

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 16th December, 2010

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PETITIONS

RESETTLEMENT OF 1992/1997 IDPs

Mr. Wamalwa: Mr. Deputy Speaker, Sir, I wish to present a petition on behalf of IDPs who were affected in 1992 and 1997 and have been waiting for a long time for resettlement and compensation. The Government has already undertaken that by 30th December, this year, it will have completed the resettlement and compensation of the IDPs affected in the post election violence of 2008. It is our prayer that this will be done and that our fellow Kenyans affected will not spend a night in the cold this Christmas.

However, for the IDPs affected earlier than 2008, the Government has, time and again, indicated plans to resettle them but this has not been effected to date. I have with me a petition signed by 4,388 Kenyans affected and who are praying that the Government, after completion of resettlement of the 2008 IDPs, will then commence the resettlement and compensation of the 1992 and 1997 IDPs. These are families that have been affected. They have been displaced for a period of close to 18 years. These families have been broken due to problems of lack of settlement and have fallen into crime and prostitution. They are praying that after the resettlement of the recent IDPs, they too will be remembered, resettled and compensated.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to present this petition and lay it on the Table.

(Mr. Wamalwa laid the petition on the Table)

Mr. Deputy Speaker: I direct that the Petition be referred to the Select Committee on IDPs.

Mr. Kioni: On a point of order, Mr. Deputy Speaker, Sir. Am I in order to seek the guidance of the Chair as to whether we should not have a few comments in support of the Petition in line with the provisions of the Standing Orders?

Mr. Deputy Speaker: Indeed, yes!

Mr. Kioni: Mr. Deputy Speaker, Sir, I want to support the Petition and thank Mr. Wamalwa for that timely Petition. It is true that we have IDPs dating back to 1992. However, because of the magnitude of the politics that surrounded the IDPs of 2007 and 2008, those of 1992 and 1997 have tended to be forgotten. It is important that this House

recognizes and puts it on record that they are also IDPs who need the attention of the Government. They need to be cared for, too. Some of them, including those who are in my constituency have come up with titles of property which they used to have and can no longer access. It is important that we also consider them the way we are considering those of 2007. This is because they also have needs and they need to be compensated, so that they carry on with ordinary life.

It is important to note that they are many and some of them have literally integrated in the communities they moved to. They are still there and require the attention of this House. The Government should give that undertaking.

Mr. Deputy Speaker: Fair enough! Under the circumstances, as I had initially indicated, I refer the Petition to the newly established Parliamentary Select Committee on IDPs.

Dr. Khalwale, do you want to present a Petition?

Dr. Khalwale: Mr. Deputy Speaker, Sir, I do not want to present a Petition, but I would like to use this moment to request the Chair to remember that I brought a Petition to this House on Kiborowa squatters and the Chair referred it to the relevant Departmental Committee. It is now six months overdue from the time you directed that they bring the Report to the House.

GOVERNMENT GRANT TO PYRETHRUM BOARD OF KENYA

Mr. Kaino: Mr. Deputy Speaker, Sir, I wish to present a Petition on grant by the Government of Republic of Kenya to the Pyrethrum Board of Kenya (PBK). We, the undersigned 300 farmers located in the Rift Valley, Central and Nyanza provinces that depend on pyrethrum for livelihood, draw the attention of the House to the following. Whereas the pyrethrum industry was liberalized in 1997 exposing the PBK to unfair competition; whereas the Board was not cushioned from this unfair completion; coupled with mismanagement at the Board leading to inability to pay pyrethrum farmers for debts amounting to millions of shillings; whereas the farmers have been impoverished leaving them with no means of livelihood leading to abject poverty; whereas pyrethrum prices and demand continue to rise yet farmers cannot plant pyrethrum due to old debts owed by the PBK; recognizing the opportunity to support the farmers and the economy of this country; in this humble Petition pray that the Government of the Republic of Kenya urgently considers addressing the financial and operational problems facing the pyrethrum industry including payment for flower deliveries and farmers arrears for delivered crop to the PBK and take specific measures like injection of working capital and acquisition of a new extraction plant for the Board in order to rejuvenate the industry and improve the economic welfare of the pyrethrum farmers; and petitioners will ever pray.

While presenting this Petition, I would like to say that millions of Kenyans depended on this pyrethrum. It is a foreign currency earning crop. It has brought foreign exchange in the country. It is because of mismanagement that the poor farmers in the provinces I mentioned above, that the Government has not given money to the PBK. This Petition requests the Government to inject about Kshs1.2 billion to this industry so that this Board could pay the farmers.

(Mr. Kaino laid the Petition on the Table)

Mr. Deputy Speaker: There being no hon. Member who wants to contribute on the same, I direct that the Petition be referred to the Ministry of Agriculture.

PAPERS

The following Papers were laid on the Table:-

Report of the Departmental Committee on Administration and National Security on its fact-finding visit to Lari, Koibatek, Dagoretti, Kisauni and Nyakach over alleged extra-judicial killings in the district from 11th October, 2010 to 27th November, 2010.

(By Mr. Kapondi)

Report of the Select Committee on Equal Opportunity on the Recruitment of the Managing Director of Kenya Bureau of Standards (KEBS)

(By Mr. Affey)

Report of the Departmental Committee on Justice and Legal Affairs on Nominees to the Judicial Service Commission.

(By Mr. Namwamba)

NOTICES OF MOTION

ADOPTION OF REPORT ON EXTRA-JUDICIAL KILLINGS IN KENYA

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

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on its fact-finding visit to Lari, Koibatek, Dagoretti, Kisauni, and Nyakach over alleged extra-judicial killings in the districts from 11th October, 2010 to 27th November, 2010 laid on the Table today, Thursday 16th December, 2010.

ADOPTION OF REPORT ON RECRUITMENT OF KEBS MANAGING DIRECTOR

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

THAT, this House adopts the Report of the Select Committee on Equal Opportunity on the Recruitment of the Managing Director of Kenya Bureau of Standards (KEBS) laid on the Table today, Thursday 16th December, 2010.

ADOPTION OF NOMINEES TO JUDICIAL SERVICE COMMISSION

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

THAT, this House adopts the report of the Departmental Committee on Justice and Legal Affairs on nominees to the Judicial Service Commission laid on the Table of the House on Thursday, 16th December, 2010.

REGULATION OF BODA BODA SECTOR

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

THAT, being greatly concerned by the rising cases of accidents involving motorcycles popularly known as *Boda Boda*, being further aware of the fact that this fast growing sector that is providing affordable motorized and non- motorized means of transport to many Kenyans today all over the country; appreciating the role the sector is playing in contributing to our economy and in providing employment to many unemployed young Kenyans and conscious of the problems and challenges facing this sector, this House urges the Government to urgently provide a policy and legal framework to regulate this fast growing and vital sector of our society and to set up a *Boda Boda* Fund to provide funds to facilitate training and empowerment of these young Kenyans.

QUESTIONS BY PRIVATE NOTICE

INVASION OF ELAND DOWN FARM BY ADMINISTRATION POLICE

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

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

(b) Could the Minister explain the circumstances under which 18-month-old Baby Lekamario, was burnt during the illegal operation and why did Police Officers deny the Kenya Red Cross and Human Rights Officers entry to the farm to assist victims with medication?

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

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, you will recall I had already

dealt with this Question. What was remaining was for the Chair to peruse and verify the documents which were laid on the Table by the hon. Letimalo. The Chair asked hon. Letimalo to show proof that, indeed, these summons were served to both the DC and the Commandant. That was what was remaining.

Mr. Letimalo: Mr. Deputy Speaker, Sir, the Chair recalls that I had submitted a certified copy of the original summons from the High Court. This matter was deferred because the Minister was not here. Since I have submitted all the required documents to show these were genuine court order summons, would I be in order to appeal to the Assistant Minister through the Chair to withdraw the police officers in the farm to enable my people enjoy their Christmas holidays without any problem?

Mr. Ojode: Mr. Deputy Speaker, Sir, I indicated that the information I have on the ground is that we do not have police officers in the farm. However, if there are police officers within the farm, I will order them to be withdrawn immediately. However, we have police officers around the farm, who are doing their daily patrols to keep law and order. If it is true that the police officers are within the farm, I will instruct the Police Commissioner to withdraw them.

Ms. A. Abdalla: On a point of order, Mr. Deputy Speaker, Sir. I have two Order Papers. I do not know which one to follow.

Mr. Deputy Speaker: Order! Stick to the original Order Paper. The tradition is that you will be directed when to shift to the Supplementary Order Paper. For now, use the ordinary Order Paper, which is there. One is Supplementary and the other one is an Order Paper for the day. We are now on the original Order Paper. Once I am through with the Questions, we will then shift to the Supplementary Order Paper.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. You will remember that the Question by the hon. Member has been on this Floor for the past three weeks. Probably, this is the third or fourth time, it is appearing on the Order Paper. However, the hon. Assistant Minister continues to give the same answer to the Member. Does the Ministry not have any compassion at all on the people of Samburu? He keeps saying: "If the police officers are there, if the police officers are harassing, I will do something." Has he not found out what is happening for the last three weeks? This is carelessness on the part of the Ministry. It is callous. The police officers are harassing innocent Kenyans. We are even aware that an 18-month-old baby was burnt in the process. However, he is still taking it lightly. This is really unfair.

Mr. Deputy Speaker: Mr. Ruto, you did not have the benefit of being here yesterday, when the Leader of Government Business attempted to address the House on this. At that time, the picture of the 18-month-old baby who was burnt was brought here. This matter has been coming back and forth. My recollection is that when you are asked, you say: "If they are there". Have you not found out whether they are there? Why always, "if"?

Mr. Ojode: Mr. Deputy Speaker, Sir, I am, in fact, a very serious Assistant Minister in regard to answering Questions that relate to matters of this nature.

On Tuesday, it was not our fault. It was the fault of the Clerks-At-the Table who should have advised the Chair what was remaining on the Question.

Mr. Deputy Speaker, Sir, the Chair ordered that when the summons were given, there was no rubber stamp to show the authenticity of that order. The Questioner came up with an original summon and I also asked if the Questioner is having the original

summons, then whom did he serve? Yet, he is serving the original summons here. So, the Chair ruled that they have to check the authenticity of what was served. The Chair wanted to see the date the summons were served.

Mr. Deputy Speaker, Sir, I can reprimand the Clerks-At-the Table for having not advised the Chair on what was remaining on that bit. However, if you look at the summons, the eviction was purportedly done on 23rd. The summons was received on 25th after the police had already evicted those people. It is here in black and white.

Mr. Letimalo: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister should not take us back. I said that the first summons was served from 22nd and they were to expire on 24th. It is for the same reasons that on 23rd, even before the expiry of the court orders, the police moved in and evicted those pastoralists. It is for the same reasons that lawyers went back to the High Court and were given court order on 25th. That was when they served the DC Laikipia East and the AP Commandant. I have tabled the certified copies from the High Court. The Assistant Minister should not take us back. All that we are requesting is whether he can be kind. Kenyan police should not mistreat other Kenyans. They should withdraw from the farms; after all, the court orders are still alive.

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. The Member was asked to bring a certified order, which I even think was too much, because once the Assistant Minister knows there is an order, service does not have to be proved because this Parliament. Is it in order for the Assistant Minister to continue arguing instead of apologizing to the House and undertaking to withdraw the police officers from that farm? If the House cannot compel him to respect the law, then who will protect Kenyans against those who are disobeying the law in Government?

Mr. Ojode: Mr. Deputy Speaker, Sir, generally, if there is a Question, we normally check from the ground on what is happening. You can see the mood. It is as if it is me who does not want to act. I have checked with the District Commissioner (DC), who told me that there are no police officers inside the farm. I want to undertake that if, indeed, there are police officers in the farm, heads will roll. The police who are---

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I have a lot of respect for this Assistant Minister, but he is gambling with the lives of Kenyans. When we request Ministers to do something, the burden of proof is not on us. It is for him to use all the Government machinery at his disposal, to confirm that the police are on site and have them removed. That is what this House expects of this Assistant Minister, and not “if” and “if”.

Mr. Ojode: Mr. Deputy Speaker, Sir, hon. Ethuro is right. I am on record having said that according to the reports I have, there are no police officers within that farm. That is why I am saying that if, indeed, it is true that police officers are inside the farm---

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to focus on procedure when the Constitution, which is superior states that every person has a right to life and that life must be protected by the Government? An 18-month old child was burnt, and the Assistant Minister is telling us “If” and “When”. The life of a child is not dependent on “if” and “when”. What are you doing to protect the right to lives of other children?

Mr. Gabbow: On a point of order, Mr. Deputy Speaker, Sir. I sympathise with the Member of Parliament for Samburu East, because this is the same Government which

has been mistreating and punishing its own employees in the name of chiefs. I do not know what mercy you are going to seek from the same Government. It is also on record that the Assistant Minister says “if, if”. For the last 21 days, we have been having a lot of “ifs” in this House. Samburu District is not very far, and I request that the Departmental Committee in charge of security matters visits that place tomorrow, or on any other day, so that they can ascertain this issue.

Mr. Deputy Speaker: Order! Order! The Chair, indeed, takes a very serious view of this issue. This issue has been in the House for a good number of times. It is important that we respect the lives of Kenyans. It is also important that the Government does not engage itself in endless technicalities. The Chair directs that the relevant Departmental Committee, which is headed by none other than the Member of Parliament for Mount Elgon, moves with speed to investigate the issue and reports back to the House the soonest possible.

Next Question!

LACK OF ELECTRICITY SUPPLY
TO NYAKACH WATER SUPPLY

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

(a) Is the Minister aware that electricity to Nyakach Water Supply was disconnected almost a month ago due to an outstanding electricity bill of Kshs.2,000,000.00, leaving residents of Nyakach without clean water for domestic use, thereby rendering them vulnerable to cholera and other water-borne diseases?

(b) When will the Ministry offset the bill?

(c) Could the Minister also consider disbanding the Board of the Nyakach Water Supply Company for failing to effectively discharge its mandate?

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

(a) I am aware that electricity connection to Nyakach Water Supply was disconnected on 18th November, 2010 and re-connected on 4th December, 2010 after intervention from my Ministry.

(b) My Ministry has paid Kshs1.9 million out of the outstanding electricity bill of Kshs2.4 million, and the Kenya Power and Lighting Company re-connected the electricity.

(c) My Ministry will not disband the Board of Nyakach Water Company, which manages Nyakach Water Supply. Under the Water Act, 2002, the company was appointed by the Lake Victoria South Water Services Board to ensure efficient and economical provision of water services. The appointment was for five years, from 2007-2012. However, due to high cost of operation and maintenance, the company has difficulties in meeting the costs of operation from the revenue generated. My Ministry, through the Lake Victoria South Water Services Board, will cluster the company together with others in the country to minimise the costs of operation and maximise the economies of scale, thus ensuring sustainability.

Mr. Ochieng: Mr. Deputy Speaker, Sir, the Assistant Minister has mentioned that they have paid Kshs1.9 million. Could I know from him when this amount was paid, and whether he can provide proof that a payment of Kshs1.9 million has been made?

Mr. Waititu: Mr. Deputy Speaker, Sir, Nyakach Water Supply has two accounts. The first one is No. 640253, and was paid Kshs500,000. The other one is No. 640254, and it was paid Kshs1.4 million. The balance as of today is only Kshs500,000.

Mr. Deputy Speaker, Sir, it is worth mentioning that the hon. Member wrote a letter to the Minister. We had a meeting together with the Permanent Secretary, and we decided to pay the money immediately. It was only after paying the Kshs1.9 million that electricity was re-connected. The hon. Member can confirm that electricity has already been re-connected, and that the people of Nyakach are now receiving water.

Mr. Ochieng: On a point of order, Mr. Deputy Speaker, Sir. Electricity was actually re-connected because of my personal intervention. Could the Assistant Minister provide proof that payment has actually been made? That is what I want to see here.

Mr. Waititu: Mr. Deputy Speaker, Sir, I have the details of payment with me here, which I hereby table.

(Mr. Waititu laid the documents on the Table)

Mr. Olago: Mr. Deputy Speaker, Sir, under the Water Act, 2002, the Ministry is empowered to engage private companies to supply water to specific areas, but this is one area through which the Ministry is practising corruption. There are several small companies, like the one in question, which are not able to provide services. Although these are private companies, taxpayers' money is used to supplement their services. There is another company in Kisumu called "Gulf Water Services Company". Why is the Ministry using taxpayers' money to off-set the costs incurred by private companies they have contracted?

Mr. Waititu: Mr. Deputy Speaker, Sir, the genesis of Nyakach Water Supply is that they have two levels of pumping water. That is why they have high electricity costs and the customers are not able to meet the cost from the revenue they receive. We have a long-term plan for this area. We are undertaking to construct one Koru Dam which is under feasibility study so that water can be flowing down by gravity. Therefore, there will be no high cost of electricity and the customers will be able to pay.

Mr. Olago: Mr. Deputy Speaker, Sir, the Assistant Minister has not answered my question. My question was under what circumstances did the Ministry offset the costs incurred by a private company using taxpayer's money?

Mr. Waititu: First and foremost, the Ministry of Water and Irrigation has undertaken to supply water to Kenyan people whatever the cost is and the companies that are not able to meet the costs from their revenue, the Ministry has undertaken to subsidize those areas so that Kenyans can have water supply irrespective of the revenue received by the company.

Mr. Ochieng: Mr. Deputy Speaker, Sir, since there is a balance of about Kshs533,000, could the Assistant Minister confirm here when they are likely to pay this amount?

Mr. Waititu: Mr. Deputy Speaker, Sir, the bill that we paid was for up to November. We are waiting for the bill for December which will be together with the

Kshs500,000 which was the balance and we shall pay it together immediately once we receive the bill.

ORAL ANSWERS TO QUESTIONS

Question No.641

PAY RISE FOR YOUTH POLYTECHNIC INSTRUCTORS

Dr. Monda asked the Minister for Youth Affairs and Sports –

(a) what he is doing to increase salaries for instructors at youth polytechnics and pay them according to merit, in view of current payment for different job descriptions;

(b) what has caused delay in payment of salary top-ups for more than three months; and,

(c) what the Government policy on payment of terminal benefits for retired and/ or retrenched instructors is.

The Assistant Minister for Sports and Youth Affairs (Mr. Kabando wa Kabando): Mr. Deputy Speaker, Sir, I already requested you for a few minutes for the answer to arrive.

Mr. Deputy Speaker: Order, hon. Kabando wa Kabando! How does an Assistant Minister address the House from the Back bench? Have you resigned?

The Assistant Minister for Sports and Youth Affairs (Mr. Kabando wa Kabando): Thank you, Mr. Deputy Speaker, Sir. I asked for a few minutes because we are coming from a State function and the answer was with my boss. He is on the way. I will do the job.

Mr. Deputy Speaker: This is the last Question on the ordinary Order Paper for today, before we shift to the supplementary Order Paper. So, we cannot wait for long, unless you want it deferred.

The Assistant Minister for Sports and Youth Affairs (Mr. Kabando wa Kabando): Mr. Deputy Speaker, Sir, I beg you to skip it for a while. The answer is coming.

Mr. Deputy Speaker: Fair enough! We shall come back to that Question.

(Dr. Monda Stood up in his place)

Dr. Monda: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is telling the House the answer will be coming, yet I have a copy of the answer that he is supposed to give to the House. How come that I have the answer and the Assistant Minister does not have?

The Assistant Minister for Sports and Youth Affairs (Mr. Kabando wa Kabando): Mr. Deputy Speaker, Sir, it is a very simple administrative Question; I can borrow the answer from him for me to do the job.

Mr. Deputy Speaker: Fair enough! We will come back to the Question. Next Question, Mr. Kaino!

Question No.665

LIST OF MANAGING TRUSTEES OF NSSF SINCE 2000

Mr. Kaino asked the Minister for Labour-

(a) whether he could provide a list of all the Managing Trustees of the National Social Security Fund(NSSF) since 2000 and indicate the rate of investment growth for the respective periods served by each of the Managing Trustees;

(b) whether he could confirm that the current Managing Trustee of the Fund was sent on compulsory leave by the Board and, if so, state why; and,

(c) what measures he is taking to streamline operations at the Fund and to guarantee its stability.

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Deputy Speaker, Sir, I beg to reply.

(a) For the year 2000/2002, the Managing Trustee was Jos Konzolo and the growth rate was from Kshs42.5 billion to Kshs40.9 billion---

Mr. Deputy Speaker, Sir, let me just be in brief because I have already supplied the Member with the list, the table of the managing trustees and the growth rates. It will take a long time.

Mr. Deputy Speaker, Sir, as for “b”, I am not aware of any board decision to send the current Managing Trustee on compulsory leave. However---

(Mr. Ethuro stood up in his place)

Mr. Deputy Speaker: What is the point of order?

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir, while I appreciate the fact that the Member who asked this Question has the answer, but I think all of us would be interested. This answer is short, because it is only about the names and the growth rate which took place during their tenure. I think he can read the entire answer.

Mr. Deputy Speaker: Hon. Assistant Minister, the managing trustees are not a hundred of them. Probably, they are a handful. Could you proceed and read them?

The Assistant Minister for Labour (Mr. Ojaamong): The first Managing Trustee was Jos Konzolo. He was there from July 2000 to May 2002. The Fund posted a negative growth rate of negative Kshs3.75 billion; that is from Kshs42.5 billion to Kshs40.9 billion. The other one was Mr. Ben Mutweta. He was there from May 2002 to August 2002. During his time, the Fund recorded a negative growth rate of Kshs5.81billion; that is from Kshs40.9 billion to Kshs38.5 billion.

The third Managing Trustee was Mr. Naftal Mogere as from August 2002 to February 2006. The Fund posted a growth rate of 75.46 percent; that is, it rose from Kshs38.5 billion to Kshs68 billion. The fourth trustee was Mrs. Rachael Lumbasyo. She was at the helm of the NSSF from February 2006 to September 2008 and the Fund posted a growth rate of 20.5 percent; that is, it rose from Kshs68.8 to Kshs81.9 billion.

The fifth Managing Trustee who was in an acting capacity was Mr. Albert Odero. He was there from September, 2008 to May 2009. The Fund recorded a negative growth

rate of 6.24 percent, dropping from Kshs81.9 billion to Kshs76.8 billion. The current Managing Trustee, who is the sixth, is Mr. Alex Chachongo. He came in in May 2009 to date. So far, the Fund has recorded a growth rate of 37.11 percent; that is, Kshs76.8 billion to Kshs105.3 billion.

(a) I am not aware of any decision to send the Managing Trustee on compulsory leave. However, the Managing Trustee was on annual leave during the month of November, 2010 with permission of the Board of Trustees and in line with his contract of service.

(b) We have taken quite a number of measures to streamline the operations of the Fund. I will just read a few. One, we have put in place a competent board of trustees with strong representation from the Government, workers employers and private sector. Further, we have put in place a clear corporate governance structure implemented by the Board of Trustees through specialized sub committees of the Board.

Two, we have embarked on a competitive and transparent recruitment of managing trustees. This exercise was concluded in May 2002. We have also carried out a job evaluation exercise following which five general managers have been appointed competitively. We are also rationalizing the recruitment of managers and other cadre of staff and that is going on.

(iii) We have developed a strategic plan which clearly defines the objectives, key performance, benchmarks and growth rates of the Fund, with a solid investment policy which guides its investment decisions. We are currently finalizing the engagement of professional fund managers in line with the Retirement Benefits Authority Act.

(iv) We have had consistent engagement of key stakeholders in the fight against corruption. The Fund's public image has dramatically improved in the last couple of years as there have been no new corruption cases reported during this period.

Mr. Deputy Speaker, Sir, due to the above measures, the National Social Security Fund (NSSF) has made significant achievements in the past two years. For the first time ever, the NSSF was removed from the list of most corrupt institutions by the Transparency International this year. The NSSF was this year awarded the coveted international social security association award for good practice in governance and leadership in the area of performance contracting in social security administration during the World Social Security Forum held in Cape Town, South Africa between 29th November, 2010 to 4th December, 2010. This put the NSSF ahead of all other social security organizations across the globe.

Mr. Kaino: Mr. Deputy Speaker, Sir, I have gone through the copy of the written answer supplied by the Assistant Minister very carefully and I am satisfied with it. Therefore, I have no supplementary question on this Question.

Mr. Deputy Speaker: Let us move on to the next Question by Mr. Sirat!

Question No.640

AMOUNT OF DEVELOPMENT FUNDS
ALLOCATED TO NORTHERN KENYA

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

(a) whether he could state how much funds the Ministry of Northern Kenya has received since its inception; 2008/2009, 2009/2010 and 2010/2011 Financial Years;

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

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

The Assistant Minister for the Development of Northern Kenya and other Arid Lands (Mr. Sasura): Mr. Deputy Speaker, Sir, I beg to reply.

The Ministry for the Development of Northern Kenya and other Arid Lands has since inception been allocated funds as follows:-

2008/2009 – Kshs2.6 billion

2009/2010 – Kshs4.1 billion

2010/2011 – Kshs3 billion

The list of projects which were undertaken in Wajir South, East, North and West are hereby tabled.

(Mr. Sasura laid the document on the Table)

Mr. Sirat: Mr. Deputy Speaker, Sir, the Ministry for the Development of Northern Kenya and other Arid Lands was created after the Government recognized that the region was underdeveloped. The Ministry was not created for Wajir East. Why did the Minister favour his constituency which is Wajir East? The Minister gave over Kshs110 million to Wajir East while he gave a mere Kshs30 million to Wajir South. The Minister purposely omitted three dams that he gave to his constituency, Wajir East. That is Sarman Dam - Kshs20 million, Dambas Dam - Kshs16 million and Dasheq Dam - Kshs15 million. This is in the copy of the written answer he has given me. Could the Assistant Minister tell us why there was unfair and unequal distribution of resources within Wajir County?

Mr. Sasura: Mr. Deputy Speaker, Sir, the Ministry does not discriminate against any district within arid areas. However, there are certain criteria which are used in the identification of projects in any given district. Among the criteria used is that every project proposal has to be approved by the District Steering Groups. The projects have to be vetted to ensure only socially inclusive, economically viable and environmentally friendly interventions are implemented. All the proposed projects must be of high priority within the respective target districts in order to facilitate achievement of the highest impact with the least resources.

Lastly, priority is also given to co-funding of viable micro-projects where communities are unable to raise enough funds for the completion of such projects.

[Mr. Deputy Speaker left the Chair]

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

Mr. Gabbow: Mr. Deputy Speaker, Sir, the Assistant Minister has just tabled what the areas of priorities are but the question is very specific. Could he tell us how much did Wajir North, Wajir South, Wajir East and Wajir West get so that the other hon. Members can know what he is telling us, other than read out a tabled document because it might not get to everyone? Tell us exactly what is there because we want to question why the money went to that direction.

Mr. Sasura: Mr. Temporary Deputy Speaker, Sir, the list is very long but I will do what I can. Here is a list of projects which were undertaken through the Arid Lands Resource Management Project---

Mr. Gabbow: On a point of order, Mr. Temporary Deputy Speaker, Sir. I had asked the Assistant Minister to give us the total amount of money allocated to each constituency. It is very simple. He should tell us that Wajir North got this amount and Wajir South got that amount. He should do that, other than going through the list.

Mr. Sasura: Mr. Temporary Deputy Speaker, Sir, I think the hon. Member can do that because we have given him a copy of the written answer. This is simple arithmetic. In the 2008/2009 Financial Year, Wajir South got Kshs4.5 million while Wajir East got Kshs5.5 million---

(Mr. Kosgey was applauded as he entered the Chamber)

Mr. Gabbow: On a point of order, Mr. Temporary Deputy Speaker, Sir. There is a huge cheering. Maybe, the Assistant Minister can continue after the cheering so that I can also listen to what he is telling us.

The Temporary Deputy Speaker (Mr. Imanyara): Order! There is no cheering! Proceed, Mr. Assistant Minister!

Mr. Sasura: Mr. Temporary Deputy Speaker, Sir, in the 2008/2009 Financial Year, Wajir South got Kshs4.5 million, Wajir East - Kshs5.5 million, Wajir North - Kshs5.3 million and Wajir West got Kshs6.2 million. In the 2009/2010 Financial Year, Wajir South got -Kshs10 million, Wajir East - Kshs8 million and Wajir North - Kshs5 million. In the 2009/2010 Financial Year, we covered the educational sector. It is a long list and I will table it.

(Mr. Sasura laid the list on the Table)

Mr. Letimalo: Mr. Temporary Deputy Speaker, Sir, to show that there are disparities in the allocation of resources in Wajir County, I would like to draw the attention of the Assistant Minister to the 2010/2011 Financial Year. Out of Kshs64 million allocated to Wajir County, Kshs40 million went to Wajir East where the Minister comes from while Wajir South got a meagre Kshs900,000. Is the Assistant Minister telling us that Wajir East has more problems than Wajir South? Could he explain that disparity? What does the Minister want to show the rest of the Arid and Semi-Arid Lands (ASAL) areas if that is not being selfish of him?

Mr. Sasura: Mr. Temporary Deputy Speaker, Sir, that is not true. If we look at some of the projects in the Minister's constituency, we will find that they are communal

and are shared by other constituencies; for example, the Wajir Community Radio and the Wajir Water and Sewerage, are shared by the four constituencies in Wajir.

Mr. Sirat: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister is misleading the House. I would have been happier if the Minister, hon. Elmi, was here to answer my Question. Unfortunately, he is sick and I pray for his quick recovery. However, the Assistant Minister indicated that a proposal has been made to Orio Programme for the funding of water to be pumped from Habaswein to Wajir to facilitate the sewerage system. What would happen if that proposal is not granted, yet the Assistant Minister is already undertaking a sewerage programme worth Kshs1.5 million? How can he take the horse before the cart? He should have first obtained the funding to pump water from Habaswein to Wajir and then embark on the sewerage system.

The Temporary Deputy Speaker (Mr. Imanyara): Ask a question, please?

Mr. Sirat: Mr. Temporary Deputy Speaker, Sir, would it not have been in order to have a sewerage plan in place before the works?

Mr. Sasura: Mr. Temporary Deputy Speaker, Sir, the feasibility study and the design of this project were done by the Ministry of Water and Irrigation. This is part of the Vision 2030 and, therefore, we are on the right course. We have to plan and after planning, we look for money. That is the procedure.

Ms. A. Abdalla: On a point of order, Mr. Temporary Deputy Speaker, Sir. In his answer, the Assistant Minister for Development of Northern Kenya and other Arid Lands has said that the programme is under the Vision 2030. Does that exempt the contracts for the appraisal of the Kshs1.5 million from being done transparently and practicing nepotism?

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

Mr. Sirat: On a point of order, Mr. Temporary Deputy Speaker, Sir, although I am a new Member, I am not happy with the answer. I would like this Question referred to the relevant Departmental Committee.

The Temporary Deputy Speaker (Mr. Imanyara): You are fully entitled to write to the Committee requesting that they take up any issue any time. You are at liberty to do so, any time.

Mr. Sirat: Mr. Temporary Deputy Speaker, Sir, I will do that.

Question No.621

SETTLEMENT OF SQUATTERS IN BANITA SETTLEMENT SCHEME

Mr. Kigen asked the Minister for Lands:-

(a) whether he is aware that land for Banita Settlement Scheme in Rongai was bought by the Government to settle squatters living in Makongeni Location, and if so, state the value of the 16,000 acre land;

(b) whether he could explain why the Government cancelled the first survey works and commissioned another one using the same Government surveyors and also state why allotments done in 2002 were cancelled, leaving out some of the previous beneficiaries; and,

(c) whether he could also provide a list of the beneficiaries of the first and second allotments, explain why a number of deserving persons were replaced in the second allocation and state what the Ministry is doing to ensure the replaced persons are among the beneficiaries.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Temporary Deputy Speaker, Sir, I am willing to answer this Question, but it was in the Order Paper yesterday in the morning. However, it was dropped without being communicated to us. Now, it has been put on the Order Paper again without telling us. How do we handle it?

The Temporary Deputy Speaker (Mr. Imanyara): Assistant Minister, are you able to answer the Question or do you need time to answer it?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Temporary Deputy Speaker, Sir, this Question was dropped because the Questioner was not there.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Do you need time in order to answer this Question?

The Assistant Minister for Lands (Mr. Bifwoli): Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): How much time?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Temporary Deputy Speaker, Sir, up to next week.

Mr. Kigen: Mr. Temporary Deputy Speaker, Sir, as much as I would want to indulge the Assistant Minister, it is very interesting that we discussed the issue with him yesterday and we have had a chance to also look at the Question today and now, he says he wants more time. He has already supplied me with an answer. He told me that he is ready to answer it. I do not know what else he is looking for.

The Temporary Deputy Speaker (Mr. Imanyara): Are you happy with the answer given to you by the Assistant Minister?

Mr. Kigen: Mr. Temporary Deputy Speaker, Sir, he has given me a partial answer.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Assistant Minister, have you supplied an answer to the Member?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Temporary Deputy Speaker, Sir, this answer was given yesterday, but the Member was not there to ask the Question. So, it was dropped.

The Temporary Deputy Speaker (Mr. Imanyara): Have you not supplied an answer to the Member?

The Assistant Minister for Lands (Mr. Bifwoli): Not today, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Kigen, under those circumstances, I am implored to allow the Assistant Minister time to come and answer the Question if you indulge him. He says he gave you the answer yesterday, but you were not there to ask your Question and it was dropped.

Mr. Kigen: Mr. Temporary Deputy Speaker, Sir, then I can wait.

The Temporary Deputy Speaker (Mr. Imanyara): The Member is agreeable to the Question being deferred. It is deferred by a week.

(Question deferred)

Mr. Sirma: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order not to answer this Question, yet he says that he has an answer? The people of Banita have been waiting all this time to get a solution to this problem.

The Temporary Deputy Speaker (Mr. Imanyara): Order, hon. Sirma! Next Question!

Question No.641

SALARY INCREASE FOR YOUTH POLYTECHNIC INSTRUCTORS

Dr. Monda asked the Minister for Youth Affairs and Sports:-

(a) what he is doing to increase salaries for instructors at Youth Polytechnics and pay them according to merit, in view of current payment for different job descriptions;

(b) what has caused delay in payment of salary top-ups for more than three months; and,

(c) what the Government policy is on payment of terminal benefits for retired and/or retrenched instructors.

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Mr. Temporary Deputy Speaker, Sir, I wish to thank you for your patience.

Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) There are two categories working in the public youth polytechnics, namely; instructors employed by the Public Service Commission and instructors employed by the youth polytechnics board of governors. Limit of salaries to the instructors employed by the Public Service Commission is guided by the established Government scales and the increment of their salaries is determined from time to time by the Collective Bargaining Agreements (CBAs) between the Government and the Kenya Union of Civil Servants. Those who have served for three years in one Job Group are eligible for promotion as per their scheme of service. Currently, those instructors who have served for three years in one Job Group have been promoted. The second category consists of instructors employed by the various boards of governors, whose salaries are determined by the respective boards. To support the efforts of the boards, the Government has continued to provide top-up grants to assist the management committees to meet their obligations. However, the responsibility of remunerating instructors under this category is the responsibility of the respective boards.

(b) There is no delay in the payments of top-up grants to youth polytechnics. The Government provides top-up grants to the youth polytechnics on quarterly basis. During this financial year, my Ministry has processed grants up to the month of September and is preparing for the months of October and November, 2010.

(c) The payment of terminal benefits for retired and/or retrenched instructors employed by the Public Service Commission is strictly guided by the code of regulations, Section R41(r17) to (27), which provide that an officer can retire voluntarily on attaining the age of 50 and be eligible for retirement benefits or mandatory retirement on attaining the age of 60.

Regarding instructors employed by the board of governors, they are supposed to be members of the National Social Security Fund (NSSF), whose members make contributions while their respective youth polytechnic boards of governors contribute as employers. Benefits are paid to a member after attaining the age of 60, as per the regulations or when he or she ultimately retires from paid employment, whichever comes first, as provided for by the National Social Security Fund (NSSF), Cap. 258.

Dr. Monda: Mr. Temporary Deputy Speaker, Sir, while I thank the Assistant Minister for the answer he has attempted to give, I want to observe that it is known everywhere in the country that the Ministry is set out to reduce unemployment by creating jobs through training the youths through the youth polytechnics. But in the opening statement, the Assistant Minister has talked about public youth polytechnics. Could he explain why we have a public institution with two different sets of instructors who have two different ways of remuneration?

Mr. Kabando wa Kabando: Mr. Temporary Deputy Speaker, Sir, first, I want to correct the impression that I attempted to answer the Question. I actually answered it. In addition, it is not clear from the hon. Member what sort of two categories he is talking about in the public polytechnics. The Question is not very clear because as per my understanding, there is only one category.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Assistant Minister, let him explain to you his Question. Dr. Monda, please, explain to the Assistant Minister what you want from him?

Dr. Monda: Mr. Temporary Deputy Speaker, Sir, the Minister has talked about public institutions being youth polytechnics. My question is; he has talked about instructors who are hired by the Public Service Commission (PSC) and those ones who are hired by management boards of the youth polytechnics and they are paid differently. So, these are public institutions. How then does a public institution get two different types of instructors with two different types of payments?

Mr. Kabando wa Kabando: Thank you, Mr. Temporary Deputy Speaker, Sir. Now it is very clear. I said that there are employees by the PSC, and this is automatic when you have employees engaged through the PSC through the normal process to work for the Government and, in this context, the youth polytechnics. But just as it happens in schools with the challenge of personnel, there is, indeed, an option for the board of governors in the respective public youth polytechnics to employ more instructors. Also, we have an ongoing recruitment of additional 2,000 instructors across the country to be assigned to various youth polytechnics, both the currently existing ones and also the newly registered ones that have been constructed by various constituencies through the Constituencies Development Fund (CDF) money and even the Local Authority Transfer Fund (LATF). So, the option to employ instructors through the board of governors is actually very encouraged.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, now that we are aware that the youth polytechnics are meant to play a very big role and considering that the largest portion of our population is comprised of the youth, why can the Ministry not consider having a clear harmonized scheme of service so that these people can be engaged straightaway through the various youth polytechnics?

Mr. Kabando wa Kabando: In fact, Mr. Temporary Deputy Speaker, Sir, that is now ongoing. As hon. Members may know, we recently posted specific officials – not

now the district youth officers but the district youth training officers – to focus specifically on the youth polytechnics to help them in their programs of recruitment and to also enrich the boards of governors.

Mr. Temporary Deputy Speaker, Sir, for the information of hon. Members, we now have moved away from the management committees of youth polytechnics to have board of governors so that they can give more advanced supervision and leadership in those polytechnics.

Mr. Temporary Deputy Speaker, Sir, the efforts that the Ministry has put, as I said, which are ongoing now as I speak, include recruitment of additional instructors, some of whom have graduated recently and some of whom have been teaching or instructing the polytechnics who are being given priority because of their knowledge, experience and the fact that they have been serving those polytechnics. It is actually advancement in the area of ensuring that instructors are given greater opportunities and permanent employment so that we reduce the burden by the board of governors in those polytechnics.

Mr. James Maina Kamau: Mr. Temporary Deputy Speaker, Sir, aware of the importance of youth polytechnics and village polytechnics in Kandara Constituency, we have pumped quite some substantial amount of money from the CDF kitty in putting them up. What is the Government doing to make sure that we have instructors, because these institutions do not have instructors?

Mr. Kabando wa Kabando: Mr. Temporary Deputy Speaker, Sir, again to repeat what I said earlier, we are taking the following steps. One, we are going to employ additional instructors for the existing polytechnics and priority is being given to polytechnics that have actually also admitted more students and, thus, have more demand for instructors. Also, to advise hon. Members that polytechnics built in their constituencies should be duly registered by the Ministry through the District Youth Officer who exists in their constituencies/districts. That will give an opportunity for those polytechnics that are lying out of the mainstream recognition by the Ministry to also be considered for additional instructors.

Mr. Nyambati: Mr. Temporary Deputy Speaker, Sir, I want to thank the Assistant Minister because they are going to employ additional instructors. I would want him to assure this House that they will make deliberate efforts to post instructors to those registered youth polytechnics – like in my Constituency, Kitutu-Masaba, which does not have instructors – to ensure that those youth institutions which do not have instructors, first of all, get the instructors before the others which have instructors.

Mr. Kabando wa Kabando: Mr. Temporary Deputy Speaker, Sir, I can assure this House that fairness and justice will be done to existing youth polytechnics which have been duly registered with legitimate boards of governors and with the requisite number of students that will make the demand be met by my Ministry. It is also good to inform this House and to request hon. Members, as I answer this question, to put more focus on the youth polytechnics – not as the old village polytechnics – but as a new medium of upgrading even Form Four qualifiers with grades “d”, “c” or even “b” because for the first time, last year, we conducted an examination through the Kenya National Examinations Council (KNEC) and those who passed were more than 72 per cent from 32 youth polytechnics which did the pilot curriculum.

Finally, Mr. Temporary Deputy Speaker, Sir, I also want to encourage hon. Members to visit the youth polytechnics and ensure that they also organize graduation ceremonies with the board of governors which will be a platform to market the youth polytechnics so that those who are leaving Form Four and those who may have no other options can have the opportunity to go to polytechnics, which is actually a gateway to joining national polytechnics, technical institutes and also technical universities. It is a milestone that is happening and the Ministry has put a lot of effort on that.

Thank you very much.

Dr. Monda: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister indicate that there are youth polytechnics in this country which do not have even one instructor, who is a public servant of the Public Service Commission, and what he is doing to immediately address this shortcoming?

Mr. Kabando wa Kabando: Mr. Temporary Deputy Speaker, Sir, through the Kenya Technical Training Institute here in Nairobi, we have been upgrading the skills of the instructors in the polytechnics who have not had the minimum grades so as for them to be employed by the Public Service Commission. We are engaged in an effort to upgrade the capacities of instructors in existing polytechnics so that they may have the ability to pass interviews and be employed permanently by the Government through Public Service Commission.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, at this point we move to the supplementary Order Paper and there are two Questions therein.

Dr. Nuh.

QUESTIONS BY PRIVATE NOTICE

MEMBERSHIP OF TANA RIVER DISTRICT DEVELOPMENT GROUP

Dr. Nuh asked the Minister of State for Special Programmes the following Question by Private Notice.

(a) Could the Minister give an overview of the membership of the District Steering Groups (DSGs), specifically for Tana River District and also explain their source of funding, roles and mandate?

(b) What are the respective contributions of the Government and the World Food Programme (WFP) in the Protracted Relief and Recovery Operation (PRRO), and could she also explain their respective mandates in that regard as well as the process of identifying the lead agencies?

(c) Could the Minister provide the minutes of the meetings of the Tana River DSG on selection of the lead agency to undertake distribution of relief food, the details of the three entities who applied for the distribution, state why the recommendations of the DSG in the selection were disregarded and indicate what action she will take to resolve the issue?

The Minister of State for Special Programmes (Ms. Esther Murugi Mathenge):

Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The Membership of District Steering Group is made up of as follows: The Chairperson is the District Commissioner. Other members are the district heads of department, local Members of Parliament and any other co-opted members. The above is

the case in Tana River and all the other 27 districts. The DSGs have no funds directly allocated to them as Committees. However, the District Commissioner gets funds from the Ministry of State for Special Programmes for transportation of food and the various district heads of departments get funds from their parent Ministries to run their programmes. There are, therefore, no specific funds for running the affairs of the DSG since its role is mainly that of co-ordination and any specific task that requires funds to be carried out is done by the line departments.

Some of the roles or mandates of the DSG are:

1. to carry out food security assessment in the districts;
2. to identify areas and populations affected by food insecurity;
3. develop district contingency plans for disaster management;
4. plan timely provision of relief supplies to needy populations;
5. make recommendations to the Ministry headquarters on organizations that qualify for appointment as lead agencies or co-operating partners to distribute relief food under the PRRO programme;
6. examine and monitor drought trends in the districts with a view to developing strategies that minimize the effects on food security;
7. encourage the development of sustainable food security projects;
8. put in place preparedness/mitigation measures to reduce the impact of disaster on food security;
9. participate in capacity building programmes for disaster management; and
10. liaise with the Ministry headquarters and other stakeholders in matters related to food security.

(b) The Protracted Relief and Recovery operations started on 1st May, 2009, and will run for three years ending on 30th April, 2012. The programme is jointly implemented by the Government of Kenya and the World Food Programme. To date, the WFP has given Kshs37 billion but the Kenya Government has given Kshs1 billion worth of foodstuff.

The mandate of the two parties is to ensure that the programme runs smoothly for the benefit of the vulnerable populations, who are the beneficiaries, of about 2 million Kenyans. Both parties are expected to contribute resources towards the programme and to jointly develop guidelines, rules and procedures for managing the operation. These have already been done and I will table a copy.

The two parties also jointly select lead agencies to handle the distribution in the districts covered by the programme, and in consultation with the districts. The process and guidelines for selection of lead agencies are also annexed to the answer as appendix 1

(c). The three organizations that applied for the job of lead agency in the Tana River were: the Kenya Red Cross Society, the German Agro Action and the Catholic Diocese of Garissa. The recommendations of the DSG were not disregarded by the national team, that is the Ministry together with the Ministry of Development of Northern Kenya and other Arid Lands. However, the team can only uphold the recommendations of the DSGs, if they have followed the set criteria for selection of lead agencies.

The DSG only recommends to the headquarters, organization that they consider qualified to be lead agencies, but the headquarters have the final say in the appointment. By and large, however, the recommendations of the DSG are ratified by the headquarters.

Basically, the criteria focuses on the technical capacity of an organization, and its financial viability. In terms of technical capacity, an organization must---

The Temporary Deputy Speaker (Mr. Imanyara): Order. How long is your answer?

The Minister of State for Special Programmes (Ms. Mathenge): It is very long. I was told to be very comprehensive in the morning.

The Temporary Deputy Speaker (Mr. Imanyara): I am asking you to summarize the last part and table it.

The Minister for Special Programmes (Ms. Mathenge): In conclusion, there are 27 districts which are beneficiaries of this programme, and we had issues in five districts. We have met with the Members of Parliament in those areas and it was confirmed in this House that we will repeat the exercise, so that we can see what their issues are. In the meantime, we have re-instructed the WFP to ensure that food is distributed, so that nobody goes hungry. This exercise is ongoing and we expect to finish by February.

Thank you.

(Ms. Murugi Mathenge laid the document on the Table)

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for giving half the information as she promised this morning. I want this House to take cognizance of the well stated facts by the Minister; that the works of the DSG are, among others, to plan timely provision of relief supplies, and to make recommendations to the Ministry headquarters on organizations that qualify for appointment as lead agencies in a ranking order. Those are the words of the Minister, not my words.

The reason as to why I am saying that the Minister has given half information is that the Ministry made a decision contrary to the recommendations of the DSG. I just want to table a few documents. The PS wrote to the District Commissioner, Tana River, appointing German Agro Action contrary to the award by the DSG to the Kenya Red Cross. The DSG again met and this is a letter forwarded by the DC to the PS. I want to forward---

The Temporary Deputy Speaker (Mr. Imanyara): What is your question?

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, let me just build up the question after tabling these two documents.

(Dr. Nuh laid the documents on the Table)

From the DSG minutes I just want to quote one sentence. The DSG, after a meeting, said the award to the co-operating partner, that the German Agro Action, had its proposal only for function 21, which is EDP management and no proposal was submitted for function 22, which is secondary transport, food distribution and monitoring and evaluation, hence members felt there was little local social inclusiveness. The Minister alleges that in cases where DSGs flout the regulations of choosing a co-operating partner, then the Ministry has an overriding authority to pick another agency. Could the Minister tell the House which regulation was flouted in the case of Tana River?

Ms. Mathenge: Mr. Temporary Deputy Speaker, Sir, the Kenya Red Cross which was recommended by the District Steering Group (DSG) was overpriced. It was actually

double that one of German Agro-Action. We are repeating the exercise so that we can accommodate the Members of Parliament because they want the Kenya Red Cross to be in charge of food distribution in that area. I think it is only fair if they allow us to do the procurement the way it is supposed to be done, so that, again, they do not ask me questions about how I have procured the goods and services.

Mr. Chachu: Mr. Temporary Deputy Speaker, Sir, the fact of the matter is that this Ministry, when it comes to appointing of lead agencies, is hardly accountable and transparent. The District Steering Groups (DSGs) are given so much work to do technical evaluation of these lead agencies. However, their recommendations are hardly followed. That is the case for Marsabit District where I come from. Is this Ministry strategically biased against local grassroots based Kenyan Non-Governmental Organizations at the expense of international organizations such as the Red Cross and many others?

Ms. Mathenge: Mr. Temporary Deputy Speaker, Sir, unfortunately, in some of these areas, some of the Members of Parliament are actually the people behind the Non-Governmental Organizations (NGOs). One of the guidelines was that we must have no political affiliation in food distribution. So, when we do not pick your agency, it is because maybe, you, as a Member of Parliament, are behind the agency.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the Minister is making allegations which are very grave and serious; that the Members of Parliament are affiliated to those NGOs. The Kenya Red Cross is a local organization that was set by an Act of Parliament. So, does she want to tell this House that they did not choose the Kenya Red Cross because some of us are affiliated to the Kenya Red Cross? Could she substantiate or withdraw?

Ms. Mathenge: Mr. Temporary Deputy Speaker, Sir, the Kenya Red Cross has relatives of Members of Parliament and I am willing to substantiate that. Again, as far as I know, the mandate of the Kenya Red Cross is to deal with humanitarian issues and actually not to distribute the food that we are given by the World Food Programme (WFP).

Dr. Nuh: On a point of order, Mr. Temporary Deputy Speaker, Sir. I have a document here which is an advertisement by the WFP, purportedly recruiting staff for distribution of the food, as the Minister alleges that it is the WFP which will distribute food for the next two months. But at the end of it, the letter is supposed to be submitted to Germany Agro-Action, the same organization that they awarded, but which was overturned again by the DSG, which they said they will reconsider. Is the Minister in order to purport that the WFP is doing the distribution when in real sense, it is still Germany Agro-Action?

Ms. Mathenge: Mr. Temporary Deputy Speaker, Sir, that is for food for German Agro Action and not the WFP.

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. I have a HANSARD copy of 12th October, where the Assistant Minister to the Minister said: "I want to report authoritatively here that those complaints have now been addressed." But the answer the Minister is giving is that we are going to repeat the exercise. The Assistant Minister even went ahead to give a timeline in which the lead agencies would take position, which the Minister has changed. Is she in order to change positions everytime she comes to answer a similar Question?

Ms. Mathenge: Mr. Temporary Deputy Speaker, Sir, I think I am in order. I have said that we are repeating, so that you cannot come and ask me about the procurement. By 1st March, 2011, we shall have finished the exercise.

CANCELLATION OF PUBLIC RALLY AT KAMUKUNJI GROUNDS, NAIROBI

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

(a) Could the Minister give reasons as to why the Police cancelled the meeting scheduled for 12th December, 2010 and organized by the hon. Eugene Wamalwa and Mr. Maina Njenga at Kamukunji grounds, Nairobi, in disregard of the Constitution?

(b) Could the Minister also explain why the Government failed to provide security at the venue as required when the meeting was rescheduled on 13th December, 2010?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I beg the indulgence of the Chair. This Question appeared in the Order Paper this morning and hon. Shebesh was not there to ask it and then it was dropped. So, I am ambushed to see it on the Order Paper this afternoon. I would seek the indulgence of the Chair that I answer it in the next sitting.

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, I am okay with that.

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

(Question deferred)

PRIME MINISTERIAL STATEMENT

GOVERNMENT STATEMENT ON ICC PROCESS

The Prime Minister (Mr. Raila): Mr. Temporary Deputy Speaker, Sir, I rise to make a Statement by the Government on the ICC process.

Mr. Temporary Deputy Speaker, Sir, I have had the opportunity to peruse the records of yesterday's proceedings in the House. I appreciate the interest the Members and the public at large in seeking a Government Statement on the matter regarding the ICC process. I further appreciate the anxiety, uncertainty and desire for clarity on a matter as weighty as the ICC process. The voice of the Government, therefore, needs to be heard loud and clear in these circumstances which have never before been experienced in our country. I want to state here that I have had extensive consultations with His Excellency the President on this matter and, therefore, this is the official Government position on this matter.

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

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, I would like to retrace the journey to yesterday's announcement by Mr. Louis Moreno Ocampo so as to remind ourselves how and why we got to this point. I sincerely believe that some historical perspective is necessary in order to fully understand our present circumstances and to articulate a way forward on this matter.

Mr. Deputy Speaker, Sir, on 4th March, 2008, the eight Members of the Serena Dialogue Team signed an agreement as part of the National Accord for the establishment of a Commission of Inquiry on the Post Election Violence. The terms of reference of the Commission now known as the Waki Commission were:-

(1) To investigate the facts and surrounding circumstances related to the acts of violence that followed the 2007 Presidential Elections.

(2) To investigate the actions or omissions of State security agencies during the course of the violence and make recommendations as necessary.

(3) To recommend measures of a legal, political or administrative nature as appropriate, including measures with regard to bringing to justice those persons responsible for criminal acts.

The terms of reference of the Commission further provided that certain aspects of the Commission's Report may be kept secret in order to protect the identity of witnesses or the persons accused and, hence, the secret envelope. I will lay on the Table the Serena Agreement.

(Mr. Raila laid the document on the Table)

Mr. Deputy Speaker, Sir, the President appointed the Waki Commission vide Gazette Notice No.4473 of 22nd May, 2008. The Waki Commission submitted the Report on 16th October, 2008, which recommended, in Chapter 13, that a Special Tribunal for Kenya be set up as a court to investigate, prosecute and adjudicate on cases related to post election violence and to bring to justice those persons who were responsible for those criminal acts.

The Waki Report was discussed in the Cabinet and, subsequently, laid before this House on 4th December, 2008 and adopted on 27th January, 2009. I lay on the Table the record of the debate of the adoption, which is the HANSARD Report.

(Mr. Raila laid the document on the Table)

On 29th January, the Government introduced in the House the Constitution of Kenya (Amendment) Bill together with the Special Tribunal for Kenya Bill. After intensive debate, and with the President and the Prime Minister present and voting in favour of the two Bills, this House rejected the Bills on 11th February, 2009. I will lay on the Table the HANSARD record of the debate and the adoption of the Report, which includes the Division.

(Mr. Raila laid the document on the Table)

Mr. Deputy Speaker, Sir, on 8th July, 2009, Dr. Kofi Annan handed over the sealed envelope to the ICC. The Government then negotiated an extension of time with

Dr. Annan to allow it to introduce to the House the Bills on a local tribunal. Fresh Bills on a local tribunal were prepared but were rejected by the Cabinet on 14th July, 2009 and again on 30th July, 2009. Dr. Annan then forwarded the envelope to the ICC. Further, another appeal to form a local tribunal by hon. Imanyara became still-born in the House on 14th November, due to consistent lack of quorum. On 26th November, 2009, an application was filed before the ICC seeking authorization for investigations on the situation in Kenya to be commenced by the Prosecutor in Kenya in relation to the post election violence. Such authorization was granted on 31st March, 2010. I lay on the Table the ICC's decision here.

(Mr. Raila laid the document on the Table)

Mr. Deputy Speaker, Sir, I understand the events of yesterday to be as follows. Mr. Moreno Ocampo has completed his investigations of the situation in Kenya and submitted an application requesting the Pre-Trial Chamber of the ICC to issue summons to six persons to appear before it. The said application is based on Article 58(7) of the Rome Statute which provides as follows:-

“As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting the Pre-Trial Chamber to issue summons for the persons to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person who committed the crime as alleged and that a summon is sufficient to ensure the person's appearance, it shall issue the summons with or without conditions restricting liberty other than detention, if provided for by national law for the person to appear. The summon shall contain:-

- (a) The name of the person and any other relevant identifying information.
- (b) The specified date in which the person is to appear.
- (c) A specific reference to the crimes within the jurisdiction of the court which the person is alleged to have committed.
- (d) A concise statement of the facts which are alleged to constitute the crime.

The summons shall be served on the person. At this stage, none of the six persons named in the application have been charged. The six have not been a subject of investigations. The Pre-Trial Chamber will, therefore, have to review the application and the supporting evidence to determine whether or not there are reasonable grounds to believe that the persons committed the crimes alleged, and that summons be issued for them to appear before the ICC. If the Pre-Trial Chamber is not satisfied that there are reasonable grounds to believe that the persons who committed the crimes alleged, then no summons shall be issued. If on the other hand, summons are issued, then the six persons will be:-

- (i) Advised on the date to appear before the Pre-Trial Chamber.
- (ii) Provided with specific reference to the crimes which they are alleged to have committed.
- (iii) Provided with a concise statement of facts which are alleged to constitute the crime.

The six will have the right to challenge the admissibility of the cases of the jurisdiction of the court under Article 19 of the Rome Statute. If there are objections to their admissibility of the cases of the jurisdiction of the court are upheld, then the charges

shall not be confirmed. If, on the other hand, the charges are confirmed, they shall be referred to the Trial Chamber for prosecution. The six persons named in the application will be classified as under investigations only if summons are issued. As at today, what has been investigated is the situation in Kenya in which one or more crimes within the jurisdiction of the ICC appear to have been committed. Those amongst the six persons who hold public office may, therefore, continue to hold such offices until and unless summons are issued. Article 66 of the Rome Statute provides as follows:-

(i) Anyone shall be presumed innocent until proven guilty before the court in accordance with the applicable law.

(ii) The onus is on the Prosecutor to prove the guilt of the accused.

(iii) In order to convict the accused, the court must be convinced of the guilt of the accused beyond reasonable doubt.

The Prosecutor of the ICC is under the supervisory authority of the court at all stages of the process, including prior to the grant of the authority to investigate. The Prosecutor's role under the authority granted by the court was to investigate the situation in Kenya in order to determine whether or not crimes within the jurisdiction of the ICC may have been committed without directing any accusations against any particular person.

For the first time, the court will consider and determine whether there are reasonable grounds on which to summon any person on the basis of the evidence which, until yesterday, was not in the custody of the court. Going forward, we have, as a nation, the following options in order of priority.

(i) Under Article 17 and 19(2) of the Rome Statute, to establish a credible local process for the investigations and prosecution of the six persons. This will entail genuine willingness and ability to carry out credible investigations and prosecutions before a special tribunal or a reformed Kenyan Judiciary. The ICC will have to review and be convinced that the local process is credible before they cede jurisdiction.

(ii) Option two is that under Article 16 of the Rome Statute, we can seek a Resolution of the UN Security Council under Chapter 6 of the Charter of United Nations, deferring prosecutions of the six persons for a period of 12 months. This option is only available if the circumstances or situations contemplated under Chapter 7 with regard to threats or breaches of peace and acts of aggression apply.

Mr. Deputy Speaker, Sir, I would like to table the UN Charter.

(Mr. Raila laid the document on the table)

(iii) Option three is to withdraw from the Rome Statute.

(Applause)

Article 127 of the Rome Statute provides as follows:-

(i) A State party may, by written notification, addressed to the Secretary-General of UN, withdraw from this statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

(ii) A State shall be discharged by reason of its withdrawal from the obligations arising from this statute while it was a party to the statute, including any financial

obligation which may have accrued. Its withdrawal shall not affect any co-operation with the court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to co-operate, and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the court prior to the date on which the withdrawal became effective.

(iii) Option four is that we let the current process take its own course. The present circumstances shall call for calm and unity. We must exercise restraint and be judicious in our comments about the ICC process. As we seek justice for the victims of post-election violence (PEV), we must not visit injustice on innocent people. We must respect the presumption of one's innocence until proven guilty beyond reasonable doubt through a fair and open process. We must seek reconciliation by ensuring that there is justice for all. This is the august House. This is the National Assembly of the Republic of Kenya. The leadership of this country resides in this House. Therefore, it behooves hon. Members to be calm and cool in order to give guidance to the country to move forward.

(Applause)

Mr. Deputy Speaker, Sir, if we lose our tempers, we will drive this country to the abyss. This is not the time for chest thumping! This is the time for composure; to think for a way forward. Theatrics cannot extricate us from this situation. We must look for credible alternatives to the situation we find ourselves in today. Throwing accusations against each other saying: "So and So wants to put So and So into problems So that they can clear so and So out of the way", is not the way to get this country out of this situation.

(Applause)

We are on record with the President sitting here, voting for the establishment of a local tribunal. How many times did we plead to say that if you want reconciliation, then we can only do it if we have the process under our control? Then we can say: "So and so may have committed this and that but that is now past as a country. But if we throw this matter to The Hague, it is out of control." How come that the same people who were shouting: "Do not be vague; say Hague", can now have the temerity to come, stand up, shout and say; "So and So wants So and So out of the way?"

(Applause)

There is a Latin saying: "*Errare humanum est*" meaning; "to err is human." If you erred, own up and we will forgive you and let us move together as one country and as one people.

Thank you!

Mr. Deputy Speaker: We will take a few clarifications!

Mr. Mungatana: Mr. Deputy Speaker, Sir, I want to thank the Prime Minister. Indeed, this is what we wanted to hear yesterday. But he did not go far enough and this is where we want him to come clear on the position of the Government in terms of how we should go forward as a country. He has given us four clear options. But he has not stated

where the Government and the Cabinet wants this country to go. This discussion must somehow be directed, so that the country can remain calm and cool. I would like the Prime Minister to clarify, out of the four options, where the Cabinet is leaning and what, in terms of specific steps, they want to take so that the nation can move forward in this matter.

Mr. Ruto: Mr. Deputy Speaker, Sir, while I appreciate the Statement by the Prime Minister, I also could not understand where the Government Statement ended and where he started making personal statements. The reference to people who opposed or may have held different views about the local tribunal cannot be part of the Government Statement today. We are entitled to express our views and we are also entitled to express different views at different times, depending on the circumstances. But in this particular case, we do not want to be misunderstood. We are asking today about the alternative local judicial mechanism; not necessarily a local tribunal of The Hague. At that time, we had not promulgated the new Constitution. At the moment, we have a new Constitution that establishes an apparently much better judicial system. I think he referred to the same in his Statement. I thought he would have elaborated further on that instead of then getting into dangerous waters of trying to appear annoyed over, maybe, certain statements that may have been made. It is important that we draw a line between where the Government statement ended and where the personal statement by the Prime Minister started.

(Mr. M. Kilonzo stood up to speak from the Back Bench)

Hon. Members: No way!

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order, Mr. M. Kilonzo!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I am offering information to the Prime Minister. I want to supply information to the---

(Several hon. members stood up in their places)

Mr. Deputy Speaker: Order! Mr. M. Kilonzo, you have been in this Parliament for a long time. This is your second term, I presume. You realize that Ministers can only address the House from the Dispatch Box. If you have resigned from your position, you might as well tell us. Have you resigned as the Minister for Justice, National Cohesion and Constitutional Affairs? Under the circumstances, while you are trying to move to the Front Bench, I will allow Mr. Imanyara to proceed.

Mr. Imanyara: Mr. Deputy Speaker, Sir, I appreciate what the Prime Minister has indicated to the House and I fully share his concerns about this country's stability and calmness. In order to facilitate that status of our calm to enable the matter to be dealt with in a manner that is consistent with what the Prime Minister has said – he has said it is a Government concern - would he, now that he has confirmed that, indeed, proceedings are alive at the ICC and that the ICC is very much part of the Kenyan judicial process in

terms of the International Crimes Act that we passed in this House--- In those circumstances, would the Prime Minister agree with me that it is not proper or right that we should be entertaining any form of discussions on a matter that is pending in court in terms of Standing Order No.80 of this House?

Hon. Members: No!

Hon. Members: Yes!

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

I want to thank the Prime Minister for that elaborate statement. However, I want him to clarify his sense of justice; if justice can be balanced in terms of particular numbers from each political divide. Why was it necessary that the list was reduced from ten to six? If the idea is to identify who has committed a crime, I could imagine even ten or 20 persons could come from one particular side of political divide.

Mr. Kutuny: Bw. Naibu Spika, ninataka thibitisho juu ya mkutano wa faragha uliofanyika kati ya Bw. Ocampo, Waziri Mkuu na mhe. Rais wa Jamhuri ya Kenya. Inadaiwa katika mkutano huo, Bw. Ocampo aliwataka Waziri Mkuu na mhe. Rais kutia sahihi mkataba kuwa hawatakuwa vizuizi au pingamizi juu ya kukamatwa na kushitakiwa katika korti la kimataifa washukiwa wakuu wa ghasia na fujo iliyokumba nchi hii baada ya uchaguzi mkuu. Je, ni ukweli Waziri Mkuu alikuwa tayari kuweka sahihi kukubaliana na mkataba huo na huko Rais akikataa kutia sahihi mkataba huo? Je, huo ni ukweli wa mambo yaliyotokea katika mkutano huo wa faragha au ni porojo?

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

Mr. Deputy Speaker: Order! Hon. Kutuny, the Right Hon. Prime Minister wants you to repeat your clarification. For God's sake, could you put it in a language that is understandable to all? It is true that you are very good in that language, but could you put it in a language that all of us can understand.

Mhe. Kutuny, uliza swali lako kwa lugha inayoeleweka.

Mr. Kutuny: Bw. Naibu wa Spika, nitautiliza swali langu kwa lugha rahisi ili kila mtu aielewe.

Je, ni ukweli kulikuwa na mkataba kati ya Bw. Ocampo, Waziri Mkuu na Rais? Je, ni ukweli mkataba huu ulishurutisha Serikali isiingilie kati wakati korti la kimataifa litawakamata washukiwa hawa sita na kuwa wao hawatakuwa vizuizi na watakuwa tayari kuwashika washukiwa hawa? Inasemekana kulikuwa na mvutano kati yenu wawili. Waziri Mkuu alikuwa tayari kutia sahihi yake katika mkataba huo lakini Rais alikataa katakata kutia sahihi na kusema sheria ifuate mkondo wake. Je, mkataba huu ulinyima Serikali mamlaka yoyote juu ya washukiwa hawa? Ninataka Waziri Mkuu athibitisha madai hayo.

Mr. Mwadeghu: Hoja ya nidhamu, Bw. Naibu Spika. Je, ni vyema kwa Mhe. Kutuny kuleta usabasi na umbea ndani ya Bunge ambao hawezi kuuthibitisha?

(Several hon. Members stood up in their place)

Mr. Deputy Speaker: Order! Order! Allow the hon. Minister to respond to the clarifications that were sought.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Prime Minister, do you wish to be informed by the hon. M. Kilonzo?

The Prime Minister (Mr. Raila): Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Proceed, hon. M. Kilonzo!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I want to thank the hon. Prime Minister for his statement. I would like him to clarify to the House and the country that the option that he has given of withdrawal from the Rome Statute would nevertheless, leave the country still exposed, particularly the citizens who have been named.

Mr. Deputy Speaker, Sir, I want to inform the Right Hon. Prime Minister that Article 2 (5) reads as follows:-

“The General rules of international law shall form part of the Law of Kenya”.

Hon. Members: No! No!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): This is the information for the Prime Minister. It is not for anybody else. It is up to him to use it or not.

Mr. Deputy Speaker, Sir, therefore, the fact of that matter is that a withdrawal of Kenya from the Rome Statute does not solve the problem that we have. The Germans who were prosecuted during the Nuremberg Trials, in fact, the Rome Statute had not yet been executed. In fact, the son of Tailor was arrested by the United States and he was subjected to prosecution under customary international criminal law.

The Kenyans whom we may think we want to protect by withdrawing from the Rome Statute would be left without any protection under the international criminal law. That is the information to the Prime Minister.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, hon. Mungatana wanted to know the options preferred by the Government out of the four options.

Mr. Deputy Speaker, Sir, the Cabinet met this Monday and came out with a resolution that the Government will continue to pursue the option of a local judicial process, as stated. You remember that the Cabinet approved the Bills which were brought here to the House seeking the establishment of a local tribunal. Unfortunately, they were shot down. Now, the circumstances have changed and the Cabinet took note of this and resolved that we pursue a local option, which includes setting up a local credible judicial process to deal with this matter. That is also the same question that hon. Ruto was interested in.

The other one as to where the Government statement ended and personal one started, is academic. Everything that I said was said on behalf of the Government.

Mr. Deputy Speaker, Sir, hon. Imanyara wanted to know about the law of sub-judice in this particular case. All I want to say is that as things stand right now; these people are presumed to be innocent because there is no trial that has been instituted against them. That is why I have said that they will continue to exercise their duties as officials of the Government until such time that the situation has changed.

Mr. Deputy Speaker, Sir, I could not agree more with hon. Ethuro about the balancing; you take so many from the ODM and so many from the PNU to appear to be fair to both sides. That is trying to politicise what is purely a judicial process, and I do not agree with that at all. What should have been important would have been to look for the

real culprits. I do not even understand why some people received notifications that they were under investigations, and were asked to make some comments, while others were completely unaware that they were even suspects at all. I do not understand that at all.

Bw. Naibu wa Spika, yale ambayo Bw. Kutuny alisema---

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. It is very clear in the Standing Orders that you do not mix the languages. Is the Prime Minister exempted from that particular Standing Order?

Mr. Deputy Speaker: Hon. Prime Minister, indeed, unless you sit down and come up again on another clarification, you cannot mix the two languages on the same clarification. So, can you proceed and complete in the language you started?

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I think this is an issue to which the Standing Orders Committee will have to apply itself more, because if you are asked several questions by different individuals and the language is mixed, is it in order, since you are the same person who is answering, to insist on answering in the same language? This question was asked in Kiswahili. So, I am just saying that, that is a matter which can be dealt with by the Standing Orders Committee. As you have said so, I can go on and answer in English.

First, hon. Kutuny is right in certain aspects. He says that there was a meeting amongst the President, the Prime Minister and Mr. Moreno Ocampo. They were the only three in the room where the meeting took place. There was not another person. Unless walls speak, how does he know what the three people were discussing? So, that is what I call "gossip" or cheap rumours; the relationship between the ICC and the Government of Kenya is contained in an agreement which was signed between the Government and the ICC on the court's operations in Kenya.

The agreement was signed on behalf of this Government by none other than the Minister for Foreign Affairs, hon. Moses Wetangula, and the Registrar of the ICC. Those are the ones who signed that agreement. So, Mr. Moreno Ocampo could not have asked the President, or the Prime Minister, to co-operate by signing the agreement. The agreement was already signed. So, that could not have been a basis of our discussions. We were discussing much higher issues than those mundane issues.

Mr. Keter: On a point of order, Mr. Deputy Speaker, Sir. I am just asking whether you can use your discretion to allow further clarification.

Mr. Deputy Speaker: Yes, you are supposed to seek clarification.

Mr. Keter: Thank you, Mr. Deputy Speaker, Sir. While appreciating the Statement by the Rt. Hon. Prime Minister, I just want to ask him whether he is satisfied that all the three named persons, supposedly from the ODM side, come from the same community? I just wanted to ask him whether he is satisfied about that fact.

Mr. Muthama: Jambo la nidhamu, Bw. Naibu wa Spika. Ningependa kumuuliza Waziri Mkuu afafanue jambo hili. Tukiwa hapa kama viongozi, tuna wajibu wa kuwaambia Wakenya ukweli. Jambo ambalo liko mbele yetu hivi sasa linatoa mtaharuko mkubwa sana, na limefanya Bunge hili lisiendeleo na shughuli nyingine. Ningependa Waziri Mkuu afafanue kinaganaga kwamba kwa kweli jambo ambalo lilo mbele yetu lilisababishwa na uchaguzi wa mwaka 2007.

Kwenye orodha ya wale watu walioweza kuhojiwa na Bw. Ocampo, hakuna hata mmoja wa vinara waliotaka uongozi wa nchi hii. Yeye, kama kiongozi, na wale viongozi wengine, wangekuwa katika msitari wa mbele na kujitolea kutoa ushahidi. Imekuwaje

mtu aliyetoa amri ya kulindwa, kupigiwa kura na kusema kwamba kura zake ziliibiwa, na kura za mwingine hazikuibiwa, asiwe kwenye orodha ya Bw. Ocampo, na wale waliokuwa “wakifagia” barabara wawe ndio walio kwenye ile orodha?

Tunataka jambo hili lifafanuliwe kwa kinaganaga kwa sababu hatutaki kukaa hapa na kucheza mchezo wa paka na panya.

Mr. Deputy Speaker: I will take two more clarifications and then the Rt. Prime Minister will respond.

Yes, hon. Konchella!

Mr. Konchella: Mr. Deputy Speaker, Sir, the clarification I would like to seek from the Prime Minister is as follows. We have had a constitutional review process in this country, and the new Constitution was promulgated on 27th August, 2010. This process will end by the year 2015, when the enabling Acts will have been enacted by this House to operationalise the new Constitution of Kenya. Therefore, to meet that threshold, this country requires proper governance.

Secondly, we have the ICC process, which is supposed to handle a certain situation and manage the problems we have had because of the election that we had. We also have the national reconciliation process, which is also supposed to take place, so that the people of Kenya can come together, and so that by the time the new Constitution becomes fully operational, the people are able to live in peace and harmony. Why are we, therefore, allowing this nation to go down? We know that there is going to be a problem? We must go the way of peace.

Mr. Deputy Speaker, Sir, there is the national interest and the general international concern. Ours is the national interest. Our national interest is putting this country together to allow the processes to go on. If the ICC wants to come and take away anybody from Kenya, let them come after 2015, when we will have gone through all the processes we have set ourselves to. If there will be any other problem thereafter, that will be the time they should come and collect whoever they will want to get. Now, saying that people should go to the Hague when we are in the process of re-building this nation, or bringing our people together, is not advisable.

In this regard, therefore, the President and the Prime Minister have a duty to tell us whether we want a nation that is together, and which can go on until the operationalisation of the new Constitution is realised, or they just want to cause havoc.

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

Mr. Deputy Speaker: What is it, Mr. Lessonet?

Mr. Lessonet: Mr. Deputy Speaker, Sir, I want to seek two clarifications from the Prime Minister.

Mr. Deputy Speaker: Seek one clarification on the Prime Minister’s Statement.

Mr. Lessonet: Mr. Deputy Speaker, Sir, I just want to ask the Prime Minister the following, now that he has indicated to us that he is very clear in his mind that there is a new Constitution, which can definitely enable us to handle the situation far much better than Mr. Ocampo can do, especially in the spirit of trying to heal this nation--- I was wondering, Mr. Prime Minister, whether your Government can write to the UN Security Council to request them to defer the actions of Mr. Ocampo. I am sure that such an action is possible, so that during that period, we can activate a local process?

Mr. Mwiru: Thank you, Mr. Deputy Speaker, Sir. I am happy that the Prime Minister has been able to give this Statement. He has also confirmed to this House that he

was able with his co-principal to have sat down with Mr. Ocampo. There have been talks in the air that there was a Waki envelope. I am not very certain whether during that talk, that they were promised that there were only six people in that envelope. I am afraid that they could have been more and that they could even target even our two principals and that we might be left even without leaders in the future. So could he confirm to this House that the envelope contained only six names and that we are not anticipating to have another envelope that will take us to The Hague as well?

The Prime Minister: Mr. Deputy Speaker, Sir, hon. Keter wanted to know why only the three people who were named from the ODM side come from one community. That is a question that I would also ask because I am not the one who prepared the list. That question should be directed to Mr. Moreno Ocampo and not Raila Odinga. But it is not the communities. It is basically the individuals and I said myself that it is puzzling that somebody can come up and say; I want to be fair and, therefore, I will take three from one side and another three from this other side. Unless there is culpability because there must be culpability and that should be the guiding principle. It is not just picking up names in order to appear to be fair. That itself is an injustice. But we have time to wait and see as these things unfold. I want you to know that I am the party leader of the Orange Democratic Movement of Kenya (ODM). My deputy party leader and my chairman are there. Therefore, I am the most agonized person. If you leave the community out of it and know that I am the leader of the party and these people are members of my party, therefore, I feel it as much as you feel it.

Hon. Muthama wanted to know why the candidates were not interviewed. The candidates were not choosing those who were supposed to be interviewed. It was Ocampo who chose who to interview and who not to interview because otherwise that way, you will be directing investigations and you see that investigations should be objective, free and fair. Therefore, we did not choose the Hague option. We did not invite Mr. Ocampo to come here, neither did Mr. Ocampo invite himself. Mr. Ocampo came into the picture as a result of our own failure to set up a local tribunal to deal with these issues. Mr. Ocampo even waited, he said; “ try, first, to reconsider the matter before ICC comes in.” Koffi Annan pleaded with us and told us that the ICC is not a good option for your country because once the ICC gets involved, it becomes very difficult to remove them. That is why Koffi Annan stood up---

(Several Members stood up in their places)

Mr. Deputy Speaker: Why do you not allow the hon. Prime Minister to conclude and then you can rise?

The Prime Minister: Mr. Deputy Speaker, Sir, Koffi Annan could have handed over the envelope to ICC on 2nd February, but he did not until July. In other words, he waited for five months for us to organize ourselves. We did not. So let us blame ourselves.

Hon. Konchella talked about truth, justice and reconciliation. That is what we said that we need to reconcile this society when we get the new Constitution so that we can move together as one united country. But hon. Konchella said also that we should not try the Hague option. I have just quickly checked the list of the voting, the Division that day; hon. Konchella voted for the Hague.

(Loud consultations)

(Mr. Konchella stood up in his place)

Mr. Deputy Speaker: Have you been adversely mentioned? Are you sure you have not been mentioned? Saying that you voted for The Hague option is not adverse mentioning.

Mr. Konchella: Yes, Mr. Deputy Speaker, Sir, but I think I want to clear something here.

Mr. Deputy Speaker: What is your point of order?

Mr. Konchella: Yes, I voted for The Hague because we did not expect the process here--- I voted for The Hague because we believed that even our judicial process could not handle the problem. I am not talking about the withdrawal from the Hague process but postponement of the Hague process until 2015 when our laws will be in order so that they can come and see whether they need to take anybody or not.

The Prime Minister: Mr. Deputy Speaker, Sir, I am afraid that is not in our hands because the ICC has got its own procedures. Once it is engaged, it moves in accordance with its own rules. We cannot tell them: Do not come today, come in 2015 or 2020. I have articulated in great details, the manner in which we can extricate ourselves from the ICC process without chest-thumping. I have also mentioned that it is possible for us to go to the UN Security Council and ask for a referral. Hon. Lessonet was asking about this. This is the possibility. I mentioned four different options but to follow them, it means that you have to begin the process of setting up a credible local process to deal with this matter. Otherwise, you cannot just go and say; we want you to defer this process without coming up with something solid and substantive that this is what we are doing or we have already done or give us time to do abcd. So, this is an option but it is one among others. We are exploring the option of setting up a process and then asking for a referral to our local process.

Hon. Mwiru wanted to know whether there were only six names in the Waki envelope. That is a question that only Justice Waki can answer because as you remember, that list was secret and there were a lot of speculations. It was mentioned that the names of Raila Odinga, Dr. Monda, hon. Eugene Wamalwa, among others, were in it and so on. But, ultimately, Mr. Ocampo has only come with these six names and he is saying that he is leaving the rest to Kenya to deal with. So, Mr. Ocampo has said that he is only dealing with six cases but he is leaving the rest to Kenya to deal with.

Mr. Deputy Speaker, Sir, let me say, in conclusion, that we look at this as a journey. We have a journey and a responsibility to the people of this country. It is important that we move together as a united country and we do not try to apportion blame and throw punches left, right and centre at a time like this. It is important that this House speaks with one voice and remain sober and looks at credible alternatives that are available for us so that we can explore. We must also have the interest of our other people at heart. If we go forthwith and say that we withdraw from the International Criminal Court (ICC) and it still proceeds with the cases, then where are we? Sudan is not a signatory to the ICC and yet, Mr. Al Bashir has been indicted and cannot step in any country in Europe or, the United States of America (USA). Now, remove Al Bashir and

put our six people there. If we say that we are throwing out the ICC, then we are condemning our people to be parias and yet some of them are innocent but cannot travel anywhere. You are the Minister for Finance but you cannot go and negotiate with the International Monetary Fund (IMF) or World Bank because you will be arrested. Will we help them that way? It is time for us to be cool and not emotional and find credible solutions for this country and for the six people.

Mr. Deputy Speaker: I will take two more clarifications and that will be the end of it.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Prime Minister to continue to mislead the House that the setting up of a local tribunal is actually a Rome Statute requirement while on the preamble, paragraph 10 says:- “Emphasizing that the ICC as established under this Statute shall be complementary to national criminal jurisdictions.”

It goes ahead under Article 17(3) to state as follows:-
“In order to determine inability in a particular case, the courts shall consider whether due to total substantial collapse or unavailability of its national judicial system---“

We are either admitting that there is a total collapse or almost collapsing. Because of that, the state is unable to obtain the accused who are around with us or the necessary evidence which they ought to be able and testimony or otherwise unable to carry out its proceedings. There is nowhere there is a major requirement for a local tribunal. That was the business of Waki. I ask the Prime Minister to confirm whether the Government of Kenya is today telling Kenyans and the whole world that our judicial system has totally collapsed or has substantially collapsed. We want that clarified even under the new Constitution, whether this situation continues to obtain.

Mr. Deputy Speaker: That is a clarification.

Mr. Prime Minister, could you take another clarification, then we dispose of this matter.

Mr. Njuguna: Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to also echo my observations. First of all, let me thank the Prime Minister for issuing this desired Statement. In addition, I urge him to give full assurance to the nation that the peace, stability and economic growth realized in the last three years would not be disrupted by the current predicament in the nation.

Dr. Nuh: Mr. Deputy Speaker, Sir, in answering the questions that were asked, the Prime Minister stated that the Cabinet has resolved to pursue a local judicial system. I want him to clarify whether this is mutually exclusive or it goes parallel to the ICC.

Mr. Deputy Speaker: Mr. Oyongo Nyamweya, the Chair has considered you. Proceed!

Mr. Oyongo Nyamweya: Mr. Deputy Speaker, Sir, I am happy with what the Prime Minister has said but he has said that the Cabinet met and agreed to go for a local solution. Kenyans are anxious. Could he come up with a time frame when that can be implemented so that we can know that the Cabinet made this decision? Even the House can stay here to form a local tribunal so that this issue is resolved and the nation knows where it is going.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, to respond to Mr. Njuguna’s clarification, the President issued a Statement yesterday to say that the Government shall ensure that peace and stability is maintained in the country during this

period. I want to assure the House that measures have already been taken to ensure that lives are not threatened and that business activities around the country are not disrupted as a result of the ICC issue. On Dr. Nuh's clarification whether you have the process at the ICC or locally here, you cannot have a dual process; that, one is proceeding at the ICC and another one is proceeding locally here. That is what the lawyers call double jeopardy; that, somebody being tried twice for the same offence. That is why there is that provision for referral to a local jurisdiction once capacity has been established. Mr. Oyongo Nyamweya has asked about the time frame. There is a process that must be initiated. First, is the judicial reforms and certain appointments must be undertaken. We must show that we have the capacity for carrying out investigations and so on. So, it is not just a question of passing a law in this House. We need a little time but our estimation is that we can be able to initiate this process before April when the ICC is likely to move to the next phase. With determination, it can be done.

Mr. Temporary Deputy Speaker, Sir, Mr. Ruto is looking at the wrong Article of the ICC. It cannot be found in the preamble. Article 17 is about issues of admissibility. This is because we are dealing now with a *fait accompli*. You are already in the ICC. How do you get out of it? It is not a question of whether you deserve to be there or not. You are there not by invitation of the ICC but you took yourself there. You said that you did not have the capacity and that you had no confidence in the local judiciary; that it was very corrupt and compromised. That is why Mr. Ruto voted for Hague and said; "Do not be vague, say Hague". So, he is the one who took us there.

Mr. Deputy Speaker, Sir, the Article that Mr. Ruto needs to look at is Article 19 which states that the court shall satisfy itself that it has jurisdiction in any case brought before it. The court may on its own determine the admissibility of a case in accordance with Article 17 that can be brought before it. Like this case was taken to the ICC by the Government of Kenya. Number two says that the challenges to the admissibility of a case on the grounds referred to in Article 17 or challenges to the jurisdiction of the court may be by:-

(a) An accused or a person for whom a warrant of arrest or summons to appear has been issued under Article 15.

(b) A State which has jurisdiction of a case on the ground that it is investigating or prosecuting the case or has investigated or prosecuted the case.

Mr. Deputy Speaker, Sir, this is the relevant article that we can go to the ICC and state that we are prosecuting the case or we have investigated and we are prosecuting. That is how to exit. So, we are not talking about exit. This is because once you are there, you cannot just say; "I am walking out" by voting in Parliament that you are pulling out of the ICC. That will not terminate the cases which are already before the ICC, if that is what you intend to do. Let us do this thing in a civilized way which will help this country and maintain the credibility and dignity of this country and also help the accused persons. This is the only way forward. Let us not play to the gallery than helping the people and the case.

POINTS OF ORDER

PETROL-BOMBING OF JAMES NG'ANG'A ALONG
FOURTH PARKLANDS AVENUE

Mr. Mbugua: Mr. Deputy Speaker, Sir, I wish to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security.

In his statement, I would like him to clarify whether he is aware that Mr. James Kiarie Ng'ang'a, who was the personal driver of Mr. Ashok Rupshi Shah, the Managing Director of Abacus Limited, was petrol bombed on 10th May, 2010, along the Fourth Parklands Avenue within Nairobi area and died. He should also clarify to this House why Mr. Hiten Kumar Raja, who was a suspect in the case, has not been arraigned in court to date. He should further clarify why Nuri Akasha alias Tinta has been accorded 24 hour security while extorting money from investors, harassing and threatening them. Is this another Magaryan affair? He should also state the action he is taking against Mr. Nuri Akasha for having threatened and extorted money from one investor, a German national, Mr. Stephen. The case was reported to Nyali Police Station on 11th October, 2010, and nothing has been done since Nuri Akasha alias Tinta is said to have police escort and is deemed to be very powerful and connected to high authorities.

The investor has also written to the Police Commissioner, Mr. Mathew Iteere. However, no action has been taken to date.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I will check and give an elaborate Statement on Wednesday morning.

Mr. Deputy Speaker: It is so directed!

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

Mr. Deputy Speaker: Order! You have been given an undertaking on the Statement. Could you take your seat!

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

Mr. Deputy Speaker: Order, hon. Sonko!

(Laughter)

BRUTALIZATION OF HON. WAMALWA BY POLICE

Mr. Kombo: On a point of order, Mr. Deputy Speaker, Sir. I had sought a Statement from the Prime Minister on the police brutality at Kamukunji meted on hon. Wamalwa. The Prime Minister was not here, but the Vice-President and Minister for Home Affairs and the Leader of Government Business promised that the Prime Minister will issue a Statement as soon as he comes. Now he is here.

Mr. Deputy Speaker: Right hon. Prime Minister, it is the recollection of the Chair that the Vice-President and Minister for Home Affairs gave an undertaking on your behalf.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, we referred that issue to the Minister of State for Provincial Administration and Internal Security. This is the subject of the Question by hon. Shebesh, which I hope hon. Ojode has undertaken to respond to next week.

Mr. Kombo: Mr. Deputy Speaker, Sir, we were told that the Prime Minister is the supervisor of all Government Ministries.

Mr. Deputy Speaker: The Prime Minister attends to issues that are cross cutting in the sense that they affect two or more Ministries. Indeed, that matter is only within the docket of the Minister of State for Provincial Administration and Internal Security. It is the responsibility of that Minister to give an undertaking. Hon. Ojode, could you, please, give an undertaking on the same?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, we have two issues here. There is a Question by Private Notice by hon. Shebesh and then there is also a Ministerial Statement. I do not know which one you want me to respond to. Would it be the Question or both?

Mr. Mbuvi: On a point of order, Mr. Deputy Speaker, Sir. Yesterday, I sought a Ministerial Statement---

Mr. Deputy Speaker: Order! Can you allow the Chair to dispose of one matter at a time? Indeed, the Chair has recognized that the Ministerial Statement you sought and the Question by Private Notice by hon. Shebesh are very similar. Did the Chair give a direction on when this Question will appear on the Order Paper again? It will appear on Tuesday. Under the circumstances, the Chair will give the kind of leeway for that Question to be interrogated to the fullest to also accommodate hon. Kombo's Statement on the same.

Fair enough!

ARREST OF HON. WAITITU BY POLICE

Mr. Mbuvi: Mr. Deputy Speaker, Sir, yesterday, I sought a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the harassment and arrest of hon. Ferdinand Waititu.

Mr. Deputy Speaker: Order! When you seek a Ministerial Statement and it is listed for today, you wait for the Minister to deliver it. You do not rise on a point of order.

Mr. Mbuvi: Much obliged, Mr. Deputy Speaker, Sir.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I have five Ministerial Statements to deliver. I would seek your advice that I deliver all of them at once.

Mr. Deputy Speaker: Due to the constraints of time and the fact that there is a very important substantive business before the House today, you will be allowed to deliver the one that concerns the hon. Members of this House and the rest of them will be deferred to other dates. Proceed!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, before I deliver this Statement, I would like to confirm that in the morning, hon. Mungatana rose on a point of order and wanted to know whether Amb. Muthaura paid for the advertisement. I will give evidence to the fact that Amb. Muthaura paid for the advertisement and not the Government. I wish to table the receipt which was given to Amb. Muthaura for Kshs1.5 million. The receipt is hereby tabled and copies of the LPOs which were given are also here for hon. Mungatana to peruse. I believe he will be satisfied that Amb. Muthaura, indeed, paid for the advertisement.

(Mr. Ojode laid the document on the Table)

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. The Statement that we sought was not restricted to just the question of payment. The HANSARD will bear me out. The main issue was the utilization of the emblem of the Coat of Arms. I want to draw the attention of the House to the fact that the National Flag, Emblems and Names Act, Cap 99 of the Laws of Kenya makes it very clear. Indeed, the Constitution that we passed makes it very clear under Section 9 (2) that these are national emblems that cannot be utilized in the manner in which the Assistant Minister has tabled, in fact, as advertisement for a personal statement.

Mr. Deputy Speaker, Sir, there are issues there and, indeed, criminal responsibility under Section 3 of the Act. So, it is not just a question of one issue. I would want the Assistant Minister to look at it and bring a proper Statement before the House. I beg that the Statement be treated with the gravity that it requires.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: That is fair enough. That part of the Statement you sought which, in the view of the Chair, is not so urgent, will be delivered by the Assistant Minister – at the moment he is going to give an undertaking – but as far as the payments for the advertisements are concerned, the relevant documents have been tabled and the Chair is satisfied that they are authentic.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, you will agree with me that Amb. Muthaura is still the Chief Secretary.

Mr. Deputy Speaker, Sir, I will give a scenario where hon. Ojode was a Member of Parliament without being a Minister and my business card had the emblem of the crown. I know for sure that a majority of my colleagues are also using business cards which have the emblem. So, I do not think there is any big grudge on that.

(Applause)

Mr. Deputy Speaker, Sir, can I make progress?

Mr. Deputy Speaker: Proceed!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, I will defer the Statement on insecurity in Kericho Town for next week. I will defer the one of Martin Opiyo Ouma for next week---

Mr. Deputy Speaker: Order! You do not defer; it is the Chair that defers!

(Laughter)

Proceed!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, the Chair actually has allowed me to issue one Ministerial Statement. For purposes of those who sought the Ministerial

Statements, they should also know that I am ready, but because of time, I will not be giving them. With regard to insecurity in Turkana County---

(Loud consultations)

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I appreciate your ruling and I think hon. Ojode is abiding by your ruling. But is it really fair for this House to think of their own hon. Member as opposed to the people in Turkana who are being killed because of frequent insecurity? This insecurity has been there for three months concurrently. I think just as important as it is for hon. Members first, then we must also ensure that the citizens we represent are also factored in. I demand for my Statement because I have been seeking for it for the last one month.

Mr. Deputy Speaker: Order, hon. Members! You realize that we are in unusual times. It is extra-ordinary time in the sense that we have business to transact that touches on the very foundation of our own State, including the need for us to operationalize the newly promulgated Constitution. That is the substantive business of the House. I do realize and I am as much as you are touched by the insecurity in Turkana. The Chair now will direct that you give that Statement on Tuesday without fail.

Proceed now and issue the Statement on the hon. Member!

MINISTERIAL STATEMENTS

ARREST OF HON. WAITITU BY POLICE

The Assistant Minister, Ministry of Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I wish to give the following Statement. It is a short one.

Mr. Deputy Speaker, Sir, on 15th, hon. Mbuvi asked for a Ministerial Statement on the manhandling and arrest of hon. Ferdinand Waititu, the Assistant Minister for Water and Irrigation by police officers on 13th December. The hon. Member sought clarification on the circumstances under which hon. Waititu was manhandled by the police and whether the manhandling sent a bad image to the public and the world. He also wanted to know the actions that will be taken against the Commissioner of Police who gave the orders to the police to manhandle the Assistant Minister. Further, he wanted to know when the police reforms will be implemented and the Inspector-General be appointed in line with the new Constitution. Finally, he wanted a clarification on whether the Government is aware that the current Commissioner of Police, Mr. Mathew Iteere, is not qualified to be an Inspector-General as per the new Constitution.

Mr. Deputy Speaker, Sir, I wish to state as follows. On 13th December, 2010, police officers under the command of OCPD, Embakasi, SSP David Rono Bunei, were providing security during the execution of a court order by auctioneers acting on behalf of Supplies and Services Ltd within Kiang'ombe Slums, which is in Langata Constituency. I have the court order here and I will table it for the hon. Member to peruse. The hon. Member for Langata Constituency is the Right Honorable Prime Minister, Raila Amolo Odinga.

Mr. Deputy Speaker, Sir, the exercise started off well and was going on smoothly until hon. Waititu, the hon. Member for Embakasi, arrived at the scene and started inciting the squatters to resist eviction. The hon. Member went on and even threatened the OCPD that if the eviction will not stop, "somebody was going to die." Due to the incitement, the public became rowdy and started stoning the police. This prompted the OCPD to order the arrest of hon. Waititu, who was immediately escorted to Industrial Area Police Station where he was placed in police custody. A case file, Police Criminal Case No. 151/329/210 was immediately opened. The hon. Member was later released on a cash bail of Kshs10, 000 to appear in court at a later date. At no time was the hon. Member manhandled. He was arrested---

Hon. Members: No! He was!

Mr. Deputy Speaker: Order!

The Assistant Minister, Ministry of Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, he was arrested and handled with the respect and dignity---

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

Mr. Deputy Speaker: Order!

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Order, hon. Members! Order, hon. Waititu! Order, Dr. Nuh! Order! Allow the Assistant Minister to conclude giving the Statement!

The Assistant Minister, Ministry of Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, he was arrested with respect and dignity befitting his status!

(Loud consultations)

The Assistant Minister for Lands (Mr. Bifwoli): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, hon. Bifwoli!

The Assistant Minister, Ministry of Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, after the arrest of the hon. Member, the situation normalized and---

The Assistant Minister for Lands (Mr. Bifwoli): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, hon. Bifwoli! You can rise on a point of order after the Assistant Minister has concluded giving the Statement.

Proceed, Assistant Minister!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, the situation normalized and the eviction proceeded very well.

The Commissioner of Police did not at any one time order the manhandling of the hon. Assistant Minister. His arrest and subsequent incarceration was necessitated by his behaviour and acts which were in breach of the law; therefore, the Government is not contemplating any action against the Commissioner of Police.

Mr. Deputy Speaker, Sir, police reforms are on course, as you all know. The implementation started way back with the appointment of the Police Reforms Implementation Committee; it has a secretariat and is headed by Mr. Titus Naikuni. In addition to this process, the National Police Service Commission Bill and Police Oversight Authority Bill are also in the process of being drafted for presentation to Parliament.

Finally, the Government is not aware that the Commissioner of Police is not qualified to be appointed as an Inspector-General of Police. If you refer to Article 245(1) of the Constitution, it establishes the office of the Inspector-General. Article 245(2)(a) gives the President authority to appoint the Inspector-General, with the approval of this august House. However, the whole process is dependent on the passage of the following Bills:

1. The National Police Service Bill;
2. The National Police Service Commission Bill; and
3. The Police Oversight Authority Bill.

This is as envisaged in Article 245(8), which states in part:

“Parliament shall enact legislation to give full effect to this Article”.

Therefore, the Inspector-General shall be appointed subject to the above provisions of the law; this is also dependent on the establishment of the Constitution Implementation Commission by this Parliament.

The Assistant Minister for Lands (Mr. Bifwoli): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Bifwoli, if you want to rise on a point of order you had better come to address the House from the Dispatch Box.

Proceed, Mr. Bifwoli.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Deputy Speaker, Sir, is the Assistant Minister in order to mislead the House by telling us when one Assistant Minister was arrested and beaten in front of Press cameras, and he says it was honourable? Is it honourable for Ministers to be beaten and manhandled in front of Press cameras? We want protection.

Mr. Deputy Speaker: Mr. Bifwoli, you are out of order.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. I do not know whether you noticed that when Mr. Ojode was answering our questions, he was pointing fingers at the hon. Members who were rising on points of order. Is the Assistant Minister in order to intimidate us in a manner to suggest that if we persist in our points of order, he will manhandle us as he manhandled Mr. Waititu?

(Laughter)

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I never realized that we have people who are cowards!

(Laughter)

I will never threaten anybody. These are my colleagues and sometimes, we exchange jokes. But nothing will happen to him; he is in safe hands.

Mr. Mbuvi: On a point of order, Mr. Deputy Speaker, Sir. I wish to table the eviction order served on the police by Mr. Mansukhlal Shantilal Patel, the Director of Supplies and Services Limited, the plaintiff in case No.3970.

Mr. Deputy Speaker, Sir, as per the orders served, the eviction was supposed to be effected on one plot; that is, LR No.209/11126. Could the Assistant Minister clarify why Mr. Patel, under the supervision and assistance of the police, went ahead and demolished houses belonging to poor citizens of this nation on LR Numbers: 209/11249, 11250, 11126, 11309, 11125, 11410, 12110, 11312, 11311, 11310, 11254 and 11255.

Further, could the Assistant Minister table the academic qualifications of the Commissioner of Police, Mr. Mathew Iteere.

Ms. A. Abdalla: Mr. Deputy Speaker, Sir, in making his Ministerial Statement, the Assistant Minister did say that Mr. Waititu was arrested in a manner that signified his position. I saw the manner in which he was arrested. This particular Assistant Minister came to this House and tried to defend an incident where chiefs were beaten and almost castrated in Wajir North; now, he is saying that it is normal for somebody to hold an hon. Member's trousers and put him into a Land Rover. That was an Assistant Minister. What would happen to me, a mere nominated MP if this Assistant Minister is made to answer---

Mrs. Shebesh: Mr. Deputy Speaker, Sir, it is not the first time that we have seen the manhandling of this particular Assistant Minister and the Member of Parliament for Embakasi, neither is it the first time we are seeing the manhandling of Nairobi MPs, because of having to always deal with court orders that are effected by police, and who behave as has been narrated. Could the Assistant Minister tell us, at what point will he allow MPs of Nairobi to do their work, instead of having to tackle policemen who remove women and children from their homes when the court order clearly states where to evict and where not to evict?

Mr. Deputy Speaker: The last supplementary question, Mr. Mbugua.

Mr. Mbugua: Mr. Deputy Speaker, Sir, there is a trend which has been going on; if we do not ensure that whatever is happening is stopped urgently, then as Members of Parliament, will find ourselves not doing what we are mandated to do by the people. I seek your ruling on whether a Member of Parliament should be arrested by the police, or whether he should be summoned by the police to present himself at a police station. In the case of the court order which was presented to the OCPD, Embakasi--- I think that the Assistant Minister should ensure that police officers go to a seminar, so that they can learn about the new Constitution because they do not know that use of excessive force is not allowed. This particular court order talks about eviction and not demolitions. The court order was given by a magistrate's court, and we are talking about corruption. This is corruption of the highest order! There is no way a court order for eviction can be given by a magistrate's court.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. I respect your ruling that, that be the last clarification sought, but due to the interest generated on this matter, I request that you allow more ventilation.

The Assistant Minister for Water and Irrigation (Mr. Waititu): On a point of order, Mr. Deputy Speaker, Sir. This case is more serious than maybe, what the Assistant Minister is thinking. Mr. Sonko has just said that---

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. The Minister has just referred to Mr. Sonko. Could we get a clarification as to who Mr. Sonko is in this House?

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, I have just said "Hon. Mbuvi."

Mr. Deputy Speaker: Order! He is referring to hon. Gideon Mbuvi alias Sonko. Proceed!

(Laughter)

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, the genesis of this problem surrounds what Mr. Mbuvi has said; that a court order was given for one parcel of land and the same order was used to demolish some other 12 parcels of land. I went to the site to seek an answer from the police as to why they were demolishing the other pieces of land. I do not know in which style I can talk to my constituents so that it does not appear like I am inciting them. Already, they had been incited by the police by demolishing their houses.

Mr. Deputy Speaker, Sir, the trend we have in Nairobi now is that some people are taking fake court orders and using them to demolish houses belonging to poor people. That should not be allowed under the new Constitution.

Mr. Deputy Speaker: Order! Order! The Chair has given you a leeway, notwithstanding the fact that you are a Minister in the same Government and the fact that Section 17 of the old Constitution which is still in force, because the Executive aspects of that are partly still in force, does indicate *inter alia*, "there shall be a Cabinet consisting of the President, Vice-President and other Ministers. The functions of the Cabinet shall be to aid and advise the President in the Government. The Cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President, Vice-President or any other Minister in the execution of this office." We do understand, of course, that the arrangement of the Executive has changed and the Prime Minister is there, but nonetheless, this is still in force. This means that it is only because you are the aggrieved person that you were given an opportunity to interrogate your own Government which you are a member of, but under normal practice, it should not be allowed. The Government issues should be sorted out within the Government itself. It is going to be one time off and in future, the Chair will take a very firm position on that. But nonetheless, I also want to state the National Assembly Powers and Privileges Act, which is very explicit. As far as immunity is concerned, it says:

"No civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Assembly or a Committee, or by reason of any matter or thing brought by him therein by petition, Bill, resolution, Motion or otherwise."

That clearly excludes any activity of a Member of Parliament outside Parliament and the Parliamentary business. This means that you have got immunity from legal proceedings, but only to the extent of what you have done in the precincts of Parliament.

Subsection (5) talks about freedom from arrest for civil debt when the session is on. I think Members need to acquaint themselves very well with this to understand where they can be arrested and prosecuted and where they cannot be arrested or prosecuted. But nonetheless, these are areas that you can deal with yourselves in your own wisdom because you are the makers of the law itself.

The Chair will allow two more clarifications based on the fact that everybody is seeing it as a very passionate issue.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I am happy that the Prime Minister is in the House and looking at the conduct of the Front Bench.

Mr. Deputy Speaker, Sir, I would like hon. Ojode to clarify the different treatment that he has accorded to fellow Members of Parliament, in the matter of hon. Kutuny, hon. Kapondi and Dr. Machage who was an Assistant Minister. They were arrested and then charged. They actually spent a night in the police cells, while in the case of my good friend, hon. Waititu, who is an Assistant Minister--- The Minister has not referred to his colleague as an Assistant Minister. Instead, he kept referring to him as the hon. Member. Why is the Government giving preferential treatment to people who serve in the same Government? This Government seems to be very eager to enforce court orders of the rich and when the court orders are coming from the poor peasants of Samburu, as was the case this morning, they have been extremely reluctant. Could the Assistant Minister confirm if the law is applicable only to the poor and not the rich?

Dr. Nuh: Mr. Deputy Speaker, Sir, part of my queries have been covered by hon. Ethuro. Are there different standards of court orders? Why would the police be so eager to enforce court orders for evictions, but when the poor peasants get a court order restraining the police from evictions, then the Assistant Minister says that the court orders are from River Road?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, let me respond to some of those interventions.

Mr. Deputy Speaker, Sir, first and foremost, I wish to table the court order which was supposed to be enforced by the police officers.

(Mr. Ojode laid the document on the Table)

Mr. Deputy Speaker, Sir, you will also remember that two hours ago, I was being roasted in this House for not enforcing the court order on Samburu. How come when my police officers are now enforcing the court order I am equally being roasted?

Mr. Deputy Speaker: Order! Order, hon. Assistant Minister! The concern of the hon. Members is that you are enforcing the court order selectively. That is the area you need to address yourself to.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, that particular area is a flight path. I have several other court orders which we are going to enforce to demolish those illegal structures, in order to bring sanity. I need to have the flight path free from any encumbrances. It is for our safety. It is not for anybody else. I do not want hon. Members to be bogged down simply because we have illegal structures within the flight path area. I will not allow that because I want them alive.

Mr. Deputy Speaker, Sir, it is this House which says that we should guard against impunity. We must guard against impunity. Police officers are under instructions that they must behave well in a manner that gives dignity to the person who is being arrested. Equally, hon. Members of Parliament, who are my colleagues, must also behave in a manner that befits their status. If you read the law, you never find any article which says that MPs are above the law. So, if you want us to be above the law, I will be happy because, sometimes tomorrow, the Prime Minister can take me to another Ministry and end up being manhandled by the police. Let us amend that law to make MPs above the law.

Mr. Deputy Speaker: Order! Could you, please, conclude?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I want to say that, let us behave with some dignity. Let no MP throw stones to the police or to anybody else. Let us behave with dignity because we are hon. Members.

Mr. Deputy Speaker: Order! Let us move to the next Order. All other Statements are deferred to Tuesday next week.

MOTION

ADOPTION OF REPORT ON IIBRC

Mr. Namwamba: Mr. Deputy Speaker, Sir, I beg to move:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Report of the Interim Independent Boundaries Review Commission (IIBRC) laid on the Table of the House on Thursday, 16th December, 2010.

Mr. Deputy Speaker, Sir, before I proceed to prosecute this matter, let me draw the Members' attention to a number of annexures to this Report. Owing to the haste in which the Clerk's Office had to put together all this material which is quite bulky, the numbering of some of these annexures was mixed up. Also, Members may not have had prior access to some of these annexures. I want to clarify to hon. Members that these annexures are marked as JLA. JLA (1) is the minutes of the Committee meetings during which it considered this matter in the preparation of this Report. Those minutes are marked JLA (1) and annexed to the Report as the first annexure. JLA (2) is a matrix representing a record of oral presentations made by hon. Members to the Committee in a bid to identify outstanding issues from the IIBRC Report. JLA (3) is the proposed Independent Electoral and Boundaries Commission Bill. That is the Bill that the Committee proposes to be processed in order to establish the new Commission for purposes of dealing with matters outstanding from the work and the Report of IIBRC. That Bill that I drew Members' attention to is annexed and marked JLA(3). The document marked as JLA(4) is a presentation made to the Committee by the former Chairman, of the now defunct IIBRC, hon. Andrew Ligale on 13th November, 2010. JLA(5) is a presentation made by the IIBRC, including data on the proposed constituencies and their delimitations, maps, diagrams and other supporting documents for that delimitation. That is marked as JLA(5). JLA(6) is a dissenting opinion presented and submitted to the Committee by three members of the Commission that dissented to the final decision taken by IIBRC. That data representing the dissenting opinion is

marked JLA(6). JLA(7) is a draft gazette notice representing a gazette notice request presented by IIBRC to the Government Printer. JLA(8) is the final Report of IIBRC presented to the Committee, and dated 27th November, 2010. It is titled: “Delimitation of Constituencies and Recommendations on Local Authorities Electoral Units and Administrative Boundaries for Districts and other Units”. That is JLA(8). The last annexure is JLA(9). It is a bulky bound record representing all written submissions that have been received from hon. Members of Parliament detailing what has been considered as issues outstanding on this matter.

I want to invite hon. Members to take note of all those annexures. Some of them are bound and available at the Clerk’s desk for purposes of reference. That is because I will keep on referring to some of them. Those like this very bulk one is only one copy and so, copies, I believe, will be made available as soon as the Clerk’s Office is able to do so.

All those annexures I have referred to constitute part of the Report that the Committee on Justice and Legal Affairs is inviting this House to consider. Specifically, this Report of the Committee on Justice and Legal Affairs is on the Report produced by IIBRC at the conclusion of its constitutional mandate. That Report has been clearly defined in the Report of the Committee on page 14 of this Report. Again, at a later stage, I will be clarifying why at page 14 of this Report, we have specifically gone into the details of defining exactly what we mean when we say “Report of the Interim Independent Boundaries Review Commission (IIBRC)”.

Mr. Temporary Mr. Deputy Speaker, Sir, in considering this matter, the Committee has agonized deeply; aware of the very serious competing interests in this matter. The Committee was very aware and took due note of the fact that the process conducted and concluded by IIBRC and the subsequent Report produced by that Commission attracted intense public interest. In equal measure, there were those who fully supported the work of that Commission and the product of its work. But there were those who had and expressed serious reservations on the work of that Commission and its product. So, this Committee has attempted to find a way out of those competing interests. We have attempted to do so in a manner that talks to the ends of justice and fairness. We have been guided by the principles that underpin the functioning of this Committee. But we have also given due regard to broad ends of justice. We have benefited from the spirit of eminent men like Hubert Humphrey, a one time US Senator and Vice-President of the USA who said once: “That unless there is liberty and justice for all, there is justice and liberty for none.” So, the challenge the Committee has had is how to ensure that in this process, everybody can see justice done and manifestly so.

I will start by paying tribute to hon. Members of the Departmental Committee on Justice and Legal Affairs who have worked over time on this matter in close consultations with the Parliamentary Committee over-sighting the implementation of the Constitution. Allow me to applaud:-

Hon. Njoroge. Baiya, MP – Vice-Chairman

Hon. Abdikadir Mohamed, MP

Hon. (Mrs). Millie Odhiambo-Mabona, MP

Hon. Mutava Musyimi, MP

Hon. George Omari Nyamweya, MP

Hon. (Ms). Amina Abdalla, MP

Hon. Mr. Olago Aluoch, MP
Hon. Isaak Ruto, MP
Hon. Sophia Noor Abdi, MP
Hon. Eugene Wamalwa, MP

Those are hon. Members of the Departmental Committee on Justice and Legal Affairs who have been seized of this matter and have brought it this far.

Mr. Temporary Deputy Speaker, Sir, the mandate of the Departmental Committee on Justice and Legal Affairs which is manifest in Standing Order No.198 extends to over-sighting matters that touch on constitutional affairs, the administration of law and order including the Judiciary, Police, Prisons Department and community service orders, public prosecutions, elections, integrity, anti-corruption and human rights. That mandate also extends to matters touching on political parties. The Committee over-sights the Ministry of Justice, National Cohesion and Constitutional Affairs, the State Law Office, the Judiciary, the Kenya Anti-Corruption Commission (KACC), the Interim Independent Electoral Commission (IIEC) and the Interim Independent Boundaries Review Commission (IIBRC). The Committee acknowledges the support of the offices of the Speaker and the Clerk of the National Assembly for the support they have extended to the Committee in its work. Therefore, it is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to present and recommend this Report to the House for adoption, pursuant to Standing Order No.181.

Allow me to start by going into a background on the IIBRC and its constitutional mandate. The IIBRC was established pursuant to the Constitution of Kenya (Amendment) Act, No.10 of 2008 as part of the Agenda 4 reforms, and as one of the vehicles to drive electoral transformation after the 2007 elections. This was in the aftermath of the disbandment of the Electoral Commission of Kenya (ECK), whose functions were subsequently split between the IIBRC and the IIEC. Section 41(b) of the Constitution of Kenya (Amendment) Act provided as follows:-

“That there shall be an IIBC which shall consist of a chairman and not more than eight other members.”

The Commission chairman and eight commissioners were duly appointed by His Excellency the President under Gazette Notice No.4796 of 12th day of May, 2009 and sworn into office on 18th day of May, 2010. The functions of the Commission were set out in Section 41(c) of the said Constitution of Kenya (Amendment) Act as follows:- To make recommendations to Parliament on the delimitation of constituencies and local authority electoral units and the optimal number of constituencies on the basis of equality of votes, taking into account the following factors: Density of population and, in particular, the need to ensure adequate representation of urban and sparsely populated rural areas, population trends, means of communication, geographical features and community of interest.

The Commission was also mandated to make recommendations to Parliament on administrative boundaries, including the fixing, reviewing and variations of boundaries of districts and other units, as well as to look into any other functions as may be prescribed by Parliament. It is important for the House to note that the initial mandate under the former Constitution was modified by the new Constitution promulgated on 27th August, 2010. Article 27 of the Sixth Schedule to the Constitution provides as follows - and now this the current law with regard to that Commission. Article 27 provides as follows: “The

Boundaries Commission established under the former Constitution shall continue to function as constituted under that Constitution in terms of sections 41(B) and 41(C), but-

(a) it shall not determine the boundaries of the counties established under this Constitution;

(b) It shall determine the boundaries of constituencies and wards using the criteria mentioned in this Constitution; and,

(c) members of the Commission shall be subject to Chapter Seven of this Constitution.

That Section provides further that the requirement in Article 89(2) that a review of constituency and ward boundaries shall be completed, at least, 12 months before a general election shall not apply to the review of boundaries preceding the first elections under this Constitution. Further, that Article provided that the boundaries commission shall ensure that the first review of constituencies undertaken in terms of this Constitution shall not result in the loss of a constituency existing on the effective date. That provision is what brought into our political lexicon, the phrase; “protected constituencies”.

Mr. Temporary Deputy Speaker, Sir, among the fundamental implications of this new scenario and the new mandate of the Commission’s mandate, included the following:

One, by fixing the number of constituencies at 290, for purposes of elections of Members of the National Assembly, Article 89(1) of the Constitution restricts the Commission to 80 additional constituencies, given the already existing 210 constituencies.

Two, the population quota adopted a constitutional formula that confined the Commission to said parameters in delimiting constituency boundaries. The initial mandate under the former Constitution had provided for use of population density and population trends as one of the general guide for the purpose. The new Article 89 gave greater prominence to the population quota, though Article 89(7)(b) qualifies this application in the sense that the formula is not to be construed as demanding instant demographic equality of all constituencies.

Mr. Deputy Speaker, Sir, three, in terms of implications, whereas under the former Constitution, the Commission had been required to make recommendations to Parliament on the delimitation of constituencies and boundaries, the new Constitution now mandated the Commission to determine by publishing in the Kenya gazette the optimal number, names and boundaries of constituencies and wards. That is in accordance with Article 27(1)(b) of the Sixth Schedule to the Constitution.

Mr. Temporary Deputy Speaker, Sir, in order to fully understand and appreciate this modified mandate, the Commission sought legal opinion from the Attorney-General of the Republic, in his capacity as the Chief Government Legal Advisor. In a legal opinion dated 13th September, 2010, the Attorney-General advised the Commission as follows. This is a matter that is important for the House to take note of. The Attorney-General advised that:

(i) The Commission had the mandate to determine the boundaries of constituencies and wards. In making this determination, the criteria to be used was not the one set in Section 41(C) of the former Constitution of Kenya, but that in Article 89 and 27(4) of the Sixth Schedule to the new Constitution.

(ii) The second advice from the Attorney-General was that whereas under the former Constitution of Kenya, the Commission was required to make recommendations to Parliament in respect of boundaries of constituencies and wards, under the new Constitution, the Commission was to determine those boundaries. The Commission was accordingly mandated to gazette its determination, which in tandem with the spirit of the new Constitution as exemplified in the mandate envisaged for the new Independent, Electoral and Boundaries Commission. The determination of the Commission could only be challenged through a judicial process after gazette.

(iii) The Attorney-General advised that the mandate of recommendations to Parliament on administrative boundaries, including the fixing, reviewing, varying of boundaries of districts and other units has not been amended or modified by the new Constitution.

(iv) It was the opinion of the Attorney-General that the Commission was not mandated to determine the boundaries of the counties established under the new Constitution. Such boundaries are set by the Districts and Provinces Act, and it is clear that the intention was that the boundaries of the counties would be looked into after the next general election, with the Senate in place. That can be inferred from Article 188 of the Constitution.

Mr. Temporary Deputy Speaker, Sir, with this opinion in mind, the IIBRC went ahead to complete their work and to determine 80 new constituencies in addition to the existing 210 constituencies, and served the Government Printer with notice to gazette the constituencies.

The Commission also made public, the product of its work by publishing in the print media on 17th November, 2010, the list of all the 290 constituencies under the Constitution. The publication of the constituencies' details elicited intense public reaction, with those in support and those opposed expressing their sentiments with intensity. Three suits were subsequently filed, seeking to stop the Commission from gazetting its report. These are Petition Nos.72 and 74 of 2010 and High Court Civil Miscellaneous Application No.339 of 2010.

Mr. Temporary Deputy Speaker, Sir, the first suit, Petition No.72 of 2010, involving John Maingi against hon. Andrew Ligale, Commissioner Rozaah Buyu, Commissioner Iren Marsit, the IIBRC and the Attorney-General is of relevance here, because it resulted in a substantive ruling of the court. Inter alia, the matters prosecuted in this suit are as follows.

1. The petitioner had sought an injunction restraining the Chairman, hon. Andrew Ligale, and two other Commissioners – Commissioner Rozaah Buyu and Commissioner Iren Marsit – from participating in or presiding over functions of the Commission, on the argument that the three Commissioners were ineligible to remain in office, under the new Constitution, which precludes any person from membership of the Commission if they, among other things, have contested a parliamentary election within the preceding five years, or held office in the Executive Committee of a political party.

In respect of that prayer, the court ruled that the same three Commissioners were validly in office, having fulfilled requirements of the former Constitution, under which they had been properly appointed.

2. The second prayer was for an injunction against the Commission, restraining it from publishing in the official Gazette the proposed delimitation of constituencies on the

contention that the Commission was to make its recommendations to Parliament, and further that it was the yet to be formed Independent Electoral and Boundaries Commission (IEBC) that had the mandate to gazette the new constituencies.

The argument was that the IIBRC had usurped the power and mandate of the yet to be formed IEBC. The court, in respect of this prayer, held that the Commission could, and was, mandated to delimit and publish boundaries of constituencies and wards. The court further found that the IIBRC was mandated to determine the boundaries and in so doing, was not subject to the direction of any of the three Arms of Government, but was subject only to strict adherence to the Constitution.

3. The petitioner further contended that the Commission had failed to undertake consultations as required by the Constitution, but it was the ruling of the court that the Commission had, indeed, undertaken extensive consultations. The court also agreed with the IIBRC that a special process had been provided by the Constitution where a person may apply to the High Court for review of any decision made by the Commission. The application ought to be filed within 30 days of the publication of the decision in the Gazette Notice.

Mr. Temporary Deputy Speaker, Sir, during the hearing of this suit, the IIBRC strongly urged the court to lift an earlier injunction delivered by Lady Justice Jeane Gacheche, restraining the Commission from gazetting its findings, but the court declined to grant this prayer to the Commission on the ground that whereas the IIBRC had conformed with all requirements of the Constitution, it had nonetheless fallen short of the requirement to provide details of both names and respective boundaries of the constituencies. For that reason, the court upheld the injunction delivered by Lady Justice Gacheche, stopping the Commission from gazetting its report.

Mr. Temporary Deputy Speaker, Sir, in considering this particular matter of legal suits against the Commission, the Committee's attention was drawn to some fundamental questions involved, including the following:

4. The law allows any person aggrieved by findings of the Commission to seek legal redress but only after, and not before, gazettment of the Commission's findings. The questions arising here include the following: Were the various legal suits premature? If so, did the various petitioners have *locus standi* at the time of filing their suits?

By entertaining the suit at the time, did the court have jurisdiction at that point? Did it act in consonance with the Constitution? Did the court action prior to gazettment amount to the Judiciary interfering with the work of an independent constitutional commission? Those are the questions that came up before the Committee.

Two, it is a principle of law that the court cannot act in vain. It cannot make orders which it cannot enforce. Given that even after the court ruling, the IIBRC process has nonetheless moved on through Parliament, essentially because the Judiciary cannot gag Parliament. Did the court act in vain? Those are the questions we cannot ignore.

Three, the judge found that the IIBRC:-

- (a) was to determine the names and boundaries of constituencies,
- (b) was to gazette its findings,
- (c) could not be directed into its work by any of the three arms of Government,
- (d) had executed its mandate in accordance with the Constitution except that it should have gazetted both the names and the boundaries simultaneously but it declined to

lift the injunction against the Commission to enable the IIBRC as it were, to cure the defects.

But that notwithstanding, the injunction was still not lifted even after the IIBRC had said that the boundaries missing from the initial gazette notice were in fact ready and,

That the tenure of the IIBRC was to expire within 24 hours from the time of the ruling. Again, those are questions that beg for answers.

Mr. Temporary Deputy Speaker, Sir, the Committee also took note of happenings at the Government Printer which raised the question as to whether the Government Printer acted in good faith by declining to gazette the Draft Notice submitted by the Commission.

The IIBRC contended that it had submitted its first draft gazette notice to the State publisher at least 12 hours before the court injunction was delivered by Lady Justice Gacheche. The Commission also hopes that the Government Printer had never been a party to any of the suits, had no order issued against it, it was not passed and could, therefore, not have been injunctioned. Further, within hours of the subsequent ruling by Justice Daniel Musinga, the IIBRC presented to the Government Printer a notice to gazette the names and boundaries of the 290 constituencies as required by the ruling. But there was still no progress with the gazettment.

The Commission is convinced beyond any shade of doubt that it had fulfilled all constitutional requirements for gazettment and expressed concern that the Government Printer was illegally questioning the legality of the work of a constitutional institution and has further wondered what would happen if the Printer, for instance, was to decline to gazette results of the 2012 general elections in defiance of the new IEBC because of some controversy.

Suffice to say that as at the time of the expiry of the IIBRC constitutional term, on 27th November, 2010, its gazette notice was still lying at the Government Printer unpublished while the legal suits remained alive in courts with the Attorney-General now as the only respondent.

As this House debates and considers this Report, this background information cannot be ignored. We cannot ignore the intense divergent sentiments that were triggered by the conclusion of the work of the IIBRC. We cannot ignore the legal and constitutional issues that have arisen by reason of that work because all those issues are part of the process of attempting to find an amicable and acceptable way out of this; a way that is not only politically acceptable but is also constitutionally tenable.

Mr. Temporary Deputy Speaker, Sir, it is at that point of absolute stalemate that the Departmental Committee on Justice and Legal Affairs stepped in. This Committee is vested with broad mandate that includes the power to investigate, inquire into and report on all matters relating to the mandate, management activities, administration, operations and estimates of assigned Ministries and departments. The Interim Independent Boundaries Review Commission (IIBRC) was one of the Commissions under the oversight of this Committee.

The Committee was, indeed, involved in the establishment of the IIBRC and had interacted closely and keenly with this Commission from the time of its inception. The Committee, therefore, took a very keen interest in the developments at the Commission, more so, when its activities started attracting such heated public interest. Therefore, at a retreat of all Members of Parliament convened at the Kenya Institute of Administration

(KIA) in Kabete on 8th and 9th November, 2010 hon. Members requested the Committee to ensure that the IIBRC work is concluded as its mandate drew to a close. The Committee proceeded acting under that task to convene a working retreat held at the Serena Hotel, Mombasa between 13th and 14 November, 2010 with the objective, among others, of establishing the progress made by both the IIBRC and the IIEC and also to gauge the state of preparedness of moving from these interim bodies to the permanent Commission established by the new Constitution. That retreat was attended by the Chairperson of the IIBRC, Mr. Ligale, the Chairperson of IIEC, Mr. Izaak Hassan and the Minister for Justice, National Cohesion and Constitutional Affairs, Mr. M. Kilonzo.

Mr. Temporary Deputy Speaker, Sir, at that retreat, the Chairperson of the IIBRC assured the Committee that his Commission was in the process of concluding its mandate. He also shared the frustrations that it was experiencing, including what the Commission regarded as interference in its work by the Government including the parent Ministry. The Committee pursued this matter further in four subsequent meetings. That is in a meeting on 23rd November, 2010 that was convened by the Committee. Let me indicate that at that first meeting, aware of the very heated public sentiments that this matter was attracting, we invited the National Cohesion and Integration Commission to our meeting in a bid to find a way to involve that Commission to bring cohesion, starting with the Commission itself where three members had already strongly dissented from on-goings at the Commission. We held a further meeting on 24th November, 2010 where the IIBRC, for the first time in a long time, was represented in full. That was the first instance where the Committee met all the nine Commissioners of the IIBRC, including the three Commissioners that had dissented. At that meeting, the IIBRC through its chairperson presented a detailed presentation on the work of the Commission, including the methodology, the strategy applied in the delimitation of electoral units as well as the rationale for the decisions taken by the Commission. The Commission also confirmed that due to public pressure, it had proceeded to publish the proposed 290 constituencies in the print media.

Mr. Temporary Deputy Speaker, Sir, in the interest of carrying everybody in this process, the Committee acknowledged that there were three Commissioners that had already taken a divergent view from the rest of the Commissioners. Therefore, the Committee invited the three Commissioners to make a presentation on their alternative view and that was made respectively by Mr. Mwenda Makathimo, Dr. John Nkinyangi and Mr. Joseph Kaguthi. These are the three Commissioners who had dissented.

A further meeting was held on 26th November, 2010 at which the chairman of the Commission delivered the draft gazette notice special issue dated 26th November, 2010 containing a list of documents that is part of what we are calling a report. The final meeting was held on 1st December, 2010 at which the Chairman delivered the final report of the IIBRC titled “Delimitation of Constituencies and Recommendations on Local Authorities Electoral Units and Administrative Boundaries for Districts and Other Units.” It was dated 27th November, 2010. Let me tell the House at this point that in the opinion of the IIBRC, they concluded what the Constitution refers to as the first review. That is exemplified in this final report, together with all the other documents I have made reference to. The minutes of all those meetings that I have made reference to, are annexed to this report and are marked JLA1, among the annexures.

Mr. Temporary Deputy Speaker, Sir, allow me now, for purposes of clarity and avoidance of doubt, to indicate to the hon. Members what exactly the report of the IIBRC is when we say that the Committee is inviting this House to adopt the report of the IIBRC. At a meeting held on 2nd December, 2010, the Committee resolved that the IIBRC report would be defined as constituting the following:-

(i) A presentation made by the IIBRC Chairman, Mr. Andrew Ndooli Ligale on the progress made by the IIBRC and the state of preparedness for the transition to the new Independent Electoral and Boundaries Commission (IEBC) at a working retreat convened by the Committee in Mombasa on 13th and 14th November, 2010. That presentation is among the annexures and is marked JLA4.

(ii) A power point presentation titled “Constitution Delimitation Methodology” presented by the IIBRC at a meeting with the Committee held on 24th November, 2010, and attended by the full IIBRC, including accompanying reports, maps and diagrams. That power point presentation is marked JLA5 and annexed thereto.

The Committee, as I have indicated, also included on its record, a presentation made by the three Commissioners that had dissented during the meeting at which the whole Commission was represented. That document, which I am holding, is annexed to this report and is marked JLA6.

(iii) The draft Gazette Notice, special issue, dated 26th November, 2010, containing the list and details of constituencies signed by the IIBRC Chairman, Mr. Andrew Ndooli Ligale, together with the accompanying affidavits sworn by the IIBRC Deputy Director of Legal Services, Mr. Mbaira Mongaya, dated 26th November, 2010, and the court ruling by Justice Daniel Musinga dated 26th November, 2010, which bundle of documents was delivered by Mr. Ligale to the Justice and Legal Affairs Committee on 26th November, 2010. It is annexed here and marked JLA7.

Finally, it is this final report of the IIBRC which is titled “Delimitation of Constituencies and Recommendations on Local Authority Electoral Units and the Administrative Boundaries for Districts and Other Units”, which is dated 27th November, 2010. Therefore, when we refer to the IIBRC report, that we will be inviting this House to adopt in our recommendations, we are referring to that full complement of documents received officially by the Committee from the Commission during the diverse dates that I have mentioned clearly and indicated explicitly in the report of the Committee.

Mr. Temporary Deputy Speaker, Sir, based on these documents and based on this report and having defined the report of the Commission, the Committee deliberated on this matter and in those deliberations, I invite the House to take note that we adopted five---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Namwamba! You will have 18 more minutes to complete moving the Motion next time.

Order, hon. Members! It is now time for the interruption of business. The House stands adjourned until Tuesday, 21st December, 2010, at 2.30 p.m.

The House rose at 6.31 p.m.