same thing. Can the Minister give us a time frame within which he will come to this House and report on what action has been taken, apart from charging these people in court? Taking them to court tomorrow morning should not be the end of investigations, particularly with regard to Administration Police Officers who perform traffic duties. Under what circumstances are the Administration Police Officers allowed to perform traffic duties for which they are not trained?

Mr. Speaker: Mr. Minister, you may now respond.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, first and foremost, I send my condolences along with those of the Government because this was a grave matter. In addition, we will assist the relatives of the deceased with burial expenses. As to what would be the ultimate compensation, should it be proved that these people were killed in cold blood, and I leave that to the courts to make judgment--- Compensation will be considered later on upon the advice of the Attorney-General. In normal cases, he is the one who determines the level of compensation.

The hon. Member for Chepalungu has asked as to whether we would have any objections at all if other parties or bodies seek to be included in the investigations of these killings. I would like to state here that we have no objections. I welcome those who feel that they can make contributions in terms of probing this matter so that the truth could be known. We have nothing to hide on this matter. I would like the truth to be known because we want to end any culture of judicial killings. I stated that fact last year in

Geneva. I did not deny that there had been some extra judicial killings. I said it and repeated that such cases would be dealt with. These Administration Police Officers will be arraigned in court. They will be dealt with as criminals.

Dr. Khalwale has asked a very interesting question as to whether we are thinking of making changes at this point in time. I would like to ask for patience until the investigations are carried out and prosecution done. On that basis, it will be very clear whether the credibility of this matter goes beyond the officers or not.

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

Mr. Speaker: What is it that is making you anxious, the Member for Ikolomani?

Dr. Khalwale: Mr. Speaker, Sir, is it in order for the Minister to avoid clarifying my point? If he doubts the authenticity of what I said, the two Administration Police Officers who were involved are Snr. Sergeant Eric Mudeku and Corporal Abdi Yousuf K. The incident took place on 20th February, 2010. They were reported at the police station and the police file number is 962/24/2010. The court file number is 380/2010. Could the Minister explain why these officers are still on duty? Why have they not been interdicted? What is it that he considers to do against the high command that has refused to observe the public service regulations?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, for the purpose of clarification, the officers who have been mentioned by Dr. Khalwale were interdicted long time ago. There is no doubt about that. However, we can bring evidence---

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

Mr. Speaker: Order, Mr. Minister! Dr. Khalwale, do you want to pursue that further?

Dr. Khalwale: Mr. Speaker, Sir, I am not attempting to mislead this House. If the Minister can table in this House a document to confirm that, indeed, these two Administration Police Officers have been interdicted, then that would contradict what I have stated. However, just claiming that the officers were interdicted when we know that they are on duty despite having been arraigned before court, does not help justice in this country.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I will be quite happy to bring documentation on that. I think the key thing to do now is to proceed.

The hon. Member for Gwassi has asked whether I have been receiving the correct information or not. In my Statement, I said that upon my demand for the information as to the circumstances that led to the killing of the seven taxi drivers by the Administration Police Officers, I received it very quickly. That information has some truth in it. However, I felt that there were certain things that I was not convinced of. I was not convinced that the Administration Police Officers, before shooting dead those people, they tried to disperse the crowd. The information was to the effect that there was a confrontation between the taxi drivers and the *boda boda* cyclists. That is what made the officers to go and quell the chaos.

Of course, in line with the rule of engagement, before a police officer shoots someone dead, first and foremost, it has to be established that his life is in danger and indeed, those they are trying to quell are in the process of trying to kill someone else. It has also to be established whether the criminal is running away. I did not find that

information. That is why I immediately directed the interdiction and arrest of those officers. Of course, as time goes by, more and more information will come up. I do not want to say that there was any deliberate attempt to mislead me.

In response to Ms. Karua's remarks, it is true the Waki Report recommended a number of reforms to be carried out. That was in the Agenda III. One of them was the police reforms. The question is: How come a similar allegation is recurring? We need to find out the root cause of the current culture of the police, its general capacity and weakness. I settled on that because there have been previous police reforms.

Mr. Speaker, Sir, having looked at those reports, the matters raised in them are purely administrative. They did not even address the issues of legal and institutional reforms. I think time has to come to be able to state that in order to address the weaknesses that were identified in the Waki Report, a thorough survey would require to be done. I am happy that the Report of the Task Force on Police Reforms is fairly comprehensive. It identifies several areas where there has been failure on the part of the police, including institutional and curriculum weaknesses that need to be addressed.

Even much more important is the fact that we inherited a colonial police outfit, which, even after we became independent, was never reformed. Therefore, our police units require far reaching institutional reforms which we are carrying out.

Mr. Speaker, Sir, hon. Karua has asked whether we can re-open cases where people have been killed. I would like to assure her that I have, indeed, asked the police to carry out investigations on all cases of killings where there has been no explanation.

Mr. Speaker: Hon. Members, we will take one more Ministerial Statement, which is very brief but, because we want to avoid a backlog of Ministerial Statements, hon. Musila will issue a Ministerial Statement on behalf of the Ministry of State for Defence, and that should last five minutes only.

INCURSION INTO KENYA BY ETHIOPIAN RAIDERS

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Speaker, Sir, on 4th March, 2010, the Member of Parliament for Marakwet West, Mr. Boaz Kaino, rose on a point of order and requested for a Ministerial Statement from the Ministry of State for Defence. The hon. Member requested that the Ministry addresses the following issues concerning incursion into Kenya by Ethiopian raiders:-

- (i) the number of people, both civilians and security officers, killed or maimed in the raid in Turkana North District;
- (ii) the number of cattle that was lost during the incursion; and,
- (iii) the measures that the Government has put in place to ensure that our borders are secure.

Mr. Speaker, Sir, the hon. Member sought clarifications on matters that are basically in the purview of the Ministry of State for Internal Security and Provincial Administration. However, after consultations, I beg to respond as follows.

Our investigations, through the local administration, the General Service Unit (GSU) and our own military personnel, who are deployed and operating in Turkana North District, have established that the Nyangatom tribe of Ethiopia raided a Kenyan water point in Tundanyang on 27th February, 2010. During the raid, one GSU officers was killed---

(Mrs. Mugo remained standing in the Chamber)

Mr. Chanzu: On a point of order, Mr. Speaker, Sir. The Minister for Public Health and Sanitation, Mrs. Beth Mugo, has been standing there for more than five minutes. Is it in order for an hon. Member to remain standing in the Chamber?

Mr. Speaker: Order, hon. Members! If you read our Standing Orders, you will realise that the Minister for Public Health and Sanitation is out of order. You are only supposed to transit through those pathways. You are not supposed to hold a meeting in the pathways. So, hon. Beth Mugo, will you, please, restrain yourself?

It is further out of order for you to circulate a list that the Speaker has not authorised within the Chamber. So, you will have to stop that circulation. If hon. Members want to know, circulation of lists seeking for support in the Chamber are limited to cases where either hon. Members of the House, or their spouses, have passed on. Anything outside that must be circulated outside the Chamber. Please, be guided accordingly.

Proceed, hon. David Musila!

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Speaker, Sir, before I was interrupted, I had confirmed that the Nyangatom tribe of Ethiopia raided a Kenyan water point at Tungonyang on 27th February, 2010, and that during the raid, one GSU officer was killed. The officer was in charge of a group of GSU officers that was guarding the water point. There were no other injuries on either side.

Secondly, we can confirm that no heads of cattle were lost during the invasion.

Thirdly, the Government has put in place several measures to ensure that our borders are secure.

In order to curb the aforementioned socio-economic problems, the Government, through the Ministry of State for Defence, Ministry of Health, Ministry of Education, Ministry of Roads, Ministry of Fisheries Development, Ministry of Agriculture, and Ministry of Livestock Development, have undertaken the following measures:-

1. Mounting of a joint disarmament operation code-named "*Operation Rudisha Amani*" with Uganda, and we intend to extend the same operation to be conducted between Ethiopia and Sudan.

The next operation between Uganda and Kenya, along the common border, will start in a few weeks' time.

2. Cross-border liaison between the military and district security intelligence committees of the neighbouring countries is taking place.

Mr. Speaker, Sir, during the last joint operation with Uganda, the following was achieved:-

1. We managed to recover 2,401 assorted weapons and 5,197 rounds of ammunition;

2. During the operation also the military dug 19 water dams and drilled 20 boreholes in the area.

3. In addition, administration centres were opened in Kenyarus, Alale, Nyoyapong and Loyapach.

Mr. Speaker, Sir, hon. Members will note that countries in the region coming out of conflicts have acquired arms which encourage cross-border raids. Since it is difficult to

put soldiers in every village, occasionally, such raids take place and some citizens or even our own soldiers, get injured or killed.

The biggest challenges in these districts of the North Rift are strong traditional culture and revenge attacks, particularly on cattle rustling for restocking purposes and dowry payments, lack of alternative means of livelihood, hence overdependence on livestock, scarce water resources and limited pasture due to low rainfall and harsh climatic conditions.

Mr. Speaker, Sir, the long-term solution to these socio-economic problems in the North Rift lies in educating the population of the disadvantages of the gun culture, and finding alternative means of livelihood as opposed to overdependence on livestock. Lastly, and more importantly, local leaders must be seen to be supporting the Government's strategies, security programmes, and in particular education, which will eventually eradicate the gun culture.

Finally, the gradual development, especially through the Ministry of State for the Development of the North Kenya and Other Arid Lands, plus economic stimulus programmes, will also go a long way in addressing the issue of scarce resources being fought over either internally or across the borders of these communities and, therefore, address the insecurity concerns.

Thank you.

Mr. Speaker: Hon. Kaino, would you like to seek a clarification? Is there any hon. Member who is interested in seeking a clarification? There is none!

Mr. Musila, you have done very well. You have been very clear!

(Applause)

Hon. Members, that then brings us to the end of Statements. Before we proceed to the next order, I have the following Communication to make!

COMMUNICATION FROM THE CHAIR

CANCELATION OF NAIVASHA RETREAT ON THE PROPOSED CONSTITUTION

Mr. Speaker: Hon. Members, the cancellation of the intended retreat on the proposed new Constitution has elicited concerns from hon. Members and the public generally. There has been extensive coverage in the media and passionate interest on the Floor of the House in the matter with wide speculation on the amount of money used.

On Tuesday, 2nd March, 2010, the Parliamentary Select Committee on the Review of the Constitution tabled the final Report of the Committee of Experts (CoE) and the proposed Constitution in accordance with the Constitution of Kenya Review Act, 2008, thus setting in motion the 30-day period within which Parliament is to debate and approve the proposed Constitution.

In order to enable Members to internalise and debate the proposed Constitution from an informed point of view, my office in consultation with the joint Coalition Government Whips agreed to organise a three-day retreat in Naivasha running from the 11th to the 14th March, 2010. The House Business Committee (HBC) approved the

said workshop during its meeting held on 2nd March, 2010 and re-affirmed this position on Tuesday, 9th March, 2010.

In preparation for the workshop, hon. Members were requested to confirm attendance through a Communication from the Chair. Following the Communication, 181 Members confirmed attendance and participation. Members were subsequently booked at various hotels in Naivasha; namely, Lake Naivasha Sopa Lodge, Lake Naivasha Simba Lodge, Lake Naivasha Country Club, Lake Naivasha Sawela Lodge, Great Rift Valley Lodge, Fish Eagle Lodge and Lake Naivasha Holiday Inn.

Hon. Members, pursuant to the Standing Orders, Tuesdays, Wednesdays and Thursdays are sitting days of the House. In order to hold the workshop on Thursday without contravening the Standing Orders, the Joint Chief Whip, Mr. Jakoyo Midiwo, MP, moved a Procedural Motion to adjourn the House until Tuesday 16th March, 2010. The Motion was seconded by the Joint Government Whip, Mr. George Thuo, MP. The adjournment Motion was, however, defeated with some Members stating that the retreat was not necessary.

Hon. Members, by the time the House adjourned on Wednesday 10th March, 2010, some of the hon. Members had already travelled to the workshop venue. A total of 48 Members, including 15 Members of the Parliamentary Select Committee on the Constitution Review had checked in various hotels in Naivasha. However, as a standard rule, cancellations of bookings attract penalties for financial and other related losses incurred.

Hon. Member, a total of 150 rooms had been confirmed by the end of the day on Wednesday 10th March, 2010. As a result of the cancellation, the National Assembly has incurred a bill of Kshs4, 221,645 which the Accounting Officer is in the process of settling. It is regrettable that the workshop did not take place as planned. However, I am confident that Members are committed to the Constitutional Review Process and I am hopeful that dialogue, consensus and vibrant debate will prevail in order to give Kenyans a deserved new Constitution.

Thank you.

(Applause)

Order, hon. Members. I wish to bring to your notice that from now on, the Order Paper that will govern our proceedings is the Supplementary Order Paper.

Let us move on to the next order!

MOTION FOR ADJOURNMENT

ADJOURNMENT OF THE HOUSE TO A DAY OTHER THAN THE NORMAL SITTING DAY

Mr. Thuo: Mr. Speaker, Sir, I beg to move:-

THAT, this House do now adjourn until Tuesday, 23rd March, 2010.

Mr. Speaker, Sir, without repeating the contents of your Communication, we did agree as the House Business Committee last time and failed on the Floor of the House. I wish to take this opportunity to commend Members who met

under the auspices of the Parliamentary Caucus for Reform which I believe was chaired by Mr. Mungatana. It was convened subsequent to the failure to agree on the Motion of Adjournment last week. This group of Parliamentarians obviously did believe that it is possible to consult. Parliament does not have to go to Naivasha to consult. They did consult and agreed that it was necessary to consult even further.

Mr. Speaker, Sir, I will make very few remarks and say that this document does not belong to one party or the other. Indeed, it is a document for the whole of Kenya and posterity. It is essential that Members are given an opportunity to talk. Despite the detractors who think that Parliamentarians should not meet outside the House, the tradition of this House, every time there has been a Constitutional Motion, is that meetings or *kamukunjis* have been held in various locations. Ultimately, the intention is always honorable. It is to ensure that such Constitutional Bills do pass without opposition on the Floor of the House. This is one such effort.

I had a bit of concern when I was asked to sit here and move this Motion because, as I had said earlier, even last week we were sure that we were on board only to be waylaid. I hope that today it will be different.

It has been 20 years plus of Kenyans attempting to write a new Constitution. It has cost billions of shillings. The Chair has just commented that we probably lost another Kshs4.5 million last week on account of our actions.

Mr. Speaker, Sir, that is not too much. I urge my colleagues that let us make the final push. It may cost a few shillings but let us make the final push to ensure that this House will have the singular honour of being able to deliver what has failed others before us.

With those many remarks, I beg to move.

Mr. Midiwo: Mr. Speaker, Sir, I second the Motion.

(Question proposed)

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, thank you for giving me the opportunity to support this Motion.

In the first instance, I would like to congratulate this House. I am on record as saying that we do as we sincerely believe we do in the supremacy of this institution. It behooves us to be able to speak with one voice. When occasion provides itself, we debate and disagree on the Floor of the House. But a time comes when we have to really, as far as is practicable, speak with one voice. I think this is one such time.

Mr. Speaker, Sir, in my own little right I happen to be a constitutional lawyer. I know that it is never easy to write a Constitution. We have been at it as a country for close to two decades.

We will be able to provide positive change and work for positive change; it is this opportunity and that happens to be clearly before us, as the 10th Parliament. I am forever optimistic. I know that this time round we will hopefully give this country a new constitution.

I want to thank Members of the Parliamentary Select Committee (PSC) on the constitution, our own Committee, which was able to meet and agree under very interesting circumstances. Again, to get political agreement is never easy when it comes to constitution-making. I think that spirit should have been replicated even at the level of

the Committee of Experts; I think by now we would be looking forward to the referendum.

Mr. Speaker, Sir, even the idea of having a stepping aside or retreat time came from the chair, and I also want to congratulate you. You have the best interests of this House and this country at heart. You had the intention of proposing this and the matter was agreed upon by the House Business Committee (HBC).

I want to announce before this House that this afternoon, the HBC met and we all, in one accord, agreed that we are going to support this Motion of adjournment, because I think it is the best we can do. Therefore, I want to hope that we will move ahead in that spirit. If we can avoid putting things under the table, if we can look facts straight in the face, and I want to quote Sir Thomas Moore, then we will all end up being statesmen and stateswomen. Let us avoid putting things under the table. Let us go out on this retreat--- I think this time round, we do not need to get out of the City. We can go to the Kenya Institute of Administration; it is a public institution; we will not have to spend the kind of sums that unfortunately now our taxpayers have to bear, by going back to Naivasha. Although I personally love Naivasha. I got involved with Naivasha during the Sudanese Peace process; whenever we go there, we succeed. When the PSC went there, they agreed. The hon. Member for Naivasha agrees with this sentiment. Therefore, I think it is time we went out there, and when we come back next Tuesday, we will be able to speak with one voice.

I want to call upon the civil society and the media to look favourably at this House. This House comprises of men and women of high integrity; the 10th Parliament has talent amongst itself; let us not condemn wholesale the wisdom of this august House. Listening to the FM stations you get MPs being unfairly demonised. I know we are all committed to doing our duty, which is a national duty. I beg to support.

Mr. Speaker: The hon. Mungatana!

Mr. Mungatana: Bw. Spika, nakushukuru kwa kunipa nafasi na mimi nizungumze, na kutoa maoni yangu kwa ufupi kuhusu Hoja hii. Kwanza, ningependa kuchukua nafasi hii kukushukuru, viongozi wa HBC, viongozi wa vyama vyetu vya kisiasa, ambao walikuja pamoja kukubaliana kwamba leo tulizungumze jambo ambalo liko mbele yetu.

[Mr. Speaker left the Chair]

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

Madam Naibu Spika wa Muda, pili, ningependa kuwashukuru wenzangu ambao tulikaa na kuzungumza chini ya Parliamentary Caucus for Reforms. Ningependa kusema kwamba walionyesha ushujaa. Nasema walionyesha ushujaa kwa nini? Kwa sababu katika vyombo vyetu vya habari, kumekuwa na mazungumzo ambayo yamekwenda kinyume na maridhiano ambayo Wabunge walikuwa wanataka. Kumekuwa na mazungumzo ambayo yameenda kinyume kabisa na ule moyo wa kutaka kuelewana. Ningependa kusema ya kwamba wote ambao tulikutana, tumesema ya kwamba jambo ni moja tu; sisi Wabunge tunafanya kazi yetu kama walivyofanya Committee of Experts (CoE). CoE walifanya kazi yao wakamaliza. Parliamentary Select Committee (PSC)

ilifanya kazi yao ikamaliza. Sisi Wabunge pia tunataka kufanya kazi yetu tumalize. Njia ni mbili. Tutafanya kazi yetu kwa vita tuwe tunazungumza hapa tukiwa na hasira ama tutakaa kwanza tuelewane kisha ndio tuzungumze tukiwa na hali ya kutulia. Sisi Wabunge tumeamua kwamba, hata kama vyombo vya habari vitatutukana, ni sawa. Lakini tumeamua ya kwamba tutakaa, tuzungumze kwanza, tuelewane, kisha tusimame hapa tufanye majadaliano kwa njia ambayo ni ya kuleta maelewano katika nchi na sio kuvurugana.

(Applause)

Sisi tumekuwa katika hoja kama hii wakati ule wa mwisho wa kutafuta Katiba. Tulikaa hapa mpaka usiku wa manane, lakini tulikuwa tunapigana; tulikuwa hatufanyi maridhiano. Kwa wakati huu, Wakenya wameamua ya kwamba lazima tupate Katiba. Na sisi Wabunge tumeamua kwamba, hata watuambie nini huko nje; watuseme, watuandike, watufanyeje, watutukane--- Wengine wanasema--- Eti leo katika gazeti moja ambalo Mbunge amezungumzia hapa---Gazeti limesema tunakataa kupitisha Katiba kwa sababu tunangoja ridhaa. Ni haki gani kuzungumza mambo kama hayo; kuleta madharau kwa Bunge letu? Wakati unaandika mambo hayo, ndio gazeti lako litanunuliwa na tutakupigia makofi lakini, kumbuka ukivunja hadhi na heshima ya Bunge, unajiumiza wewe kama Mkenya wa kawaida.

(Applause)

Na tena tukubaliane, tusiende mbali. Angalia nchi hapa ambazo hazina bunge wala rais. Hizo nchi zimekuwa namna gani? Sisi Wakenya tumepata bahati kubwa ya kuwa na Bunge ambalo liko na nguvu. Tujenge vitu vyetu; tuheshimu na tupatie heshima Bunge letu. Tufanye kazi yetu na tukimaliza, wananchi watafanya kazi yao. Watapiga kura kwa ajili ya kuamua maoni ya “ndio” ama “la”. Wananchi wakifanya kazi yao, itakuwa ni wakati wa Attorney-General kupeleka hii Katiba kwa Rais na Rais afanye kazi yake. Atie sahihi, tupate Katiba mpya. Kwa hivyo, tunawaomba ndugu zetu ambao mnaandika huko nje, tafadhali--- Tunanyekekeke tafadhali, tupeni nafasi na sisi tufanye kazi yetu. Tukimaliza kazi yetu, wananchi nao wafanye kazi yao kwa Referendum. Sisi hatutatishwa na hatutaogopa! Kama Bunge, tutafanya kazi yetu!

I thank you, Madam Temporary Deputy Speaker.

The Minister for Tourism (Mr. Balala): Madam Temporary Deputy Speaker, I stand to support the Motion to adjourn the House to go and hold discussions and dialogue among Kenyans. This is the time that Parliament needs to give leadership to the nation on this important Constitution-making process. Some of us who had gone to Naivasha last week for the PSC felt disappointed. That did not take place then because we are spending a lot of time without resolving the issue of Constitution-making. Twenty years is a long time and I think this is the time that we should not lose the chance to give it to Kenyans. It is important for us to go now to have dialogue. Every problem has a solution. When people sit down and talk to each other, they will be able to understand each other's position. I want to say that I support the discussion that is going to be among the Parliamentarians, so that we can have a common position. We should be aware not to open everything. There are some principles that we worked on relating to governance,

devolution and civil rights. Those are the principles that we, Parliamentarians, need to make sure that they are sustained.

It is important that when we come to such discussions, we should all put our cards on the table. The minute we play some of the cards under the table, we are going to be dishonest and not deliver a new Constitution to the people of Kenya. It is time that Parliament gives leadership. That will be achieved by starting dialogue and discussions. Some of the compromised positions which have been put by the CoE are suppositions that some of us never agreed with. But those are suppositions that we have compromised. We have said that we come from different backgrounds. But for the betterment of the country, we are ready to compromise. Constitution-making is about give and take. It is about compromise. I think it is appropriate for the House to take leave and time to discuss, before we run out of time, start panicking and create a Constitution that will not be for posterity.

Mine is to commit myself and say that this is the time that we should dialogue, be able to come to an understanding and take a position that is bigger than an individual's position. That will be the country's position. We want to make sure that we deliver a new Constitution.

With those few remarks, I beg to support.

Mr. Mbadi: Thank you very much, Madam Temporary Speaker, for giving me this opportunity to also add my support to the Motion of Adjournment. Many of us have spoken and said that Kenyans have waited for far too long to realize a new constitutional dispensation. It is true that we have waited for that document for too long and the earlier we dispose of it, the better for this country. The earlier we realize a new Constitution, the better for this country.

I am aware that we will meet somewhere in Nairobi and that is fine. But I would be failing in my duty if I do not warn this House that, even as we consult, we should know that we are making a Constitution for Kenyans. If we go to that meeting thinking that we are making a Constitution for ourselves, we will miss the point. It is also not right for us to demonize the work of the CoE. We hired those people; it is this House that hired the CoE. The process that we used was very detailed and elaborate. So, I believe that the CoE represents the face of this country because that was the bottom line. I want to also add that, as opposed to us, the advantage that the CoE has is enormous. They have all the documents that originated from the people of Kenya. They have the Bomas Draft, the so-called Wako Draft and even the Naivasha Draft. They have memoranda from the people of Kenya, which we do not have. Some were sent through email and others through representation. So, when the CoE changes or makes some amends on some of the agreements that were arrived at in Naivasha, we should not look at it negatively. We should look at it positively and think that probably, there is something that we are missing; that probably we are leaving Kenyans behind. Probably we are moving too fast. But we are here to represent the people of Kenya.

Madam Temporary Deputy Speaker, my concluding remarks are that as we head for that retreat--- although it was against my wish--- Personally I believe that there is no single day that we will have a document that everybody will say is perfect. This document will have to be worked on. I changed my mind when I went to County Hall for two days, that is on Friday and yesterday. I realized that many of us have not read this document. Some of the issues that we have are as a result of misinformation. So, it is

important that we have an informal meeting so that we can be on the same page. Some of us believe that this document is for lawyers. That document is a purely political document which is very simple to understand even by accountants like myself.

As we go there for two or three days, do not even pretend that you will understand it. Take an individual effort to read the document.

Ms. A. Abdallah: Thank you, Madam Temporary Deputy Speaker. Like the rest of my colleagues, I would like to begin by supporting this Motion of Adjournment for us to meet and come to a consensus on the matters that are in this Draft Constitution.

Madam Temporary Deputy Speaker, I am more concerned with the fact that without this meeting of consensus, we will have persons raising matters that they fear will be out of their favour, that will be individual, ethnic or regional. The only way that we can make those matters national is for us to have a meeting that will then be able to take us to a level where we are all at the same threshold of understanding.

I am a member of the Parliamentary Select Committee on the Constitution. Like my colleagues, in natural circumstances based on the traditions of this House, I should not be raising matters requiring amendments because I ought to be owning the contents of this Draft.

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

[Mr. Speaker resumed the Chair]

Mr. Speaker, Sir, that is truly not the case in this scenario. The Review Act did not contemplate for us, the Members of the PSC and the CoE to have any disagreement. That is why the threshold for amendments in the Review Act is so high, because it was not anticipated.

As a person who has interacted so much with the Review Act and Section 47(b), I feel that there is need for you to give guidance to this House on how to deal with the different clauses of this Draft. I say so because there is no precedence for dealing with the Draft. In 2005, when we dealt with the Draft Act we were approving a Motion by a Committee of this House which is a sub-sect of this House. So, there was ownership to the entire content of the Draft.

At this point, the Motion that we will be passing is a Draft that belongs to the CoE and with not 100 ownership by Members of the PSC. So, we not only need your guidance on the fact that Section 33(b) of the Review Act requires a simple majority for us to pass this Act but requires a two-thirds majority for us to amend. The question I then ask for you to give guidance on is this: if we were going clause by clause and there is a particular clause that at the voting falls on its face at the simple majority stage, does that become an amendment?

Mr. Speaker, Sir, another item I would like your guidance on is that Standing Order No.53 states that we need to give these amendments in writing with ample notice. How much time would that notice require or would some of us who suddenly get some bout of intelligence or light and come up with a spur of the moment amendment, would that be considered?

As I support this Motion hoping that we will go and agree, I would really urge that you provide us with guidance on how to deal with the amendments especially considering Section 10 of this 33 would require---

Mr. Midiwo: On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to give the impression that we have a procedure laid before the House that we are going somewhere to look at this document clause by clause?

Ms. A. Abdalla: Mr. Speaker, Sir, I am very clear that the procedure stipulated under the Review Act and the Constitution did not anticipate the fact that we were going to deal with a Motion. We would only be dealing clause by clause if it is a Bill. I am well aware of that fact. I need that guidance because if I am confused and I have interacted well with this Act, I expect that other hon. Members need that guidance. If Mr. Midiwo does not need it, then it would explain why he is extremely--- I do not want to use the word because it is unparliamentarily. But I can tell him outside this House what I think his point of order means.

With those few remarks, I beg to support.

Mr. Speaker: Hon. Members, I confirm that I will give guidance and directions at the opportune moment in this House on the procedure that we will adopt.

Mr. Okemo. There is a balance of just three minutes.

Mr. Okemo: Much obliged, Mr. Speaker, Sir. I will do my best in those three minutes.

Mr. Speaker, Sir, I have tried to understand the procedure that has been stipulated in the Constitution of Kenya Review Act, 2008. I think it was clearly arranged in a manner that all stakeholders have got an input and that input will be recognized in the final document.

Mr. Speaker, Sir, the consultations are too loud.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Please, let us hear the Member for Nambale.

Mr. Okemo: Mr. Speaker, Sir, looking at the Constitution of Kenya Review Act, 2008, the various stakeholders have been put there that will participate in this process. We have the Committee of Experts, the Parliamentary Select Committee, the National Assembly and the Referendum. At every stage, provision has been made for input from all sorts of people, particularly the Kenyan people. I believe that where we have reached, the Committee of Experts have received memoranda and all kinds of deliberations from the members of the public. The document that will come out of this exercise is supposed to be in the interest of the Kenyan people. Even in the selection of the Parliamentary Select Committee, it is clearly stated that the Parliamentary Select Committee's composition should take account of regions, gender and ethnic interests. So, if we have already provided for that, then the corollary of that is the Parliamentary Select Committee has taken account of all our interests. Where the Naivasha Draft reached, I think what is really left for us to do is to ensure that the draft document comes before this House and is passed and it is now ready for publication by the Attorney-General and ready for the Referendum.

If we begin to introduce amendments at this point in time, I think we will derail the process. If that is the reason for our consultations, then I will not support them if they

will lead to differences. I would rather that those differences remain where they are and we pass the document. They can resurface later. At the end of the day, what is important is that the Kenyan people's interests must be taken care of. We should be looking at what the public has told the Committee of Experts. What would they like put in the document? What does the civil society say? What did the members of the public who appeared before the CoE and the religious organizations say? I think once all these things have been taken care of and they are in the final draft, then we as Members of Parliament; we are the representatives of the people and therefore, I think ours should be to consult in order to pass the document as it is.

Thank you, very much.

Mr. Speaker: Order, hon. Members! The time for the Motion has lapsed and I will now put the Question.

(Question put and agreed to)

COMMUNICATIONS FROM THE CHAIR

Mr. Speaker: Hon. Members, before we come to the end of business, I have two Communications to make.

PRESENTATION OF BUDGET POLICY PAPER

Hon. Members, as you are aware, in accordance with Standing Order No.143(1), which states that:-

“Every year, not later than 21st March, the Minister responsible for matters relating to finance, shall prepare and lay before the House a Paper to be referred to as the Budget Policy Statement.”

Thereafter, the Budget Policy Statement shall be committed to the Budget Committee which must consider it in consultation with all other Departmental Committees and lay its report in the House not later than 15th April. Similar provisions are found in the Fiscal Management Act of 2009.

This year, as the 21st of March will fall on a Saturday, I hereby direct the Deputy Prime Minister and Minister for Finance to deliver the Budget Policy Statement to the Clerk of the National Assembly on Thursday, 18th March, 2010 and in compliance with the Standing Orders, lay before the House the Budget Policy Statement not later than Tuesday, 23rd March, 2010. So my directions are clear; that the Deputy Prime Minister and Minister for Finance shall deliver the Budget Policy Statement to the Clerk of the National Assembly by or on Thursday, 18th March, 2010 and lay it in the House on Tuesday, 23rd March, 2010.

MEETING TO FACILITATE DIALOGUE ON DRAFT CONSTITUTION AT KIA

Mr. Speaker: Hon. Members, I wish to bring to your attention that at the meeting of the House Business Committee held today, the House Business Committee resolved that a meeting for Members of Parliament be held in order to facilitate dialogue on

matters relating to the Draft Constitution, now before the House. It was further agreed that the dialogue meeting be held at the Kenya Institute of Administration (KIA) in Kabete for up to three days commencing tomorrow Wednesday, 17th March, 2010, at 10 o'clock in the morning and ending on Friday, 19th March, 2010. I am pleased to inform you that despite the short notice, the KIA has kindly agreed to host this non-residential meeting. The Director of the KIA has assured me that all facilities will be in place to ensure its success. I, therefore, wish to take this opportunity to invite all Members to this important event.

Like I have said before, it is at a forum like this, where it matters, where it counts. Please, be there and be heard, starting at 10.00 a.m. tomorrow.

I thank you.

ADJOURNMENT

Mr. Speaker: Hon. Members, that brings us to the end of business for today. The House stands adjourned until Tuesday, 23rd March, 2010, at 2.30 p.m.

The House rose at 5.10 p.m.