

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 21st October, 2010

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

NOTICE OF MOTION

CONSTITUTION OF SELECT COMMITTEE ON IDPS

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

THAT, conscious that this country witnessed serious breakdown of law and order as a result of the Post-Election Violence of 2007/2008; aware of the multiple forced displacements, reducing factors and the current status and deplorable plight of the Internally Displaced Persons (IDPs) in the country; considering the obligation of Parliamentarians to the people they represent including those IDPs and Integrated Persons through their legislative, oversight and representative role; this House urges the Government to speed up the resettlement of IDPs and to further constitute a select committee on IDPs to look into how the Government has addressed the current plight of the IDPs in terms of basic food rations, shelter and compensation; to review the existing situations and organs addressing forced displacement and further to examine policies and laws governing all forms of forced displacement with the aim of promoting, protecting and improving the wellbeing of forced migrants and to make recommendations on the way forward.

The Committee shall comprise the following and should be able to table its report within six months of its appointment:-

1. Hon. Ekwe Ethuro, MP
2. Hon. Martin Ogindo, MP
3. Hon. Kiema Kilonzo, MP
4. Hon. David Koech, MP
5. Hon. Gitobu Imanyara, MP
6. Hon. Jeremiah Kioni, MP
7. Hon. Charles Kilonzo, MP
8. Hon. Hussein Ali, MP
9. Hon. Erastus Mureithi, MP
10. Hon. Sophia Abdi, MP

11. Hon. Milly Odhiambo-Mabona, MP
12. Hon. Dr. Joyce Laboso, MP
13. Hon. Shakila Abdalla, MP
14. Hon. Boaz Kaino, MP
15. Hon. Ntoitha M'Mithiaru, MP

Mr. Deputy Speaker: Next Order!

QUESTIONS BY PRIVATE NOTICE

APPOINTMENT OF KBC BOARD

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

Why did the Minister, in appointing the Kenya Broadcasting Corporation's Board, fail to comply with the provisions of Section 4 (1) of KBC Act (Cap. 221) of the Laws of Kenya?

The Assistant Minister for Information and Communications (Mr. Godhana): Mr. Deputy Speaker, Sir, I beg to reply.

Yes, I admit that we have not fully complied with the provisions of Section 4(1) of the KBC Act, Chapter 221 in appointing the current Board of Directors at KBC.

According to the Act, the Board should be composed of 11 members. However, currently there are ten members. Three are representatives from the Treasury, Office of the President and the parent Ministry respectively. In addition, there is the Managing Director and the Chairman who are appointed by the President. On the other hand, six directors are appointed by the Minister.

Mr. Deputy Speaker, Sir, the law requires that of the six, one should have specialization or experience in matters of radio communication apparatus and another should have specialization or experience on radio or television programme production. Another should have specialization or experience in print media while another should have specialization or experience in finance and administration.

The constitution of the Board had met most of the requirements in that there is a member from print that is Mr. Ben Gituku, from radio and television is Miriam Kahiga and from administration we have Debora Letodo.

Mr. Deputy Speaker, Sir, of the other two, one is a prominent lawyer and has some background in financial management. That is Mr. Charles Muhia. The other is a university lecturer, Rev. Symon Kiuta.

The only specialization lacking is in the area of radio communication. There, however, exists a vacancy following the expiry of the term of one member early in the year. Once this position is filled, the Board will be fully compliant.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, the Assistant Minister is partially accepting that the Board is not properly constituted. The Controller and Auditor-General who wrote a letter on 20th of May this year said as follows:-

“Verification of copies of academic and professional qualifications and CVs of the appointees to the Board of the Corporation revealed that the above section of the law was not complied with by the Minister in the appointment of the members of the Board”.

Mr. Deputy Speaker, Sir, the section is about who should qualify to sit in the Board. He further says:-

“It is not clear why the appointing authority did not invoke the said section of the law while appointing Board members”.

He then recommends that the appointing authority should consider reconstituting the Board membership which satisfies the requirement of Section 4(1) (f) of the KBC Act to enhance good corporate governance of the corporation.

Mr. Deputy Speaker, Sir, if the Controller and Auditor-General has seen that the Board has not been constituted according to the law, how comes the Assistant Minister sees it differently?

Mr. Godhana: Mr. Deputy Speaker, Sir, indeed, we have complied with the letter from the Controller and Auditor-General. The only area we have not complied with, and which I have mentioned, is that of radio communication. This is a very rare area to cover. We are still looking for a qualified person to fill this vacancy. It is hard to find engineers in the field of radio communication. This is the only area we did not comply with. The rest of the criteria with regard to the board members were complied with.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I know for a fact that this corporation is one of the most heavily indebted to the extent that the Cabinet sat and provided a bailout to the tune of Kshs3.5 billion, which this corporation has been receiving at the rate of Kshs200 million per year. Part of the reason why this bailout was given was the inadequacies and incompetence in running this corporation. Could the Assistant Minister table the resumes, or curriculum vitas, of these appointees so as to convince us that as we keep on pumping millions of shillings into this corporation, the officers who are there are up to the task?

Mr. Godhana: Mr. Deputy Speaker, Sir, I have already highlighted the qualifications of the membership of this board in their respective areas, but the hon. Member is saying there are weaknesses. In my view, the weaknesses that were witnessed before have already been addressed. So, I do not think it is very necessary, at this point, to bring their CVs since I have already highlighted everything in my answer.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. If the Controller and Auditor-General has already perused the CVs, and has found them wanting and not complying with the law, is the Assistant Minister in order to say that he cannot bring them here? There is a contradiction between what the Controller and Auditor-General said and his answer? If, indeed, they are qualified, why is he holding the CVs? He should bring them here.

Mr. Godhana: Mr. Deputy Speaker, Sir, I was only saying that it may be necessary to bring them here. However, if the hon. Member insists, with your direction, I can, at a later date, avail the CVs.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. The Controller and Auditor-General is an adviser to this House. He does his job so that this job is better informed on how the Executive performs. Therefore, if he said that he has doubts about these CVs, and we are not ignorant about what we are talking about, could he, kindly, table the resumes so that we can interrogate him further? Is he in order to refuse to lay on the Table the resumes?

Mr. Deputy Speaker: Order! He has not refused. We have not heard him refuse. He has said that he is willing to lay that on the Table at a later date. Therefore, if you are

rising on a point of order, it has to be on something else but not with regard to him refusing.

Mr. Mbadi: Mr. Deputy Speaker, Sir, the incompetence of the board of management of the Kenya Broadcasting Corporation is not in doubt. I wanted to find out from the Assistant Minister what he intends to do with some of the actions or decisions that the incompetent Board is currently involved in. I wanted to mention that the Board has advertised the position of the Managing Director, which they have obviously, and evidently, tailored to suit the current Acting Managing Director. Why have they asked for only one degree, yet in the same corporation, for a junior officer, the Human Resource Officer, he is required to have a master's degree and the current Acting MD has a degree in Education? They have pegged the age limit at not more than 45 years of age. Honestly, what is the magic about being 45 years of age? Is it just because the Acting Managing Director is 44 years old now? They tailored this advertisement to suit him! Finally, they have said that the Managing Director must have worked at a senior position in the broadcasting sector asked for, at least, three years. Why? It is because Mr. Waihenya joined KBC in 2007. That is exactly three years today.

What will the Assistant Minister do with a Board which is making incompetent advertisements to recruit a Managing Director? What will he do with the process of recruiting the Managing Director?

Mr. Godhana: Mr. Deputy Speaker, Sir, first of all, I find the question by the Member speculative. There is no position that has been advertized for somebody. I have said in my response that---

Mr. Deputy Speaker: Order! Mr. Mbadi, are you willing to lay on the Table the information that you have?

Mr. Mbadi: Mr. Deputy Speaker, Sir, while I know that newspaper cuttings are not supposed to be used, this is an advertisement. The only way that I can prove this is to lay the cutting on the Table. I am not speculating. I have explained why I think that this advertisement was tailored to suit Mr. Waihenya.

Mr. Deputy Speaker: Proceed and lay it on the Table.

(Mr. Mbadi laid the cutting on the Table)

Mr. Godhana: Mr. Deputy Speaker, Sir, I have said that the positions of the Managing Director and the Chairman are yet to be filled. The advertisement is not tailored to suit anybody. It is an open advertisement and anybody who qualifies can apply and we will do the necessary.

Mr. Chanzu: On a point of order, Mr. Deputy Speaker, Sir. You have heard the answer that the Assistant Minister has given and the remarks from Mr. Mbadi. We need your guidance on this matter because this is not a matter of the Member and the Assistant Minister trying to see who is better in argument. This is a serious matter and anybody can see that the advertisement was to---

Mr. Deputy Speaker: Your point has been noted.

Mr. Chanzu: Mr. Deputy Speaker, Sir, we need your guidance in this matter.

Mr. Deputy Speaker: Mr. Assistant Minister, newspaper cuttings are normally not admissible in this House. The Chair would want to get from the horse's mouth whether, indeed, you advertised for the position of a Managing Director, or whether the

information here reflects what the Board advertised. If you deny it, the Chair has no way of compelling you to do anything because this is a newspaper cutting.

Mr. Godhana: Mr. Deputy Speaker, Sir, I do not have any intention to deny it.

Mr. Deputy Speaker: Is it reflecting--

Mr. Godhana: Mr. Deputy Speaker, Sir, unless, I go and compare it exactly with what is in the office---

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to show ignorance about what is happening in his Ministry? This is an advertisement for recruitment of an MD of a State corporation which is under his watch; it is something he should have known. So, he does not need to be given any time to go and verify the facts.

Mr. Deputy Speaker: Fair enough. Under the circumstances, since you are asking for more time, are you asking that we defer the Question so that you can comprehensively answer it?

Mr. Godhana: Mr. Deputy Speaker, Sir, yes.

Mr. Deputy Speaker: Fair enough!

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I would like to ask for your direction with regard to the Assistant Minister bringing the CVs to the House. According to the Controller and Auditor-General---

Mr. Deputy Speaker: The Assistant Minister has made an undertaking and it is already reflected in the HANSARD. It is the presumption of the Chair that he will come with a comprehensive answer, meaning that the CVs will also be there.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, give the date.

Mr. Deputy Speaker: When would you want the Question to appear on the Order Paper?

Mr. Godhana: I will lay the documents on the Table on Tuesday.

Mr. Deputy Speaker: This is a Question by Private Notice. Nonetheless, it is directed that the Question appears on the order Paper on Tuesday next week.

(Question deferred)

PREPARATION FOR KCSE EXAMINATIONS

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

(a) To what extent is the Ministry prepared for the forthcoming Kenya Certificate of Secondary Education (KCSE) Examination in terms of security and other logistics to avoid leakage of the same?

(b) Could the Minister provide the number of court cases on examination leakages and cheating for the last two years and the court ruling on the case so far determined?

(c) Could the Minister consider making it a requirement for all KCPE and KCSE candidates to indicate only their index numbers on the examination papers instead of both their names and index numbers?

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

(a) The Kenya National Examinations Council (KNEC) has put all measures in place to administer the KCSE and ensure the security of the examination in the field. The KCSE examinations started today, 21st October, 2010, at 8.00 a.m. without any hitch. The Council has deployed over 130,000 field officers to administer the national examinations.

(b) The KNEC arrested 22 culprits who were involved in examination malpractice and they were charged. Out of the 22 cases charged in court, only one case has been concluded and the culprit imprisoned for 12 months.

(c) It is not prudent to make it a requirement for all candidates to indicate only their index numbers on the examination papers. This is because both the index numbers and the names of the candidates are required on the answer scripts to ensure that the candidates get their correct results. The index number and the name are used to counter-check candidates who make mistakes or maliciously indicate other candidates index numbers so as to claim marks which are not genuinely their own.

Mr. Yakub: Mr. Deputy Speaker, Sir, I wish to thank the Assistant Minister for Education. According to part “b” of his answer, he has informed the House that out of 22 culprits, only one case was concluded and the culprit was imprisoned for 12 months. What steps is he taking against the other 21 culprits, so that they could also face the same punishment with the culprit who was imprisoned?

Mr. Mwatela: Mr. Deputy Speaker, Sir, I have already stated that 22 culprits were charged in court and it is not within the ambit of the Ministry to speed up the matter. We are also awaiting the court process to finalize these cases.

Mr. Pesa: Mr. Deputy Speaker, Sir, the Assistant Minister has told us that there are some cases pending in court, which is okay. Is he satisfied that the jail terms imposed on these people who create problems during examinations is adequate or could he want this House to amend the Act so that these people can be imprisoned for a longer term?

Mr. Mwatela: Mr. Deputy Speaker, Sir, as much as I may not be satisfied with the terms, it is incumbent upon the House to bring amendments to the law that governs these matters, so that stiffer penalties are applied.

Mr. Yakub: Mr. Deputy Speaker, Sir, the examination papers are transported in green plastic bags. Could the Ministry change this and use iron tins instead of the plastic bags?

Mr. Mwatela: Mr. Deputy Speaker, Sir, I wish to request the Questioner to repeat the question.

Mr. Yakub: Mr. Deputy Speaker, Sir, the examination papers are transported in green plastic bags. Could the Assistant Minister try to change this type of material and instead of using plastic bags, use iron boxes to avoid leakages?

Mr. Mwatela: Mr. Deputy Speaker, Sir, indeed, the material used this year, which I do not need to reveal at this stage, is completely different from the one we have used traditionally.

Mr. Deputy Speaker: Next Question, Dr. Monda!

LACK OF RADIOTHERAPY MACHINES AT KNH

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

(a) Could the Minister explain why Kenyatta National Hospital's Radiotherapy Department has only one functioning machine which is supposed to cater for patients from all over the country and why it takes more than five months to secure treatment at the hospital?

(b) Why is it that only 140 patients are treated daily while more than 500 others are kept in the waiting list and emergency cases are not attended to and are kept for more than 30 days?

(c) What measures is the Ministry putting in place to urgently equip the hospital with functional Radiotherapy machines?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I beg to request the Chair to allow me to answer this Question next week on Tuesday. This is because the Kenyatta National Hospital was not ready with the necessary report to the hon. Member, having realised the importance of this Question and the need to get sufficient information to give an adequate answer.

Mr. Deputy Speaker: Dr. Monda, are you comfortable with that?

Dr. Monda: Mr. Deputy Speaker, Sir, I am comfortable.

Mr. Deputy Speaker: Fair enough! Under the circumstances, the Chair directs that this Question appears on the Order Paper on Tuesday next week.

(Question deferred)

NON-RECRUITMENT OF SOUTH WANGA RESIDENTS INTO ARMY

(Mr. Washiali) to ask the Minister of State for Defence:-

(a) Could the Minister explain why army recruits in the ongoing recruitment exercise from South Wanga in Mumias Constituency were not given a chance and instead referred to Matungu in the neighbouring constituency?

(b) What steps is the Minister taking to ensure the people of South Wanga have a fair chance to join the armed forces?

Mr. Deputy Speaker: Mr. Washiali not here? We will leave the Question until later.

ORAL ANSWERS TO QUESTIONS

Question No.301

DELAYED CONSTRUCTION OF NZEU BRIDGE

Mr. Deputy Speaker: Hon. K. Kilonzo not here! We will come back to the Question.

Question No.357

CRITERIA FOR IDENTIFYING BENEFICIARIES OF INFRASTRUCTURE FUND

Mr. Chanzu asked the Minister for Education:-

(a) what criteria is used by the Ministry to identify the schools that benefit from the Infrastructure Fund; and,

(b) how the amounts given out to the schools are determined.

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

(a) The criteria used to identify schools for the regular infrastructure funding for districts is as follows:- Poverty index of the district, permanent classroom gap in the district, permanent toilet gap in the district and non-schooling gap. The four variables are assigned a total weight of ten and distributed as follows:- Poverty index, a weight of four, permanent toilet, a weight of three, permanent classroom, a weight of two and non-schooling gap a weight of one.

The District Education Boards then undertake the schools selection process by nominating the neediest schools for inclusion in the programme using the following criteria:- Schools with no permanent classrooms and toilets, schools with inadequate permanent classrooms and toilets, schools with semi-permanent classrooms and toilets; schools where learning takes place outside, and schools with high enrolment and have infrastructure problems. The school infrastructure management units from the headquarters and the district infrastructure co-ordinating teams then evaluate an average of 50 per cent of all schools in the district to verify if the DEB nominated the appropriate schools based on the approved criteria guidelines.

The schools infrastructure management units then produce a verification report ranking the schools in terms of the number of complete classrooms, semi-permanent classrooms and permanent classrooms for which the schools are finally ranked. Lastly, the schools infrastructure committee implements the programme in accordance with expenditure guidelines under the guidance and supervision of the area Education Officer and the Ministry of Public Works officers to ensure efficient management and quality.

Besides the regular programmes, there are also needy schools whose selection does not follow structured process explained above. These schools also require infrastructure intervention due to emergencies, natural or manmade calamities such as floods, arson, winds, vandalism and post-election violence. For needy schools left out in the regular programme, equity-driven strategy is adopted and the District Education Officers (DEOs) are instructed to advise the schools and other stakeholders, including leaders to apply for one-off infrastructure grants indicating the need and the estimate cost. All the selected schools open infrastructure current account for the infrastructure improvement grant. The funds are disbursed by the schools infrastructure management unit directly to the school infrastructure current account based at a minimum of Kshs300,000. In addition to the annual grants, a one-off additional grant of Kshs1,000,000 can be provided to a school whose infrastructure is extremely poor or has minimal permanent or semi-permanent infrastructure through the existing General Purpose Account (GPA). The signatories of the accounts that are open by the schools are the same signatories as those ones of the free primary education accounts.

Mr. Chanzu: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for the comprehensive answer that he has given to this Question. Considering the fact that we now have many devolved funds in various sectors, for example, the

Constituencies Development Fund (CDF), where there is a lot of focus by everybody--- This money is just sent to the schools secretly and it is only the headmaster and maybe a few people who know about it. Could the Assistant Minister consider making this open so that he also incorporates other stakeholders in the committee like it is done in other committees like the CDF and the District Roads Committee?

Mr. Mwatela: Mr. Deputy Speaker, Sir, that is a very valid point. I consider that point very useful. The Ministry will consider incorporating other stakeholders so that the spending of the money is open.

Mr. Letimalo: Mr. Deputy Speaker, Sir, could the Assistant Minister explain the monitoring mechanisms he has put in place to ensure that funds that have been allocated to these projects under the infrastructural development are utilized for purposes intended? Does he have provisions to ensure that projects that have been funded in the past could get more funds to complete them?

Mr. Mwatela: Mr. Deputy Speaker, Sir, I did not get the second bit of the hon. Member's question but the first one is that we use the District Education Boards together with education officers to monitor and give reports back to the Ministry to ensure that the money is spent in accordance with the guidelines given by the Ministry.

Mr. Deputy Speaker: Mr. Chanzu, do you wish to ask the final supplementary question or are you satisfied?

Mr. Chanzu: Mr. Deputy Speaker, Sir, if the Assistant Minister can implement what he has proposed, then I am satisfied.

Mr. Deputy Speaker: Fair enough! Mr. Assistant Minister, you have made an undertaking to implement what you have proposed.

Mr. Mwatela: Mr. Deputy Speaker, Sir, I fully concur with the hon. Member. I am grateful for that proposal and we will definitely include other stakeholders in the management of those funds.

Question No.393

IMPOSITION OF LEVIES ON DAIRY

FARMERS IN ELDAMA RAVINE

Mr. Lessonet asked the Minister for Livestock Development:-

(a) whether he could explain why the Kenya Dairy Board has imposed levies on dairy farmers delivering milk to the processors in Eldama Ravine, Koibatek District; and,

(b) what steps he is taking to mitigate the effects of the punitive measure on farmers.

Mr. Deputy Speaker: Is anyone here from the Ministry of Livestock Development?

(Mr. Duale consulted loudly)

Is the Assistant Minister here? This is the third time the Chair is calling out your name, Mr. Duale!

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Deputy Speaker, Sir, I apologise.

I beg to reply.

Mr. Deputy Speaker, Sir, you remember that you made a ruling last week on the receipts that were tabled by the hon. Member for Eldama Ravine, Mr. Lessonet. I want to answer my question pertaining to the receipts and not the other details of the Question.

The following persons, who are the owners of these receipts; Mr. Dickson Chemongotie and Mrs. Anne Targok, transported milk to the New Kenya Co-operative Creameries cooling plant in Eldama Ravine and the receipts issued were movement permit as provided for by the Dairy Industry Act and paid for as follows:

For Mr. Dickson of Box 294 Eldama Ravine, the vehicle used was registered as KBC 284C, the movement permit was 30586 and was dated 26th May, 2010. The amount paid was Kshs1,000. The official receipt used is No.125323. The same person, Mr. Dickson of the same particulars, again used vehicle No.KNY 988 under the movement permit No.35585 on the same date and was also charged that movement as provided by the Dairy Industry Act. The last receipt was for Barnabas Koech. On 25th February, 2010-

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(Loud consultations)

Mr. Njuguna: On a point of order, Mr. Deputy Speaker, Sir. The level of consultation in this House is too high.

Mr. Deputy Speaker: Order, hon. Members! You will realise that nobody is able to transact the business of the House because hon. Members have decided to turn this into a big consultation hall. Everybody is consulting everybody else and nobody is able to hear the Questioner or the answer. Let us hear the business of the House because that is what brings us here this afternoon. We have provisions in our cafeteria and lounges to go and consult, if you want to consult. Once you are in the Chamber, you are here for business. Let us hear the Questioner and the answer!

Proceed, Mr. Assistant Minister!

Mr. Duale: Thank you, Mr. Deputy Speaker, Sir. The last receipt was for one Mr. Barnabas Koech. On 25th February, 2010, Mr. Barnabas Koech of P.O. Box 52, Eldama Ravine, was intercepted by the Kenya Dairy Board inspectors while transporting milk for sale at Stage Hotel in Eldama Ravine Township and upon inquiry, he was found to be operating without a licence, contrary to the Dairy Industry Sales and Produce Regulations of 2004. Mr. Barnabas Koech requested to be accorded the chance of legalizing his trade by obtaining the necessary permits. Consequently, he paid Kshs2,800 to obtain a producer's licence, an amount that is distributed as follows: Application fee, Kshs600; primary producer's licence fee, Kshs1,200 and the movement permit, Kshs1,000. He was issued with an official receipt No. 118119 dated 25th February, 2010.

Mr. Lessonet: Mr. Deputy Speaker, Sir, on Thursday last week, the Assistant Minister indicated to this House that--- I want to read to this House what exactly he said:-

“The Dairy Board does not charge any fees to producers. It does not charge any fee when delivering your milk to the Kenya Co-operative Creameries (KCC).”

I want the Assistant Minister to confirm to us whether he is withdrawing his response to this same Question last week when he indicated that there is no charge like producer's licence and transport licence.

Mr. Duale: Mr. Deputy Speaker, Sir, I still have my answer for last week and it says:-

“The Kenya Dairy Board has not imposed any levy on the dairy farmers delivering milk to processors in Eldama Ravine.”

That is a totally different Question! Mr. Barnabas Koech is a trader. He is not a dairy farmer as per the receipt he asked for and which he was given. So, what he paid for is the annual trade licence fee that gives him the opportunity, as the industry regulator, to deliver milk to the KCC.

Mr. Lessonet: On a point of order, Mr. Deputy Speaker, Sir. On this issue of Mr. Barnabas Koech and the issue of Madam Targok; where it is indicated on the receipt that they are paying as producers, could the Assistant Minister tell us whether Mr. Barnabas Koech is a processor?

Mr. Duale: Mr. Deputy Speaker, Sir, Mr. Barnabas Koech is not a processor, but the categories under which payment of levies is made to the Kenya Dairy Board is not only for processors. It is even for manufacturers, transporters and even those who prepare and treat the dairy products. They all pay. So, Barnabas is in one of those categories.

Mr. Deputy Speaker: Question No. 361!

Mr. Lessonet: Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: You have asked three questions. How many more do you want to ask? This is a Question which is being dealt with for the second time and I think the areas where there were grey areas have been explained. If you are not on a point of order at the moment, let us move on to the next Question.

Mr. Lessonet: Mr. Deputy Speaker, Sir, it is still not clear to me; the charges which the Kenya Dairy Board is supposed to charge farmers in this country. The answer which the Assistant Minister brought to this House last week indicated very clearly that the Kenya Dairy Board does not impose any levy on the dairy farmers delivering milk to processors, but that is exactly what is happening to farmers in Eldama Ravine. The receipt which I tabled here is about dairy farmers delivering milk to processors. The only processor we have in Eldama Ravine is KCC. I am surprised that the Assistant Minister is indicating that there is another processor called Barnabas Koech. There is no such other processor in Eldama Ravine! So, I am still not satisfied with the response of the Assistant Minister.

Mr. Deputy Speaker: Under the circumstances, you will have to make do with other provisions provided for under the Standing Orders to seek for debate or any other. There are many, many provisions you can utilize. But, as a Question, I think it has been exhaustively dealt with.

Next Question, Mr. Pesa!

Question No.361

RESTRUCTURING OF POSTAL CORPORATION OF KENYA

Mr. Pesa asked the Minister for Information and Communications:-

(a) what plans the Government has to restructure the Postal Corporation of Kenya (PCK), given the increased investments in the state-owned firm;

(b) whether he could confirm that despite the huge investment of over Kshs.120,000,000, records show massive drop in revenue. Whether he could provide revenue records of both postal and courier services for the last three years, and further confirm that in the now competitive ICT environment, the corporation is a viable undertaking; and,

(c) how many employees are currently contracted in the corporation in general and Migori in particular and with what facilities, and whether there are plans to establish an ICT village in Migori.

The Assistant Minister for Information and Communications (Mr. Godhana):
Mr. Deputy Speaker, Sir, I beg to reply.

(a) In order to restructure the Postal Corporation of Kenya (PCK) and improve its overall efficiency and, therefore, boost revenue, the Government has approved the voluntary retirement of 493 members of staff which constitutes 10 per cent of the work force. This measure will enable the corporation to grow. You will appreciate that with reduced numbers, system re-engineering that is in information technology will be a priority for the corporation in line with the broader strategic plan. It is, therefore, anticipated that this measure will control any possible collapse as indicated.

(Loud consultations)

Mr. Outa: On a point of order, Mr. Deputy Speaker, Sir. You can hear hon. Members consulting very loudly. We cannot hear the Assistant Minister giving his answer. You can also see people moving around, I do not know what exactly is interesting hon. Members today.

Mr. Deputy Speaker: Order, hon. Members! It is only fair that we transact the Business that brought us here. If you really want to consult outside the Business that brought us here, there are lounges; we have elaborate facilities in the other buildings in the Parliamentary Square for us to be able to transact. We cannot have those kind of loud consultations here! You are almost turning the House into a market! The Chair is going to check very seriously on that. The next time the Chair notices people who are consulting very loudly, the Chair will not hesitate to exercise its authority under the Standing Orders!

Proceed!

The Assistant Minister for Information and Communications (Mr. Godhana):
Thank you, Mr. Deputy Speaker, Sir. It is, therefore, anticipated that this measure will control any possible collapse as indicated.

(b) It is, indeed, true that the corporation in the Budget Estimates for 2009/2010 had projected an expenditure of Ksh.120,000,000 for purchase of software for an enterprise resource planning system for use in back office operations. The amount of Kshs120 million was, however, not spent as the project was dropped in the subsequent revision of the 2009/2010 focus and 2010/2011 estimates on account of limited cost.

With regard to the corporation's revenue for the last three years, it is evident that the corporation registered growth in post age and courier, as shown in this table. In 2006-2009, EMS---

Mr. Deputy Speaker: Order, Mr. Assistant Minister! You can table the information for the Questioner to review.

The Assistant Minister for Information and Communications (Mr. Godhana): Thank you, Mr. Deputy Speaker, Sir.

(c) The corporation's current work force stands at 3,945 distributed across all the eight regions. Migori has one post office which is served by ten members of staff. The post office is situated in Suna and is fully computerized. In addition, I also wish to inform the House that my Ministry and various operators are working on plans to roll out ICT Villages in all the major town centres across the country under the Universal Access Program and Migori will be included in the plans.

Thank you.

Mr. Pesa: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for giving a very elaborate answer. He has indicated that they have reduced the workforce to 90 per cent. Could he assure this House and Kenyans that the 90 per cent that he has left behind to work in the corporation will make an input which will be commensurate with the business plan of the corporation?

Maj. Godana: Absolutely, Mr. Deputy Speaker, Sir. Once that is done, re-engineering of the whole of the PCK will be done. That way, the corporation will be able to improve services and realise more income.

Mr. Deputy Speaker: Last question, Mr. Pesa!

Mr. Pesa: Mr. Deputy Speaker, Sir, I am satisfied with the answer.

Question No.430

PROVISION OF UNIVERSAL HEALTH INSURANCE

Dr. Khalwale asked the Minister for Medical Services what the Government is doing to provide universal health insurance for all Kenyans.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I have been away. I just got back last night. I picked the answer from my office, but I want to confess to the hon. Member that this answer is extremely inadequate. I am not satisfied with it, and I would like to request the hon. Member that I answer the Question on Tuesday, next week.

Mr. Deputy Speaker: Is that okay, Dr. Khalwale?

Dr. Khalwale: Mr. Deputy Speaker, Sir, whereas I have no problem with his request, the whole of next week, I will be away from the House. Therefore, I request that he answers the Question in the week after the next.

Mr. Deputy Speaker: Very well. Therefore, this Question shall appear on the Order on Tuesday, the week after next week.

(Question deferred)

Next Question, Mr. John Mututho! Is hon. Mututho not here?
Next Question, hon. Elias Mbau!

Question No.455

MANDATE OF PERMANENT PRESIDENTIAL
MUSIC COMMISSION

Mr. Mbau asked the Minister for National Heritage and Culture:-

(a) to state the current functions and activities of the Permanent Presidential Music Commission;

(b) what the Commissions' personnel establishment is and budgetary allocations in the 2009/2010 and 2010/2011 financial years; and,

(c) what the Commission's highlights of achievements are since its formation.

The Assistant Minister, Ministry of State for National Heritage and Culture (Mr. Ombui): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Permanent Presidential Music Commission was established in 1988 through *Kenya Gazette* Notice No.2132 to study ways and means of developing and preserving music and dances in Kenya. In the year 2008, the Ministry of State for Public Service transformed the Permanent Presidential Music Commission into Department of Music under the Ministry of State for National Heritage and Culture.

The Department is mandated, amongst others, to write, guide and co-ordinate music and dance activities in the country; identify, nurture and promote music and dance currently in the country; document, conserve, preserve and disseminate music and dance ethics of Kenya; develop and promote relevant and popular music and dance entertainment programmes during national days and presidential functions, and provide consultancy services within the public and private sector.

(b) The staff establishment of the Department is 96 members of staff but currently, it has 25 members of staff, categorised as shown: Director of Music Commission, 1; Music Officers, 5; Film Officers and Audio-Visual Section, 3; Support Staff, 16; Total, 25.

The budgetary allocation for the Music Commission is as shown: In the year 2009/2010, Kshs---

Mr. Deputy Speaker: Assistant Minister, can you table that information? Consider that there are other Questions. You have to summarise your answer.

The Assistant Minister, Ministry of State for National Heritage and Culture (Mr. Ombui): Mr. Deputy speaker, Sir, let me go to next part.

(c) The highlights of the achievement of the Presidential Music Commission are as follows:

(i) It has finalised the Draft Music Policy to guide, regulate and co-ordinate music and dance activities in the country and the road map on which the industry will grow and develop. The draft will be presented to the Cabinet and Parliament by next year.

(ii) It has rolled out a Youth Training Programme to identity, nurture and promote music and dance talent in the country.

(iii) It has created a database of music and dance heritage of Kenya in conjunction with the Kenya Broadcasting Corporation and the French Cultural Centre.

(iv) It has carried out research on music and dance ethics of Kenya, with over 120 research papers being ready for publicity. In the year 2008, the department published the first manuscript with 20 research papers, while the rest are being published this year for wider circulation.

(v) In the year 2009, the department started a programme for developing and publishing biographies of Kenya---

Mr. Deputy Speaker: Order! Order, hon. Ombui! Table that elaborate answer.

The Assistant Minister, Ministry of State for National Heritage and Culture
(Mr. Ombui): I am almost finishing, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Proceed!

The Assistant Minister, Ministry of State for National Heritage and Culture
(Mr. Ombui): Thank you, Mr. Deputy Speaker.

(v) In the year 2009, the Departments started a programme for developing and publishing biographies on Kenyan musicians. The first book with 12 biographies is already with the publishers.

(vi) It has held annual national symposia on Kenyan music for academicians, researchers, music teachers, trainers and stakeholders in the music industry to discuss research findings on music and dance in Kenya. Already, six national symposia have been held and 20 research papers and research findings discussed and disseminated.

(vii) Recording on audio-visual format, the music and dance literature of Kenya for reference by posterity. Already, the department has recorded over 100 learning hours of music from 40 Kenyan communities.

(viii) The department's Audio-Visual Section has developed promotional audio-visual documentaries for various Government institutions, for example.

(ix) Developing and promoting relevant music and dance entertainment programmes during State national days and presidential functions.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Mbau: Mr. Deputy Speaker, Sir, I thank the Assistant Minister for that elaborate answer, which contains much of the functions of this new department. You note that this Commission was formed in 1988. Whereas I want to appreciate that from 2008, something may be happening, after the Commission was transformed and taken over by a Ministry as one of its departments, the Assistant Minister is now telling us that for 20 years – between 1988 and 2008 – there is nothing to show with regard to what the Commission was doing, or what it achieved for all the period it had been in existence. What he has given are just functions and achievements since the Presidential Music Commission became a department of his Ministry in 2008.

(Loud consultations)

Mr. Deputy Speaker: Order! Order, hon. Members!

Proceed, Assistant Minister!

Mr. Ombui: Mr. Deputy Speaker, Sir, I agree with the hon. Member that this department has not achieved a lot. It has been faced with a lot of challenges. The first one is movement from one Ministry to the other. The department has been moved to six

Ministries. At one time, it was under the Office of the President. It went to the Ministry of Culture and Social Services. It subsequently went back to the Office of the President. It then went to the Ministry of Education. Afterwards it went to the Ministry of Gender and Sports, after which it went to the Ministry of Culture and Social Services. Finally, it is under the Ministry of State for National Heritage and Culture. That is the first challenge it faced. That is why it has not done a lot.

Secondly, it has a problem of insufficient funding. The department is not adequately funded by the Ministry of Finance. In actual sense, if you look at those two financial years, you will see that they have substantially reduced the department's budget in the current financial year. What we call "consultancy fee" was there in the last financial year. However, in this year's budget, it has been removed.

Thirdly, the department is facing a problem of inadequate personnel. Out of the establishment of 96 personnel in the Department, there are only 25 members of staff currently. In actual sense, they are overwhelmed.

Leaving that one aside, the department has not been having permanent premises. Now, it is trying to construct the premises for its own operation. I think those are the reasons why it has not performed well as far as employment is concerned. But given adequate resources, I am sure the department can do a lot in this country.

The Deputy Speaker: Hon. Mbau, ask your last supplementary question.

Mr. Mbau: Mr. Deputy Speaker, Sir, the Assistant Minister has submitted that indeed this particular department does not have much to show in terms of its achievement for a period of more than 20 years. There are various other departments within Government that face the same scenario where departments continue to draw money and funding from the Exchequer year in, year out and yet there is nothing to show. Can the Assistant Minister confirm or deny whether therefore this department and others of its like are being used as conduits of siphoning money from the Exchequer to other predetermined needs where there are no rational planned outcomes but only money going in without anything to show?

Mr. Ombui: I think I am very clear and the Member can agree with me that the money which is allocated to this department from the budget, which you have a copy, is not adequate. However, the department is trying as much as possible to ensure that it has carried out its functions adequately. That is why it has also developed the music policy which will help it to continue to execute its mandate and at the same time have musicians from all the parts of the country. This way, it can set up a very clear guideline on how to carry out the issue of music and dance in the country.

Mr. Mbau: On a point of order, Mr. Deputy Speaker, Sir. You have heard the Assistant Minister once again confess that the resources that have been allocated to this department have not been adequate, yet he has also accepted that the department, for all that time, has not had much to show for what it has been getting. I think the Assistant Minister needs to appreciate that given the colossal resources that go under the expenditure Vote on Recurrent, it is high time he advised that such departments be scrapped with a view to rationalize and ensure that money from the poor taxpayers goes where there is value.

Mr. Deputy Speaker: Fair enough. Next Question, hon. Hassan Joho!

Question No.457

STATUS OF MOMBASA WATER AND SEWERAGE
COMPANY BOARD

Mr. Joho asked the Minister for Water and Irrigation –

(a) If she could provide details on the status of the Mombasa Water and Sewerage Company Board; and,

(b) When she will constitute a functional Board.

Mr. Deputy Speaker: The Minister for Water and Irrigation not here? The Question is deferred to next week on Tuesday afternoon.

(Question deferred)

Mr. Waititu: On a point of order, Mr. Deputy Speaker, Sir. The Minister is right across where I am standing.

(Mr. Waititu addressed the House from the Dispatch Box)

The Deputy Speaker: Hon. Waititu, are you in a position to answer the Question? Have you been sworn in as an Assistant Minister?

Mr. Waititu: I have not been sworn in, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: In the circumstances and for all practical purposes, you are not a Minister. I am talking as far as transacting business of the House is concerned. Hon. Joho, this Question---

Dr. Khalwale: On a point of order Mr. Deputy Speaker, Sir. Did you notice that the hon. Waititu has spoken from the Dispatch Box when this House is not aware that he is a Minister?

Mr. Deputy Speaker: Indeed, hon. Waititu, you have no right to address the House from the Dispatch Box. You can come to this side until such time that you are sworn in as a substantive Minister. Fair enough!

(Mr. Waititu stood up in his place)

Mr. Waititu: Most obliged, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Joho, is next week fair with you?

Mr. Joho: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: The Chair directs that the Question be put on the Order Paper next week on Thursday.

QUESTION BY PRIVATE NOTICE

(Mr. Washiali) to ask the Minister of State for Defence:-

(a) Could the Minister explain why army recruits in the ongoing recruitment exercise from South Wanga in Mumias Constituency were not given a chance and instead referred to Matungu in the neighbouring constituency?

(b) What steps is the Minister taking to ensure the people of South Wanga have a fair chance to join the armed forces?

Mr. Deputy Speaker: Hon. Washiali not there? The Question is dropped.

(Question dropped)

ORAL ANSWERS TO QUESTIONS

Question No.301

DELAYED CONSTRUCTION OF NZEU BRIDGE

Mr. Deputy Speaker: Hon. K. Kilonzo not there? The Question is dropped.

(Question dropped)

Mr. Mututho: Thank you, Mr. Deputy Speaker, Sir. I rise to ask Question---

Mr. Deputy Speaker: Order! Order! Mr. Mututho, first, apologise to the House for coming late.

Mr. Mututho: Thank you, Mr. Deputy Speaker, Sir. I apologise profusely for coming late when my Question was called.

Mr. Deputy Speaker: Proceed now and ask the Question.

Question No.442

NON-EMPLOYMENT OF NAIVASHA RESIDENTS BY MINISTRY OF ENERGY

Mr. Mututho asked the Minister for Labour:-

(a) why the Ministry of Energy in Naivasha has persistently locked local residents out of recruitment of basic manual jobs in all its operations and affiliates;

(b) to provide a breakdown of all persons employed in the last one year by Geothermal Development Company (GDC) and their contractors, KenGen and Kenya Pipeline Company (KPC) within Naivasha and state where they come from within Naivasha Constituency; and,

(c) when the apparent discrimination against local residents will stop.

The Assistant Minister for Labour (Mr. Ojaamong'): Mr. Deputy Speaker, Sir, I have been provided with a very inadequate answer and our efforts to get the Managing Director for the Geothermal Development Corporation has been fruitless. So, my officers have tried their level best; they have left a questionnaire in his office, they have made phone calls and the man is not picking the calls. So it is my kind request that, I think the relevant Committee takes up the matter because the man is extremely rude.

Mr. Mututho: I want to thank the Assistant Minister for being very honest. That is the exact situation on the ground. Shall it be in order therefore to seek your guidance such that this matter be brought before the relevant Committee and then we hear from him

within at least seven days because he is just simply arrogant? He will not listen even to his Minister.

Mr. Deputy Speaker: Indeed, it is a pity for a Government Minister to stand up on the Floor of the House and say that he or she is helpless. In line with the issue of collective responsibility, I wish the Leader of Government Business---

(Mr. Musyoka Stood up in his place)

Mr. Deputy Speaker: Order, Mr. Vice President and Leader of the Government Business! The Chair would want you to listen to the ruling of the Chair. The hon. Assistant Minister has stood up here and said that he is unable to get an answer from a Government department or a parastatal in a Government department. It is a pity. In line with collective responsibility, a Minister of the Government cannot stand on the Floor of the House and say "I cannot do anything about this thing." Can the Leader of the Government Business give direction on the same?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, I confirm that your ruling is actually correct and it cannot be heard from one Minister denying the operations of another Ministry. So I would want to get details. I think I will work at it and perhaps if need be, I give a report to this House. Thank you.

Mr. Deputy Speaker: When? The Question has got to be deferred. Under the circumstances, I think it is only fair that the Leader of Government Business answers this Question.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, can I be given up to sometime next week may be on Wednesday or Thursday? That will be fine.

Mr. Deputy Speaker: Fair enough. It is so directed that the Question appears on the Order Paper next week.

Mr. Mututho: On a point of order, Mr. Deputy Speaker, Sir. I am perturbed by one fact and I seek your indulgence. The Assistant Minister is a very honest man. He has expressed his difficulties and genuine difficulties in trying to get answers from Government officers who are ignoring him in total. I would be seeking a direct action against the officers now that they cannot obey their superiors in the name of Ministers.

Mr. Deputy Speaker: That is why precisely there is the Leader of Government Business in the House who has given an undertaking to answer this Question on Wednesday morning next week.

The Chair directs that the Question appears on the Order Paper on Wednesday morning next week!

(Question deferred)

POINTS OF ORDER

EFFECTS OF CONSTRUCTION OF GIBE III DAM

Mr. Lekuton: Mr. Deputy Speaker, Sir, I stand here to seek a Ministerial Statement from the Ministry of Water and Irrigation on the agreements between Kenya

and Ethiopia on the construction of Gibe III Dam on the Omo River; the amount of fresh water flowing from River Omo into Lake Turkana per day; amount of water projected to flow into Lake Turkana after the completion of Gibe III; the number of people, animal and plant life on the Kenyan side who would possibly be affected by the building of the dam which is a trans-boundary river on Lake Turkana; and lastly, whether there was any environmental impact assessment done by the National Environment Management Authority (NEMA).

CONTRACT BETWEEN GOK AND BRITISH ARMY
ON SAMBURU EAST LAND

While I am still standing I would also like to ask for an answer from my earlier Statement that I sought on 26th August, 2010 from the Ministry of State for Defence on the contract between the Government of Kenya and the British Army to use part of Samburu East land exclusively for British Army training.

Mr. Deputy Speaker: Fair enough! Will the Minister for Water and Irrigation give an undertaking on the earlier Ministerial Statement that was sought by Mr. Lekuton?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Deputy Speaker, Sir, I undertake to make a Ministerial Statement next week on Wednesday.

Mr. Deputy Speaker: Fair enough! It is so directed that the Ministerial Statement be available next week as the Minister has promised.

Mr. Mututho!

Mr. Lekuton: On a point of order, Mr. Deputy Speaker, Sir. I had asked when my earlier Statement which I had asked on 26th August, 2010 would be answered by the Ministry of State for Defence.

Mr. Deputy Speaker: Mr. Haji, Mr. Lekuton had made a request for a Ministerial Statement that the Ministry was supposed to have supplied. Could you give an undertaking when that Ministerial Statement will be delivered?

The Minister of State for Defence (Mr. Haji): Mr. Deputy Speaker, Sir, we oblige and we will do that next week on Tuesday.

Mr. Deputy Speaker: It is so directed!

The Minister for Water and Irrigation (Mrs. Ngilu): On a point of order, Mr. Deputy Speaker, Sir. I have just remembered that we have had several meetings with other Ministries concerning this issue of Omo River. Therefore, I may not be able to convene these meetings between Monday and Tuesday to give a good response by Wednesday. I wonder whether I can be given one week to get a good answer so that I come the following Tuesday.

Mr. Deputy Speaker: Fair enough! Is that okay Mr. Lekuton?

Mr. Lekuton: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: It is so directed! Indeed, it is appreciated that this is multi-sectoral but many Ministries have to be consulted and the Chair takes note of that. It is, therefore, so directed that the Ministerial Statement be delivered the week after next.

NON-COMPLIANCE WITH PROVISIONS OF LABOUR
INSTITUTIONS ACT

Mr. Mututho: Mr. Deputy Speaker, Sir, I would like to seek a Ministerial Statement from the Minister for Labour on the following:-

(a) Why the Minister has ignored the provisions of Section 46 of the Labour Institutions Act, No.12 of 2007 that require him to lay before the National Assembly within 21 days the publication of the regulations he published on 18th June, 2010 as Legal Notice No.96 of 2010 titled the “Basic Minimum Consolidated Wages; Agricultural Industry Regulation 2010”.

(b) Why the Minister has in the Legal Notice No.96 of 2010 deliberately failed to separate the agricultural sector into its various categories including horticulture, floriculture and yet the law gives him the power to do so.

(c) Whether the Minister is aware that the horticultural and floricultural sectors are unique and require separate consideration from the general agricultural sector owing to the level of exploitation by the workers in that particular sector.

(d) Whether the Minister is aware that the returns from one stem rose flower exported is adequate to pay daily wages of up to five workers.

(e) Whether he will withdraw Legal Notice No, 96 of 2010 and cause amendments to be made to cater for the peculiar circumstances in the horticultural sector.

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Deputy Speaker, Sir, we shall provide the Statement on Thursday next week.

Mr. Deputy Speaker: Okay! It is so directed! The Leader of Government Business, in line with the provisions of Standing Order No.36 (4) ---

EVICITION NOTICE TO SQUATTERS OF KIPSONGO SLUMS

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I had indicated to the Chair that I wish to remind the Deputy Prime Minister and Minister for Local Government that they promised me a Statement on the eviction notice given to the squatters of Kipsongo slums in Kitale which was due on Thursday last week. I did not raise it on Tuesday because I was hoping they would bring it today, but now it is a week since then. Could you give further directions?

Mr. Deputy Speaker: The Leader of Government Business, can you give a further undertaking on this matter?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, I will take up the matter with the Deputy Prime Minister and Minister for Local Government. In fact, I will request Mr. Ethuro to jointly do it with us from my Office here in Parliament so that, at least, this matter is responded to. Of course, it is the prime responsibility as the Leader of Government Business, but I think because of the delay in this matter, I want to assure him that the Ministry of Local Government will get the message today.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. While I appreciate the offer by the Leader of Government Business to communicate further, I thought it is his responsibility to ensure that Ministers respond by the time they have agreed. So what assurance can he give to the House that this time round the Deputy Prime Minister and Minister for Local Government will not again conveniently forget to respond in due course?

MINISTERIAL STATEMENT

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, he is going to get a written communication from my Office.

PARLIAMENTARY BUSINESS FOR THE WEEK
COMMENCING TUESDAY, 26TH OCTOBER 2010

While I am on the Floor, pursuant to provisions of Standing Order No.36 (4) I take this opportunity to make the following statement with regard to the business for the week commencing Tuesday, 26th October, 2010.

Mr. Deputy Speaker, Sir, may I first thank hon. Members for the smooth and successful passage of the Bill on the Commission for the Implementation of the Constitution which was done on Tuesday. This, in itself is a milestone and the clearest indication so far that this House intends to carry out the full implementation of the Constitution and that the process has taken off in earnest. Once assented to, the legislation will enable the Constitution Implementation Oversight Committee to move with speed and constitute the Commission for the Implementation of the Commission.

With regard to Bills that are scheduled to appear before the House next week, I want to mention that the following Bills are on schedule: The Chiefs (Amendment) Bill 2009 is expected to be read a Second Time; The Mutual Legal Assistance Bill, 2009 is at the Committee Stage of the House.

The House is also expected to deliberate on the following memoranda from His Excellency the President: Memorandum from His Excellency the President on the Animal Technicians Bill 2010; Memorandum from His Excellency the President on the Indemnity Repeal Bill 2010.

The House Business Committee will meet next Tuesday on 26th October, 2010 to consider any other business that the House may be required to consider.

Lastly, I wish to reiterate our earlier call to the Ministries and departmental committees to expedite consideration of Bills referred to the said committees in order to ensure timely passage of legislation in this House. Indeed, the provisions of Standing Order No.111(2) require committees to present their reports on Bills within ten calendar days of such committal.

POINTS OF ORDER

SHOOTING OF CIVILIAN AT KANGEMI MARKET

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. Now that I see the Minister in charge of internal security is here, before the recess, which was two months ago, I asked for a Ministerial Statement on the shooting of a civilian at Kangemi Market when people were being evicted. I am aware that his Ministry has been ready and I am wondering when that Ministerial Statement will be given.

RECRUITMENT OF KEBS MANAGING DIRECTOR

Secondly, last week Dr. Eseli asked for a Ministerial Statement on the recruitment of the Managing Director at the Kenya Bureau of Standards. As a Member of this House who was aware that it had been asked, my appetite was whetted for knowing the truth about the matter. I am wondering when these two Statements will be given.

Mr. Deputy Speaker: The Minister of State for Provincial Administration and Internal Security, you could deal with this.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, I would like to request that I be allowed to bring that Statement on Tuesday.

Mr. Deputy Speaker: Tuesday next week; it is so directed.

Leader of Government Business, the other Minister is not present; so, the presumption is that you will take responsibility for that.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, since this matter is actually in the HANSARD, I would like to have a look at it, because I was not able to get the exact requirement by my learned friend, Ms. Karua, on the second request. Since it is in the HANSARD, I intend to deal with it as such.

I was also going to correct what I had earlier read out with regard to the Chiefs (Amendment) Bill. It should actually read “the Retirement Pensions Bill”, which Mr. Wamalwa had wanted to work on next Tuesday.

Ms. Karua: Mr. Deputy Speaker, Sir, the hon. Vice-President and Leader of Government Business has not stated when he may wish to give the Ministerial Statement sought by Dr. Eseli. I am wondering whether I am in order, because I did not ask for that. It was asked by an hon. Member, but it raised our appetite for the truth regarding that matter.

Mr. Deputy Speaker: Proceed, hon. Member. It is the property of the House. You have the right to demand it.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): The hon. Member for Gichugu and my learned friend talked about the fact that her appetite for the truth was actually--- It is good to know that she has absolutely good appetite for the truth.

(Laughter)

That is on a light note. I intend to get in touch with Dr. Eseli to find out whether he is still very keen on this Statement, because it is the property of the House. Since this matter now belongs to the province normally referred to as “Parliament”, in all fairness it should be dealt with expeditiously. By next week, we will ensure that this happens.

Mr. Deputy Speaker: Order, Mr. Vice-President and Minister for Home Affairs! In line with the principle of collective responsibility, could you give a specific day next week when the Ministerial Statement will be on the Floor of the House?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Thursday, next week. Mr. Kosgey will deal with the Ministerial Statement as required by Dr. Eseli.

Mrs. Shebesh: On a point of order, Mr. Deputy Speaker, Sir. On the same issue, would I be in order to ask the Leader of Government Business to also ensure that Ministers do not talk about this issue in public and in the media as we await the Ministerial Statement?

Mr. Deputy Speaker: I think that is a standard rule.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, I think that is within the province of the Chair; in accordance with the requirements of our own Standing Orders, we are not required to take business which is before the House to the outside world. I hope it is not just Ministers, but all of us are duty bound to abide by the Standing Orders that govern the conduct of business in this House.

Mr. Deputy Speaker: Fair enough. That is very well stated.
Next Order!

MOTIONS

ADOPTION OF REPORT ON APPOINTMENT OF JUDICIAL SERVICE COMMISSION

Mr. Baiya: Mr. Deputy Speaker, Sir, I beg to move that this House adopts the Report of the Departmental Committee on Justice and Legal Affairs laid on the Table of the House on Tuesday, October, 19th, 2010.

The report laid on the Table of the House on Tuesday relates to the appointment of the members of the Judicial---

Mr. Deputy Speaker: Order! Mr. Baiya, when you are moving a Motion, you should read the Motion as it is in the Order Paper, word for word, that is verbatim and then you proceed.

Mr. Baiya: Thank you, Mr. Deputy Speaker, Sir, I stand guided accordingly.

Mr. Baiya: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the appointment of members of the Judicial Service Commission laid on the Table of the House on Tuesday 19th October, 2010.

Mr. Deputy Speaker, Sir, the Report laid on the Table relates to the appointment of the members of the Judicial Service Commission under the new Constitution.

Article 171(1) of the new Constitution sets out the various bodies and organs that are to appoint members of the Judicial Service Commission. All of them come to about 11. The Report we are tabling recommends the appointment of two members of the Judicial Service Commission pursuant to Section 171(b) that relates to the appointment of members of the Judicial Service Commission elected by the Judges and Magistrates Association.

Mr. Deputy Speaker, Sir, in the transitional provision of the Constitution, Clause 20(1) of the Fifth Schedule provides that the Judicial Service Commission shall be appointed within 60 days after the effective date. The Commission shall be deemed to be properly constituted under this Constitution despite the fact that there may be a vacancy in its membership, because any of the bodies nominating or electing members have not done so.

Mr. Deputy Speaker, Sir, therefore, this House has had only 60 days from the effective date of the new Constitution, which was 27th of August, 2010 to appoint members of the Judicial Service Commission under transitional Clause 21. So, by

appointing the first two members of this Judicial Service Commission under this clause, it is anticipated that the other organs will in due course appoint the various members and there will be full compliance with the new Constitution and no objection may be raised.

Mr. Deputy Speaker, Sir, the Committee undertook the vetting process by inviting the two members before it. They appeared and responded to all questions and concerns that were raised by the hon. Members. It is the Committee's opinion that they are suitable to serve in the offices that they are intended to serve. Some concerns were also raised by some of the legal professional bodies during the public vetting process. They raised concern why Parliament itself was vetting the members of the Judicial Service Commission. But it is also clear that Section 248 of the new Constitution grants Parliament the mandate to vet all Commissions and independent constitutional offices. They are all to be vetted. Specifically, Article 250(2) says:

“The chairperson and each Member of the Commission and holder of an independent office shall be:-

- (a) identified and recommended for appointment in a manner prescribed by the National Assembly;
- (b) approved by the National Assembly; and,
- (c) appointed by the President.”

So, in vetting and recommending for approval the officers we are seeking, we are, therefore, exercising the power granted by Article 250(2)b.

Mr. Deputy Speaker, Sir, finally, I wish to express the gratitude of the Committee to the staff of Parliament who assisted us in this exercise, as well as the candidates who appeared before us for having co-operated. It is my pleasant duty on behalf of the Committee to recommend to the House the adoption of this Report.

Mr. Deputy Speaker, Sir, with those remarks, I beg to move and ask hon. Olago to second.

Mr. Olago: Mr. Deputy Speaker, Sir, I rise and have the honour to second this Motion for the adoption of the Report of the Committee on Justice and Legal Affairs.

Mr. Deputy Speaker, Sir, the appointment of the two candidates is the first of a series of exercises that our Committee has to undertake. From the outset, I wish to say that setting up a new Judicial Service Commission will be the first step in getting Kenya on the right track to justice and fairness. It is going to be a variation from the Judicial Service Commission (JSC) that we have in place now. Hon. Justice Isaac Lenaola and Principal Magistrate, Ms. Emily Ominde, are nominees of the Judiciary. This is a man and a lady who have the confidence of their peers. They held their elections under the umbrella of Kenya Magistrates and Judges Association and came up with those two names.

Mr. Deputy Speaker, Sir, I wish to reiterate that the first candidate, Justice Isaac Lenaola, is a youthful judge who can mutate, if given the chance, into Lord Denning of Kenya. Justice Lenaola, for those lawyers in the House who know him or non-lawyers who are interested in the judicial records of this country, will say he has had decisions that have formed precedence in Kenya and have been supported by the highest court under the last Constitution, that is, the Court of Appeal.

Mr. Deputy Speaker, Sir, the injection of these two names into the new JSC will be a milestone in enriching our jurisprudence. Justice Lenaola is intellectually smart and appreciates the honourous task of writing judgments. He has also been a member of the

reform team to the Judiciary. He is, therefore, competent and most suited to be appointed to the JSC as newly constituted.

Mr. Deputy Speaker, Sir, the Principal Magistrate Emily Ominde, enjoys confidence and respect from her peers. She is equal to the task of being appointed a member of the JSC because of her wealth of experience. She also possesses the ingredients of the kind of person that is suitable for the appointment that is being set by Parliament. She has served as a magistrate in various stations in Kenya and it is crucial to note that having served in these stations, has prepared her for further challenges of whatever nature that may come in her area of jurisdiction, particularly, where litigation is concerned. It seems to me that with her articulate and sharp mind, she is an ideal person for appointment to the new JSC.

Mr. Deputy Speaker, Sir, I wish to reiterate an issue that hon. Baiya has mentioned, that is, the requirement of the Constitution in constituting the JSC. If you look at the provision in the Constitution pertaining to the creation of Commissions, the JSC stands alone because it is not set by Parliament, but by the Constitution itself. So, as we stand here, it has been set and the Constitution is very clear. It says that once appointment is made irrespective of any vacancy, the Commission will be in place. That way, we shall be able to beat the deadline of 26th October. The rest of the Members of the Commission will be presented to Parliament for approval. It is worth noting that this week, on 25th October, 2010, members of the Law Society of Kenya will be holding elections to submit two names - a name of a man and a woman – to be considered by the House. We expect that this honourable House will endorse the two names from the Committee on Justice and Legal Affairs to be presented to the President and hon. Prime Minister for appointment. Once that is done, we shall have beaten the deadline and the Commission shall be in place.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to second this Motion.

(Question proposed)

Mr. Imanyara: Mr. Deputy Speaker, Sir, I beg to support this important Motion that has been very ably moved and seconded by my two predecessors.

Mr. Deputy Speaker, Sir, Kenya is a very different country today. In another constitutional dispensation, we would just have read a notice or announced from some corner that so-and-so has been appointed into this body. We are seeing the beginning of germination of the constitutional seed. We, in Kenya, are setting an example of what a constitutional Government is, how it should behave and how the affairs of the Kenyan people should be governed.

Mr. Deputy Speaker, Sir, in supporting this important Motion, I must say that I personally know Justice Lenaola. I have appeared before him in a constitutional court. I must also say that of all the judges of these courts, some who have had records of more than 30 years experience, none has the intellectual capacity that I have seen from Justice Lenaola. In fact, I appeared before him and the now Justice for the International Criminal Court (ICC), Lady Justice Aluoch and Justice Hatari Waweru in a constitutional reference involving the arrest and torture of former Air Force detainees. Mr. Justice Lenaola led the other two judges in writing a constitutional judgment that has far reaching repercussion and has set the pace for many other judgments that have come up

including the judgment in the Nyayo House torture cases, where former detainees have been given compensation for the torture they received.

Mr. Deputy Speaker, Sir, what we are seeing today is setting up of this important Commission under the new Constitution as benchmark. The Kenya judges and magistrates have done a very commendable job in recommending a man and woman, whose confidence they enjoy and who also enjoy the confidence of the Kenyan people. I look forward to seeing the other institutions that are required under the new Constitution to nominate persons to serve in the Judicial Service Commission follow the example of the Kenya Judges and Magistrates Association.

I have just come from the Republic of South Africa, where I was heading the Kenyan delegation to the Pan African Parliament. Reading the media there, even Constitutional amendments involving the exercise of Presidential prerogative, you will find that notices go out to the media inviting applicants to serve in these four positions before appointments are made. So, I look forward to seeing the other entities that are required to nominate persons to serve in the Judicial Service Commission follow the example of the Kenya Judges and Magistrates Association, and in particular the Head of State when he appoints one woman and one man to represent the Republic. I would like to see the same example, where an advertisement goes to Kenyan newspapers and even the *Kenya Gazette* from the President of the Republic of Kenya inviting Kenyan citizens, men and women who want to be recommended for service in the Judicial Service Commission. This will enable him have a wide number of candidates from whom he can nominate the persons he sends to this House. Unlike others whom we can summon to the Committees during sessions of the Committees of the House, we cannot summon His Excellency the President. So, it is up to him also to show by example that when he chooses the two people who will serve in the Judicial Service Commission, the process of nominating them to this House is also very transparent. We would like to see an example where a media notice in the dailies, and if necessary, on the radio and television is coming from the Office of the President inviting Kenyans to submit names for appointment by the President to serve in the Judicial Service Commission. This should be the same way the Kenya Judges and Magistrates Association has done; the way the Law Society of Kenya will be doing shortly and the way others have done.

On my good friend, the Attorney-General, who is sitting here and listening to me, I hope that when he too makes nomination as is required under the Constitution of Kenya, we will see an advertisement in the newspapers from his office inviting Kenyans who wish to serve in this Commission so that he can nominate. This will enable us see that he has also followed the process that on the face of it indicates that he is leading the way in nominating the person that he will submit to serve in the Judicial Service Commission. Of course, the Attorney-General is not listening. He will read this in the HANSARD. For his benefit, I would like to repeat that I look forward to seeing an advertisement in the Kenyan media from his office inviting candidates who wish to be considered by him to serve in the Judicial Service Commission so that we know the criteria he will use when it comes to nominating the person. That is the same thing the Kenya Judges and Magistrates Association has done. The Law Society of Kenya in which he is the secular head is doing the same thing. This will also make the individuals who head institutions in this House follow the example that is set by the requirements of the new constitutional dispensation.

Mr. Deputy Speaker, Sir, I know it is difficult for people who have served in the old dispensation to come to terms with the new constitutional order that requires them to do things in a very different way. However, I am sure that the Attorney-General will live to the standards that he has set.

With those remarks, I would like to support this Motion that seeks to appoint Justice Lenaola and hon. Ominde to serve in the Judicial Service Commission.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I rise to support this Motion.

Mr. Deputy Speaker, Sir, allow me to highlight a number of things, because it is important for this House to accept my salute for taking this very important step in this process of implementing the new Constitution.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, the main purpose for vetting is, first of all, to ensure that there are minimum standards of integrity throughout institutions. It is also to determine suitability. Above all, it must be recalled that integrity for that purpose refers to a person's adherence to relevant standards of human rights, professional conduct including financial propriety. It gives me great pleasure to hear that the Judge and the Principal Magistrate have secured the approval of the Committee. The other purpose is to transform institutions involved in serious abuses into public bodies.

It cannot be forgotten that this country went on its knees in 2008, because we were unable to use the Judiciary to resolve an election dispute. The other one is to create civic trust so that the public and particularly the victims of abuses can rely on the institutions because they would be hiring people who have gone through this process.

The other point I would like to mention without fear is the renewal, rather re-legitimization of public institutions so that the public can feel that the people working in those institutions enjoy the trust of Kenyans. The other one is to disable structures that have permitted abuses. By seeking to appoint this body, we are more or less dismantling the old Judicial Service Commission, where judges used to be appointed and pulled out of drawers the way you would be able to extract cockroaches from your kitchen.

Mr. Temporary Deputy Speaker, Sir, we will create a new institution so that these judges are subjected to a transparent process of recruitment. Therefore, it is a very important measure of governance, when you have a reformed Judicial Service Commission. However, I would like to caution the House and the country that vetting of these people must be part of broader spectrum of reforms and requires enormous political will. Therefore, I plead particularly with the two Principals to realise that, however, much you attempt to reform these institutions, if political will is lacking and if there are breaks that are being applied on the implementation of the Constitution, for example, the recent rendition of Kenyans arrested in Kenya and taken out of the country, the dream of a new Constitutional order will never be realized.

I would like to emphasize that the new Constitution requires that a Kenyan arrested must, first of all, be presented to a court established by the new Constitution, and

a Ugandan court is not such a court; a Tanzanian court is not such a court and a United States court is not such a court. Therefore, this step is very important.

Mr. Temporary Deputy Speaker, Sir, the other aspect is resources. As a Minister I have noticed that the country is shy about providing resources. Therefore, we will be coming to Parliament from time to time to get sufficient resources for these purposes. A word of caution: I am convinced without doubt that this is purely a shortcut. What we will do today is a shortcut. I am convinced without doubt that we still must pass a law under Article 250 of the Constitution. I have drafted that law. When I say "I", I include the Attorney-General because he co-sponsors the law. I also include the entire House because I have presented these Bills to Parliament.

Mr. Temporary Deputy Speaker, Sir, I want to beg Parliament to re-read the Constitution. You will realize that the requirement is for the Attorney-General, in consultation with the Commission for Implementation, to prepare the law. There is, however, no requirement that that is the only man who can present these Bills to this House. I would like to seek the indulgence of this House to unlock the blockages that are in our House so that the other remaining two Bills on the vetting of judges can also be tabled.

We need good judges. The fact that the two; a judge and a magistrate nominated by the judges and the magistrates have received unanimous approval by the Committee, to me is a vindication. I have always held the point of view that it is true we have had a rotten Judiciary. It is true that we have had a Judiciary stuck in corruption. However, there are good quality magistrates and judges in this country. Therefore, the opportunity has now come for us to do so. The importance of the Judiciary cannot be under-played.

Mr. Temporary Deputy Speaker, Sir, to the hon. Judge and the magistrate, I am afraid that you will still be vetted when we pass the law on vetting of judges and magistrates. So this vetting that has taken place is to determine whether you are suitable for the Judicial Service Commission (JSC). However, when Parliament unlocks the windows that have been locked against Mutula, and I can table these Bills, I am afraid you will still have to go through the vetting to determine whether you are a suitable judge or magistrate for the Judiciary. I thought I should make that clear.

Thank you for giving me this opportunity to support.

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, I rise in support of the Motion.

Basically what I wanted to say has just been said. The vetting that has been carried out by this House is vetting for the purpose of membership in the JSC in accordance with Clause 20 of the Sixth Schedule.

Clause 23 of the Sixth Schedule requires that Parliament enacts a law to vet judges and magistrates within one year. It is true the two we are seeking to approve now must be vetted as judicial officers when that law is in place. The exercise today is to comply with Clause 20 of Schedule Six to appoint the JSC within 60 days. This House ought to be persuaded to approve the names. By appointing two members, we shall have complied with the law and we shall not need any extension. The balance can be appointed later.

Mr. Temporary Deputy Speaker, Sir, one thing which has not been said is that, we must ask ourselves what we want of the JSC. Once we know that Kenyans, by passing a new Constitution, wanted a new beginning, in appointing the balance of the members or approving their names, we shall take care to ensure that we give Kenyans a clean start.

With those many words, I beg to support.

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, I count myself lucky for just coming in and getting the chance to contribute.

I think I am a very happy man. Thanks to this Committee for carrying out the first vetting of judicial officers serving in the JSC. I believe that in this country Kenya, if we had a strong and independent judiciary, we would not have got to where we have gotten over the last 30 years. We had a Judiciary which had become more executive than the Executive. We had a Judiciary that was carrying out the whims of those in power without caring about the interests of Kenyans. I think it should be said that the sovereignty of the Republic of Kenya no longer lies in any one State organ or institution. The sovereignty of this country is in the people of Kenya. We vet these judicial officers in compliance with our constitutional duty, which is that delegated authority to carry out that exercise, on behalf of the Kenyan people. We are not doing it on behalf of the Executive.

Having said that, I would want to remind this House that there are instances in this country where people have suffered because of the kind of Judiciary we had. If we had a good Judiciary, hon. Kenneth Matiba would not be in the situation he is today. He would not have served a day longer in jail if we had the kind of Judiciary that this Constitution is trying to create.

Mr. Temporary Deputy Speaker, Sir, if we had the kind of Judiciary we are trying to create, even I, would not have spent ten days in jail in Kisii, having been charged with sedition because those were just trumped up charges. I believe that this is the duty that Parliament must serve with ultimate pride. Never let the Executive go beyond what is necessary! This is because if any institution in this country becomes the extension of the Executive, that is where the rain will start beating us.

I know as a matter of fact that if we started looking at the glossary of cases which many Kenyans--- Sometimes I think of my friend like Victor Thiong'o, a very innocent man, a young dedicated advocate who was jailed for five years on account that he wanted to overthrow the Kenyan Government. This was just a simple advocate who was just doing his work. When he made an appeal to the Court of Appeal, I am sure the Chair is aware of these cases because you did so many. I forgot that you are the one who is on the Chair. There are many times that you had to run to the court as an advocate of those who were being thrown to jail by the Judiciary. The court would say that even for a man who had been locked in for 90 days, if somebody had pleaded guilty, that plea could not be interrogated. Even if he did not have access to an advocate that was a voluntary plea and, therefore, he must serve seven to ten years in jail.

I am glad that the Attorney-General is here! That age was under the current Attorney-General.

Attorney-General, you are now part of this new Kenya. I am happy that you have become part of this new Kenya. Because fighting for it, I know when you dared say anything like the facts we are saying today, you would end up in detention. The Attorney-General would not speak for you because if he spoke for you, he would lose his job. Instances like those happened many times.

Mr. Temporary Deputy Speaker, Sir, I am glad that my senior learned friend Mr. Mutula Kilonzo is now speaking the language of reform!

(Applause)

My friend, Prof. George Saitoti is asking me what language he was speaking before. You were speaking the same language with Mr. Mutula Kilonzo. So I will not tell you what type of language it was.

(Laughter)

Mr. Temporary Deputy Speaker, Sir, we do not want to remember or live in the past. Kenya will be a greater nation when we think about the future. The future is what we are creating now. The happiest thing for me is that Judge Lenaola has been rendering exemplary service. He was in the Constitution Court initially, but because of the many good decisions he was making, he was quickly kicked away and taken to one of those courts in Meru and Kakamega.

Now, I think this House can defend any such judge from unnecessary intimidation. You have shown that when a good judge appears before a Committee of Parliament and he has a good record, it takes a very short time for him or her to be confirmed. I know those with a lot of dirt will take a long time not just to be approved but also to account for the deeds of the past.

Mr. Temporary Deputy Speaker, Sir, I think we should look at this positively. The lady magistrate also has a very good record and I hope that this trend will continue. Kenya will be a better place with such a Judiciary. Such a Judiciary should weather the storm of time and any authority knowing that it is only the Constitution of Kenya which is above them. No other power will be above any such court. Such a court can, in reality, arbitrate over conflicts between the Executive and Parliament and all other organs of Government.

It is good that you are sitting on the Chair when this issue is going on. You got me out many times, and I got you out many times. So, we were brothers in the struggle. I will not also forget the gracious lady, Ms. Martha Karua. People forget the past, but the past makes us stronger. I know that if all of us had their own contributions, Kenya would be a better place.

I beg to support.

Mr. Wamalwa: Thank you, Mr. Temporary Deputy Speaker, Sir. I also stand to support this Motion on the adoption of this Report. I want to start by congratulating the Committee for burning the midnight oil to ensure that we meet the deadlines set by the Constitution. There are many other Bills that are coming that we need to, no doubt, fast track to beat the deadlines we need to beat and ensure the implementation of the new Constitution.

Last Tuesday, we passed a Bill in this House for the Implementation Commission, and there was a very interesting debate about how many years it would take for one to be called a distinguished practitioner. Maj-Gen. Nkaisserry was of the view that it would take nothing less than 20 years for one to distinguish himself in his career. However, we brought an amendment to this House with regard to the Implementation of the Constitution Commission Bill. We said that anything above five years would be good enough. Indeed, Justice Lenaola is one of the youngest judges on the Bench today. However, I can tell you that he is a distinguished jurist, with a clean record and who has a clean past. In the new Kenya, under the new constitutional dispensation, integrity will

be the issue that will determine distinguishment in one's career. Justice Lenaola, I must say, qualifies on this ground.

I must congratulate the Committee for having found guidelines to guide them in the vetting process, even without laid down laws for vetting. However, we must impress upon the Attorney-General and hon. M. Kilonzo that the vetting Bill is long overdue, and is required as soon as possible, so that we set clear guidelines on how we will do the vetting. This House shall be seized of a very important role in vetting and ensuring that not only judges but distinguished Kenyans who will serve this country in various capacities in the public service are vetted properly according to the law that we will pass.

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

[Mr. Speaker took the Chair]

Mr. Speaker, Sir, I want to congratulate other young Kenyans, who have come up and distinguished themselves within a very short period. I have in mind, apart from my learned friend, Justice Isaac Lenaola, my learned friends, hon. Abdikadir, Ababu Namwamba, Millie Odhiambo-Mabona and Isaac Hassan of IIEC. These are young people who have served this country in a very short time, but in a very distinguished manner. We believe that with the vetting of Isaac Lenaola and Emily Ominde, we have added their names to this list of a new Kenya of clean leadership and integrity.

I beg to support.

(Mr. Muriithi stood up in his place)

Mr. Speaker: Order! As much as I have just taken over, you were not on your feet.

The Assistant Minister for Industrialization (Mr. Muriithi): Thank you Mr. Speaker, Sir. I rise to support. Indeed, hon. Orengo has spoken at length about integrity, reforms and moving this country forward. I want to agree with him and I hope that he, others and all of us will not only speak the language of reforms but will practise reforms. I am sure that all Kenyans are expecting the leadership of this country to move forward, so as to get this country where it is supposed to be.

Speaker after speaker has spoken about the issue of integrity and about Justice Lenaola, the other people involved in this process, about the Committee itself and others who are part of making sure that this country moves forward. I think that it is incumbent on all of us to put into practice everything we speak about in all places. Without doubt, the Judiciary is a key institution in the governance of this institution. Unless it is restored to what it should be, this country cannot move forward. We, as Members of this House, have a role to help Kenyans to make sure that this country stands proud and tall in the community of nations. We want this spirit to be present, not just in this particular issue, not just in us looking for people of integrity for the Judicial Service Commission, but also in other appointments that we make, either as a House or as individual leaders in our different capacities. We want to reflect this spirit.

I support.

Mr. Konchella: On point of order, Mr. Speaker, Sir. Seeing the mood of the House and realizing that nobody is saying anything new, would I be in order to request that you call upon the Mover to reply?

Mr. Speaker: Hon. Member for Kilgoris, there is dissent even before I gauge the mood of the House. A number of hon. Members stood up shaking their heads. That tells me what the mood of the House is.

The Attorney-General (Mr. Wako): Thank you Mr. Speaker, Sir, for giving me this opportunity to speak on this important Motion. We are talking about a new constitutional dispensation. We are talking about the beginning of constituting a new Judicial Service Commission, which answers to the letter and spirit of the new Constitution. The difference between the new Judicial Service Commission and the old one is that whereas the old one had five members, all appointees of the President, the current one will have more members, but they will not be appointees of the President. The democratic principle that constitutes this Commission is very critical. You will find that the members are not appointees of the President, but they are judges of the Court of Appeal elected by their own peers in the Court of Appeal. A judge of the High Court will be elected by their own peers in the High Court; there will be two members of the law society elected by members of the Law Society of Kenya. Therefore, you will find that there will be a democratic principle. However, overall, the major difference is that the Judiciary, now, under the new Constitution, is answerable to the people of this country.

If you look at Article 1, you will see that it states very clearly that the sovereignty of this country lies in the people of Kenya. It is, therefore, the people of Kenya who have chosen to delegate their sovereignty to the Executive, the Legislature and the Judiciary. So, the Judiciary is not answerable to the Legislature or the Executive, but to the people of this country.

Mr. Speaker, Sir, therefore, I stand to support this Motion because I know Justice Lenaola and Principal Magistrate Emily Ominde very well. I associate myself with the positive remarks that have been made about these two individuals. The only thing that I would like to add in respect of Justice Lenaola is that he has proved that one can be efficient in case management. When he was posted to Machakos, there were very many cases unheard for many years, but within a space of six to nine months, he had cleared the backlog. He was doing another excellent job in Kakamega and so on. So, no wonder that the entire Judiciary, namely, the Association of the Judges and the Magistrates, felt that this is the man who should be on the Judicial Service Commission.

Mr. Speaker, Sir, I want also to mention the issue about the urgency of enacting the Judicial Service Commission Bill and the Judges and Magistrates Vetting Bill. There is, indeed, an urgency in that. We shall try, as much as possible, to fast-track, first of all, the Bill that we passed in this House on Tuesday, so that the President assents to it quickly, so that it can come into operation within two days after its publication, as we agreed. That will be fast-tracked. The delay in the consideration of the Judicial Service Commission Bill and the Vetting of Judges and Magistrates Bill is not a delay about who signed those Bills. If that was the delay, then it will be a very petty delay for refusing to go ahead with the Bills. The delay was to comply with the Constitution, particularly as regards, first, the fact that the Bills that are enacted in implementing this Constitution must be Bills which have been drafted by the Attorney-General in consultation with the Commission for the Implementation of the Constitution. Therefore, up and until that

Commission is in place, that is when we can now start having Bills coming to this House. As to who will sign them, I will sign them, but I have no objection, whatsoever. In fact, let me inform this House that when I became the Attorney-General, I used to sign all the Bills. I issued a circular in 1991, that whereas I will assist Ministries in the drafting of the Bills, when we have finalized the drafting of the Bill, it is the Minister responsible who will sign that Bill, so that he can take responsibility for the policies of that Bill. Therefore, if somebody else signs for me, I am even happier.

Mr. Speaker, Sir, I am very glad that hon. Orengo said that he is very glad that the Attorney-General is now a person of the new reform. It did not begin with the new Constitution. It began in 1991 when I was appointed. The person who has just been on your Chair, hon. Gitabu Imanyara, I remember very well that one of the first acts I took after appointment in May, 1991, was to enter a *nolle prosequi* in his case, which terminated the case and he then came out of his bed at the Kenyatta National Hospital for further treatment. I remember that very clearly because the pictures appeared in the Press. I also terminated the case of the late George Anyona and of everybody. I also in my own way influenced the release of all those people who were in detention. It was a decision of the Attorney-General of the Republic. It was an independent decision. So, the reform did not begin yesterday.

Ms. Karua: On a point of order, Mr. Speaker, Sir. I am just wondering whether it is in order for the Attorney-General to end his statement that it was his decision to release the detainees without also indicating that he was the legal advisor when they were detained.

The Attorney-General: Mr. Speaker, Sir, let me remind the hon. Member of the legal profession that all these people were detained before I was appointed the Attorney-General of the Republic of Kenya.

Mr. Imanyara: On a point of information, Mr. Speaker, Sir. I would like to remind the Attorney-General that, in fact, he is in error because although he entered a *nolle prosequi* in the cases in which I and the Nairobi Law Monthly were charged with many counts of sedition, he was in office when I was served with the detention order under the Preservation of Security Act. He was also in office when the hon. Justice Ibrahim was detained with me. He was in office when Mr. John Khaminwa, an advocate, was detained. He was in office when Mr. Charles Rubia, hon. Raila Odinga and Kenneth Matiba were detained. More importantly, he has failed to tell this House that upon release from detention, it was his office that prosecuted me again with sedition on the same day I was supposed to be released from Naivasha. I was re-arrested and locked up the very same day. So, although he should claim some credit, he also ought to tell the House the whole truth.

Mr. Speaker, Sir, you came to visit me in hospital just recently and I rose reluctantly because I was in hospital out of injuries I received in Nyayo House when this Attorney-General was there. He has been opposing all the applications that have been filed by people who went through the Nyayo House Torture Chambers until the judgments have been given and he is only reluctantly, as a result of the intervention of this House that he has agreed to pay those detainees. So, please, as the Attorney-General blows his trumpet, he must also remember that we are also sitting in this House to remind him of the truth about the circumstances under which we were held up. There are many others who died, who cannot stand up in this House, as I and Ms. Karua can do, and

correct the record. These are not matters to joke about. These are serious matters for which the State ought to be at the forefront, even in offering compensation under this new dispensation. It ought to offer an apology to the people of Kenya and the families of some of these detainees who cannot speak or walk today as a result of injuries they received in the Nyayo Torture Chambers and many other places when the Attorney-General was in office. These are facts and that is the truth.

(Mr. Wako stood up in his place)

Mr. Speaker: Order, Mr. Attorney-General! Member for Imenti Central, you stood on a point of order and as I have heard you, you were challenging the Attorney-General on the information that he has given to the House. Do you wish that the Attorney-General substantiates the information?

Mr. Imanyara: Mr. Speaker, Sir, the matters before this House are so important that I do not wish them to be personalized. I wanted to inform him of the truth about what happened, so that as he claims credit---

Mr. Speaker: Order, Member for Imenti Central! So, you are not challenging the factual premises of the Attorney-General's assertion?

Mr. Imanyara: Mr. Speaker, Sir, he entered a *nolle prosequi* that led to the withdrawal of cases against me and a few others, but he was also in office. So, is he in order to withhold this further information that also happened when he was in office? More importantly, the matters before, namely, the new constitutional dispensation, are so important and we should not personalize them. I wanted the Attorney-General, at least, to acknowledge that although he did certain things, a lot of harm has been done under his watch.

Mr. Speaker: Attorney-General, you are challenged that you have told the House half the story.

The Attorney-General: Mr. Speaker, Sir, the truth of the matter is, and this can be checked in the records and it is quite clear, that all the people who had been detained were detained before I became the Attorney-General. If I may say so from the Floor of this House, in fact, I was one of the advocates of Mr. John Khaminwa and I went to see him in detention. So, it was before. I came in at a time when they had been detained. Mr. George Anyona and Mr. Matiba were all in detention by the time I became the Attorney-General in May, 1991. However, this is history.

Mr. Speaker: Order, Mr. Attorney-General! There is a specific case here. The hon. Member for Imenti Central says that he was not in detention when you became the Attorney-General. In fact, he has said that he was detained after you became the Attorney-General. That is what I think you need to deal with specifically in so far as it relates to the hon. Member for Imenti Central.

Mr. Attorney-General (Mr. Wako): Mr. Speaker, Sir, as far as the hon. Member for Imenti Central is concerned, honestly, I cannot remember if he was detained after I became the Attorney-General. All I can remember is that when I became the Attorney-General he was facing a charge and I terminated it. But as to whether he was detained after I became Attorney-General, I cannot remember but I stand to be corrected. I think I am right.

Mr. Speaker, Sir, when we are talking about reforms, of course, many cases of violation of human rights have occurred and a number of things have happened. The history of this country since Independence is well laid out and everybody can see it. That is why the country has been clamouring for a new Constitution and all of us have been involved in our own ways. Some people in the Opposition and some in the Government have been involved. We have been involved in trying to see that we get a new Constitution. The record of the HANSARD is here. It shows what the Attorney-General stated in this House from time to time beginning in May, 1991 on the issue of having a new Constitution. We know what delayed it for more than 18 years. We were very much involved on just working on the review process. However, since all that has happened, we are now enjoying a new constitutional order. That is the point that I am trying to make. That is why I support this Motion before this House. I support this Motion because even when I was the Chairman of the Law Society of Kenya (LSK), it was under my watch then that we demanded that the LSK be a member of the Judicial Service Commission. That is a fact and the records are there. At that time, we did not envisage that the member from the LSK will be done through an election. We envisaged that the member will merely be appointed by the council but this Constitution has gone a step further and stated that we should carry out an election properly so that we can elect a representative to the Judicial Service Commission.

Mr. Speaker, Sir, I support this Motion and I hope that the other organizations which are supposed to nominate people to the Judicial Service Commission, that is, the Court of Appeal, the High Court and the LSK will now move with speed to ensure that they do elect their representatives to the Commission. If they move, at least, we can have five members of the Judicial Service Commission who can transact the business of the Commission. That is what is provided for under our Constitution.

Mr. Speaker, Sir, with those few remarks, I beg to support this Motion.

Mr. Mbadi: Thank you very much, Mr. Speaker, Sir, for giving me this opportunity to also support the Motion before us. The Judiciary is a very important institution in this country and I think Kenyans have had a problem with this institution. At one point, Kenyans had lost faith in our judiciary. This is the first serious attempt that we are making as a nation, after passing the new Constitution, to reform this important arm of the government. The judiciary forgot that the sovereign power is with the people of Kenya. It is important that this power is reclaimed again and the judiciary should know that whatever duty they carry out, just like the Executive and the Legislature, they do it on behalf of the people of Kenya, following delegated authority from the same people.

Mr. Speaker, Sir, as we debate this Motion, we are trying to fulfill the requirement contained in the Sixth Schedule, paragraph 20 of our Constitution which requires that we appoint the Judicial Service Commission within 60 days after the effective date which date will be 26th October, 2010. I know there was a bit of confusion about this requirement where some of us thought that we are expected to have a Judicial Service Bill before that time but the requirement is just but the appointment of the Judicial Service Commission which is already spelt out in Article 171 of the Constitution. Today, we are approving the appointment of two able Kenyans who will be part of the 11 member team which will come into force later on. However, I would like to put it on record that even though we are approving these two names, that should not be equated with the vetting of judges which will still take place. I believe that the two judicial

officers whose membership to the Judicial Service Commission we are approving today will also go through the vetting process as any other judge after we put in place the required legislation to help in the vetting process.

I also want to mention that there was concern from a section of the society. They were asking whether it was appropriate and proper for Members of Parliament to approve these two names especially after they have been elected by their representative bodies. However, if you look at Article 252 (b), you will see that it gives Parliament the authority to approve the membership of this Commission. It gives Parliament the power to vet and approve all the members of the Commission who are listed in Article 248(2) of the Constitution. So, it is proper and appropriate for us to approve these names today. I want to mention that those who have spoken ahead of me talked about the virtues, integrity and competence of these two Kenyans. What is important to me is the procedure. I am happy with the fact that the two judges were arrived at through an election by the membership of their bodies. It is also equally important to observe that a Committee of the House has done the vetting of the two individuals and has no reservations. So, it is proper and appropriate for this House to pass these names and have the Commission running. I know that this Commission will not transact business until we have, at least, three more members to join it. That is not difficult because I am sure the Chief Justice and the Attorney-General are automatic members. The LSK will also give us a member through an election. We also have the President and the Prime Minister in consultation to appoint two additional members. That can be done as fast as possible so that this House vets them and approve the names for this Commission to move on.

Mr. Speaker, Sir, I conclude by saying that I feel privileged to witness for the first time the power of the Kenya National Assembly in vetting appointments to public office. I am happy that even James Orengo who is a *Waziri* mentioned that there have been reluctant reformists. The Attorney-General was mentioned as one of the reluctant reformists although he disputed it. However, we are happy to welcome the reluctant reformists like the Attorney-General and the Minister for Justice, National Cohesion and Constitutional Affairs. We welcome them home. Some of us became reformists when we were at the age of 20 together with Kabando wa Kabando and Cicely Mbarire. Although they took too long to join us, we welcome them. They say better late than never. So, we welcome the late entrants in the reform movement.

Mr. Speaker, Sir, I beg to support this Motion.

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Thank you, Mr. Speaker, Sir. I rise to add my voice to those who are supporting this Report and also to congratulate the two individuals who have benefitted from a process that is transparent. One thing that is clear is the improved role of Parliament in processing this recruitment transparently, covered live by media, with issues being expressed publicly.

One lesson that is coming out very clearly is that, we are talking about a Judiciary that is on trial from the public opinion whether we are talking informally or whether we are doing deliberations. But the fact that there are very strong positive sentiments about the gracious lady and the gentleman – that is the names that have been put forward by this Committee to the Floor of this House for approval – it means that we need to have the collective consciousness as a country to really believe and trust that we cannot have general condemnation, may it be, of communities, of professions or of a class.

Mr. Speaker, Sir, last Saturday I happened to be in a celebration some place, and I heard the pastor repeating again and again how children must not be like Kenyan politicians as if being in politics or even being a student of political science or being a political scholar or even a professional – like a Member of Parliament or Mayor or a councilor – is a crime in itself. Today, we are hearing voices of hon. Members of this Committee and the hon. Members of this House saying that these two judges are good. Therefore, in Kenya, we can extract the good from the bad. But also another lesson; I have not witnessed an effort like I have before, of people lobbying based on regions and communities for these two names that have been brought here to be passed. There is something happening in this country under the new dispensation.

(Applause)

Many at times when issues are brought here, there is lobbying. It is not bad! But use your experience. Even when individuals are besieged over issues about public office, it is time to have ethnic parleys. Consequently, we convert the National Assembly or our own class as politicians into an ethnic gathering and become captives of a medieval, ethnic, dialogue and negotiations.

(Applause)

Mr. Speaker, Sir, I am saying that time has come when people must stop this blatant, shameless behavior of contacting me because I am born in Nyeri; contacting you because you are from Kisumu; contacting you because you are from Meru or because you come from the Rift Valley. This very shameless thing that is being watched by our children on television every evening – holding press conferences – because “our men” are under siege or because “our community” is being finished, must come to an end!

Mr. Speaker, Sir, there should be that belief and trust that individuals can actually win because they invest in being profiled positively. I recall in July, 2004, when one Mathenge Gitonga, an advocate of the High Court talked to me about how he loved and respected his classmate; Justice Lenaola. Many years down the road – nearly seven years down the road – we are hearing from the Floor of the House from the likes of Eugene Wamalwa, Abdikadir and others how this young man is good. This is again a firm indication that, always, chronological experience is not always above profiles and exemplary curriculum vitae. You can be in service for five years and be better than somebody who has been in service for 20 years.

The opportunity that is rolling out and the message that must go to every civil servant and to every politician, even in this House, is that the time is nigh and we are on a roll out. The call is on a high mountain; that the young professionals are taking charge. Invest in working positively. Disinvest in talking in your vernacular because you are in a spotlight.

I strongly support this Report.

Mr. G.O. Nyamweya: Thank you, Mr. Speaker, Sir. I have only one more useful thing I may add to the contribution and, particularly, on the question of vetting. I do sit in that Committee. We saw those two Kenyans. We believe and commend them to Kenyans to serve in the Judicial Service Commission. But before we embark on vetting others, I

think it is imperative that we must first now design a Vetting Act, so that we do have a standard for every appointment we are going to make. That we know what it is that we are looking for in that person. I do not think that it should be left just to our whims in that Committee to say: “I was in school with so and so and I think he is a good person or currently I am not happy with so and so and so I think he is not a good person.” The very thing we are talking about is a new dispensation. Before we start vetting those judges and magistrates, before we start approving the appointments for Permanent Secretaries, ambassadors and so on, before we even worry about the Judicial Service Commission Bill and so forth – and I am appealing to the Attorney-General and the Minister for Justice, National Cohesion and Constitutional Affairs – let us agree on how we are going to vet these people.

If we do not do so, we are going to land ourselves into a situation where there is going to be a barter trade; where we sit in Committees and we say: “Why do you not give us a few from your place, a few from this; after all they all have the same qualifications”. So, perhaps, we need to set that standard. I think there was an attempt in the Committee by introducing a schedule to this particular thing. I, personally, am not quite comfortable with what we have proposed and, in fact, I did not even get the opportunity to contribute. Not because I was not there, and this is something we have to resolve also, between the Departmental Committee of Justice and Legal Affairs and the Select Committee of Parliament on the Implementation of the new Constitution. I can see and already we are overlapping and clashing. I think it may even require your intervention to know which particular Committee has which function. This may help us speed up this particular process. I, personally sat in that Committee and I commend these two very good Kenyans.

Thank you.

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Thank you, Mr. Speaker, Sir, for giving me the opportunity to support this Motion and to rejoice with the other Kenyans that this is, indeed, a very good beginning. I was just listening to the communication between hon. Imanyara and the Attorney-General on who is wrong and I just was wondering. I remembered something; when we were craving for the multi-party democracy, there was a law that was changed regarding the period of campaigns and it went like this: Somebody changed it from “not less than 21 days” to “not more than 21 days.” Who was the Attorney-General then?

(Applause)

The Attorney-General (Mr. Wako): On a point of order, Mr. Speaker, Sir. I was the Attorney-General. The ruling was made *ex parte*. My then Chief Litigation Officer was in court; Justice Mbaluto refused to hear him and made that ruling. Had my Chief Litigation Officer been heard, that ruling would not have been there because what happened was in the exercise of my powers under Chapter 1 to ensure that what has been published is the correct version that had been passed by this Parliament; it is the correct version that had been passed by the Cabinet.

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Mr. Deputy Speaker, Sir, the point I was making was that with Lenaola and

Ominde, we have made a very clean beginning. I am saying that it is a clean beginning because the biggest problem---

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang’): On a point of order, Mr. Speaker, Sir. Is the Attorney-General in order to mislead the House? When this matter went to court, I was then the Counsel for Jaramogi Oginga Odinga and the others who took the matter there. I was led by a Senior Counsel, Mr. Nowrojee. This matter was canvassed very well before Justice Mbaluto.

In fact, I am very aggrieved that Justice Mbaluto is not on the Bench now. The fact of the matter is that the campaign period was reduced to a term which would be determined by the electoral commission. It could even be two days. That was the fallacy. That was why we went to court. I owe it to Justice Mbaluto; he made a contribution to this country.

So, could the Attorney-General withdraw the remarks he has made? It is sad that he can say that the Cabinet at that time reduced the campaign period to two days. That was what it meant. “Not less than 21 days” actually means any day before you reach the 21st day. That was what we canvassed, and Justice Mbaluto ruled on it and said it was wrong to change that rule.

The Attorney-General is my friend, but on this one, he must be reminded that he hurts Kenyans. Justice Mbaluto corrected the record, and we were very happy with the judgment.

(Mr. Wako stood up in his place)

Mr. Speaker: Order! Order, Attorney-General! This matter must rest somewhere, but if you are going to help the record of the House and put the history correctly, then proceed.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, the issue is not whether the policy was right or wrong. The record will bear me out; this Parliament had approved what he corrected, and the Cabinet had approved what I corrected. On the question of correcting what this House had passed, it was *ex parte*. My officer was kept out. Had he gone to the court, he would have shown what the Cabinet had approved, what was discussed in this House and what was enacted. I am quite sure that, most likely, it would have made a difference to the judgment.

I, very painfully, chose not to appeal in the national interest, the national interest being that had I appealed, there would have been a constitutional crisis. If I had appealed, it would have been almost impossible for the general election to have been held within the five year period, thereby generating a constitutional crisis. That was why I said “in the interest of the nation, let me not appeal, so that we proceed with the judgment as it is to ensure that the general election takes place within the five year period”.

Mr. Speaker: Very well! To some extent, that is helpful. Perhaps, it demonstrates, in a small measure, that the Attorney-General is, in fact, progressive.

(Laughter)

Proceed, Dr. Mwiria!

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, especially when he has no choice but to be progressive!

Mr. Speaker, Sir, I said that we have made a good beginning. I would like to congratulate the Committee for giving us two clean people. I am saying this because the biggest problem with reforming this country – even though we talked of zero-tolerance to corruption in 2002 – is that we let in non-reformers to be part of the Government which was supposed to support reforms.

Therefore, I hope that as we vet appointments for the next commissions and committees, we are going to pay particular attention to the kind of people we are going to involve. I hope that those who will be selected will be people who have a record of not only standing for the good of this country, but who have not been identified with fighting reform.

Mr. Speaker, Sir, I also hope that we are going to give priority to communities and groups which have been marginalised. It is good that we have a judge like Lenaola, who comes from a minority community. I hope this trend is going to be followed as we look at other commissions, because minorities in this country have not had a fair share of representation. This also includes women and the youth.

We continue to talk about “extensive experience”. What kind of experience are we looking for when a lot of the people who are changing this country are young people in the 30s and 40s age bracket? What kind of experience are we looking for? Are we looking for positive or negative experience? If you look at our politics, you will realise that a lot of experience can be tribal experience. A lot of experience can be experience about corruption. Is that the kind of experience we want when talk of “extensive experience”? So, we need to be very careful.

Mr. Speaker, Sir, finally, many Kenyans are asking questions. Parliament is going to do all the vetting, but who is going to vet the Parliamentarians? Are we, ourselves, so clean that we believe that we are absolutely right to be the ones who will vet everybody else? So, I hope that the Electoral Commission, and this Parliament, will come up with criteria for vetting potential Members of Parliament. If we can lock out bad people from the ballot box, we will have solved 70 per cent of this country’s problems.

With those remarks, I beg to support.

Mr. Abdikadir: Mr. Speaker, Sir, this is a great day for Parliament, and for anybody who was wondering whether or not the implementation of the new Constitution will take place on time and/or properly. This week has been a great week. On Tuesday, this House passed the Bill on the implementation of the Constitution. Today, we are doing the first set of vetting for the Judicial Service Commission.

The Judiciary is probably the most critical of the three arms of Government. A country can live with a mediocre Parliament. It can live with a mediocre Executive, as we have done, but it is absolutely unacceptable to live with a mediocre Judiciary.

Mr. Speaker, Sir, the Judiciary has been an institution with a lot of problems. Those problems are not all the making of the Judiciary. The Judiciary, as an institution, requires the support of Kenyans and the support of each institution, because the Judiciary is the guarantor of the liberty of the people. It is the guarantor of the Constitution.

They say that when the people fear government, it is anarchy, and when government fears the people, it is liberty. That liberty is guaranteed by the Judiciary. Some of the problems of the Judiciary relate to funding. The Constitution now guarantees

independent and adequate funding for the Judiciary. The other problem has been institutional framework. The Judicial Service Commission is the start of the proper framework for the Judiciary.

Mr. Speaker, Sir, we used to ask ourselves: “Do judges need performance contracts?” Yes, they do, but we did not have the framework to be able to hold them to performance contracting. Who was going to hold them to that level? Was it Members of Parliament? No, because they have to be independent of Parliament. Was it the Members of the Executive? No, because they have to be independent of the Executive, because we have separation of powers in terms of the independence of the Judiciary.

We now have, through the Judicial Service Commission, the adequate framework that is going to hold judges and magistrates accountable, so that they come on time for their jobs, so that they perform and handle an adequate number of files per week, so that they can serve the people of Kenya without their independence being infringed upon by the Executive.

Mr. Speaker, Sir, the Kenyan Judiciary has very many good people, who work very hard for long hours, and who get very little pay, especially in the magistracy. It is now important that, through this judge and the lady magistrate, whom many of us have not heard of, but who impressed the Committee - Justice Lenaola impressed the Committee - it is possible for Kenyans to look at their Judiciary and say: “so-and-so is a good person.”

I am happy that the first two people we are approving as far as the Judiciary is concerned, are sitting members of the Judiciary. It makes fallacious the assumption that everybody or everything in the Judiciary is bad, because, indeed, it is not. Indeed, the difficulties of the Judiciary are not just of the Judiciary’s making.

Mr. Speaker, Sir, I am happy that the process is moving forward this way. I am also happy that Parliament has stepped up to the plate once more. It is important for members of the public to have confidence in the fact that this House has time and again demonstrated the fact it is able and willing to do what it is asked to do. It is amusing to hear the debate between the Attorney-General and people who have been in the struggle.

I think it is a good thing that we are having this debate because it was not possible to have this debate a few years back, and that even the space of Parliament has been expanded to such levels. So while we support these two individuals who have been approved, can we rededicate ourselves to the fact that we are going to move forward as required by the Constitution? Those who fear that Parliament may not do justice to them, this is adequate explanation and clear indication that this is the way to go. I am sure we, as parliamentarians, shall perform.

I beg to support.

Mr. Konchella: On a point of order Mr. Speaker, Sir. Unless there is a voice of dissent which I have not heard so far, I would request that we now call upon the mover to reply.

Mr. Speaker: Order, the Member for Kilgoris! Yes, that may be genuine. It may be indeed a legitimate concern because I note that Members are tending to be repetitive except that this, in the history of Parliament, the Kenyan legislature, and I have been careful to check this, it is unprecedented for one Member to call upon the Mover to reply after he has done so unsuccessfully the first time. So it will have to take somebody else, I am afraid.

Dr. Machage: Thank you, Mr. Speaker, Sir. I support the adoption of the Report as put to us by the relevant departmental Committee, and indeed, the two members whose names have been suggested to be in this Commission. It is true that young people are a good investment for this country for tomorrow. They have used their career with a lot of respect that Kenya has noted. It cannot be true that every young person will have the same credentials in terms of support by the Kenyan people. I do not agree with some Members who think age is not important in the experience. It is, and it will always be even though young turks including me, will always fight to have opportunities our way. Today's discussion has given us an opportunity to have a few Members vent out what may have been in their hearts over the years. Maybe that was a golden opportunity for the Members who have done so and we hope that will be the end of the story.

We do not have to have a repeat of the same history. I do not think we should blame the Attorney-General over these issues every time we have such a discussion. He did his part. We just put on the scale and see which part was good and bad. It is up to him and his God, but he is with us. He is with us and supporting the move, and the cause of proper administration and governance of this country. He needs our support.

Mr. Speaker, Sir, without much ado, I support.

Mr. Nyambati: Thank you, Mr. Speaker, Sir, for the opportunity to support this Report of this Committee. I am extremely happy that I am part of this 10th Parliament, which is on the verge of making a lot of history. I think this country now has started to see that this House is playing by the fairness that it should.

Mr. Speaker, Sir, I am happy to note that we are now giving the Kenyan people the opportunity to be what they must be if they play by the rules and if they work hard. This country is giving our young people a chance to excel and I want to say that in the recent past, we have seen this House vet very young and able people like Prof. Lumumba who came from no big family and became what he is. I can now see that we are at a point of supporting this Report where Justice Isack Lenaola and Principal Magistrate Emily Ominde are going to be part of this Judicial Service Commission.

Mr. Speaker, these are young Kenyans who have worked hard and become what they are, not because of the name that they carry but because they have been given the opportunity and this is what we must do in this country; give the young Kenyans an equal opportunity to become what they must become if they work hard and if they play by the rules.

I have heard from several Members of the legal fraternity praising the young judge for being impartial, hard working and for being a straightforward Kenyan. This is what we must do. We must encourage this in all spheres, we must encourage Kenyans to know that they no longer must carry whichever name they carry to become what they must become. And so even as we support this Motion, we need also to look in the other areas which are going to come up so that we can appoint Kenyans into positions who are clean, who can be given the opportunity, Kenyans who can take this country to higher heights. It is a responsibility of this House as the constitution mandates, to vet these people and there are many other commissions that will be doing so. I want us to be fair, and this House must be fair, it must be seen to live up to its expectations, where we give people a chance also to become what they must become.

Mr. Speaker, Sir, even as I finish, I want to urge this House that they must also look at those communities which are marginalized, because they also can produce young

Kenyans who can become what they have to become, who can become responsible citizens of this country.

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. There is evidence from the contributions so far, that the entire House is in support of this Report. Will it be in order for me to call upon the Mover to reply?

Mr. Speaker: Very well! I accept that because Members are now tending to be repetitive. So I will put the question that the Mover be called upon to reply.

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

Mr. Baiya: Thank you, Mr. Speaker, Sir. I would want to, first and foremost, register thanks on behalf of all the hon. Members who have made their contribution in support of this Motion. It is particularly encouraging to note that they all have been positive. This is a clear demonstration of the Members' commitment to the reforms that are intended to be implemented as we go about with the new Judicial Service Commission.

Mr. Speaker, Sir, as some concerns have been expressed, I would want to also confirm that it is the position of the Committee on Justice and Legal Affairs that the vetting of the members of the Judicial Service Commission, for purposes of the Judicial Service Commission, has nothing to do with the vetting of judges which is still going to come under the relevant legislation which is also going to be put in place.

I also want to assure Members that all the relevant consultations took place even within Parliament itself. The Parliamentary Constitutional Oversight Committee was also consulted and involved and they are fully supportive of the process. This being the first vetting under the new constitutional procedure, it is very encouraging to see that the process is going to go on smoothly and hon. Members can rest assured that under the very rigorous procedure that they have put in place through the Constitution, there is nothing like any horse trading that has taken place.

With those few comments, I beg to move.

(Question put and agreed to)

ADOPTION OF REPORT ON PROPERTIES BELONGING TO KENYA'S DIPLOMATIC MISSIONS

Mr. Keynan: Mr. Speaker, Sir, first I am humbled and privileged to present to this august House the Report of the Departmental Committee on Defence and Foreign Relations on the procurement, disposal and construction of properties in our missions abroad and in particular, five missions; Egypt, Cairo, Pakistan, Islamabad, Belgium, Brussels, Nigeria, both Lagos and Abuja and finally Japan, Tokyo.

Mr. Speaker: Order, Mr. Keynan! By reason of your being the Chairman of the Departmental Committee on Defence and Foreign Relations and the fact that you have tabled many reports, this House will want to believe that you have gathered enough experience to know how to move a Motion. You are taking too long to get to moving the Motion. That must be your first action.

Mr. Keynan: I was coming to that, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Keynan!

Mr. Keynan: Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Procurement, Disposal and Construction of properties of Kenya's Diplomatic Missions in Egypt, Japan, Nigeria, Belgium and Pakistan laid on the Table of the House on Tuesday 12th October, 2010.

I am, indeed, humbled and privileged to present to this august House the report of my Committee on the procurement, disposal and construction of properties in the five missions that I have just stated. But before I go into the details of what we gathered, I would like to take this early opportunity to thank your office and the office of the Clerk. You will realize that we are talking of issues of missions in different continents. You know where Nigeria, Egypt, Brussels, Japan and Pakistan are. Without your support and, indeed, without your personal involvement and intervention; having initiated one of the most pragmatic and let me say broad reforms in our Standing Orders in the legislative history of the Republic of Kenya, some of the events that touch on the oversight role, not only of my Committee but the entire Parliament cannot be achieved without having a Speaker with a reformist mind and without Parliament being prepared to play its rightful oversight role. It is in line with our oversight role that we stumbled on a number of issues that touched on the Ministry of Foreign Affairs.

Mr. Speaker, Sir, late last year, there was a budgetary provision in the Ministry of Foreign Affairs budget and I am sure quite a number of Kenyans must have seen it, which advertised for the purchase of Presidential suites in Nairobi. When we saw the advert, we interrogated the Ministry's budget and it dawned on us that there was something that was not clear. We called the Minister and his team, we inquired why in this modern time, somebody in Kenya should purport to construct presidential villas in different places in this era where there are security challenges and where everybody is talking about economic gains. I can tell you today that it is as a result of our intervention, as a Committee, that that project was cancelled and we feel that we saved the taxpayers between Kshs800 million and Kshs1 billion that would have been used to buy ten maisonettes in an area that was not totally required. I felt that I should bring that to the attention of this House.

(Applause)

It is a true fact; it is not something that I have created. The advert was there. It was placed in the newspapers and we wonder why it dawned on somebody to think of that particular aspect.

Mr. Speaker, Sir, the policy of the Ministry to have properties abroad is a noble idea. But just like in the 1990s when our parastatals were used - you all recall because all of us must have been in Kenya then - as cash cows. This particular policy of acquiring properties abroad, I am sorry to say, has again been used in a similar way, just like some of our parastatals like the NHIF, NSSF and a number of key Government institutions were used in the 1990s. We know that up to today, there are queries in the name of some

of these parastatals that cannot be used for anything other than the purpose they were intended for.

What we did as a Committee is that, we looked at the policy. One thing that we realized was that, where there was an attempt to purchase, there was a deliberate attempt to over-value. Where there was an attempt to sell, there was a deliberate attempt to under-value. Where there was an attempt to construct, there was a deliberate attempt to vary and this is what we will be demonstrating. All these would not have been happening if there was no connivance between the senior Ministry officials and some of the players who are in different parts of the world in different areas that we visited.

Mr. Speaker, Sir, one of the challenges we face as the Departmental Committee on Defence and Foreign Relations is that, we have to do oversight on 52 missions in different continents. I know your Office has been very kind. Right now there are challenges; not only on the areas that we have visited. Early this year, this same Parliament passed a report that we prepared on our Mission in London, Turkey and Ireland. I am proud to say that that report was adopted by Parliament and as a result of the issues that we handled directly, the crisis that bedeviled our mission in London has been resolved as a result of our involvement. We will need and I am appealing on behalf of hon. Members for your continuous support, so that within the next five years, we can reach or at least visit half of our missions abroad. I believe we will have inculcated and contributed positively to the mission employees and we will have also enhanced Parliamentary diplomacy because it is one key component in this modern era.

In the early years, we used to have political diplomacy but right now the theme is economic, environmental, ecological and parliamentary diplomacy. These are the modern themes. As a country, we have no choice but to adjust to this reality. One of the things that we realized when we visited Egypt is that, in the late 1980s our ambassador or the Government then, acquired a piece of plot in one of the suburbs of Cairo. Then it was not an official policy; it was something that was done *ad hoc* by those who were in charge. But again, owning property in any city is something that any country would be proud of. Those who visited Berlin know that, just next to the Chancellor's office is an old building owned by the Government of Sweden. I think many of you must have seen it. They have been given all sorts of offers but they have refused to sell it. Owning property is something that any country would be proud of.

After the individuals who were there in the late 1980s bought that plot, it dawned on somebody in the Ministry of Foreign Affairs, after this policy, that they needed to dispose of that property in order to get money to construct the ambassador's residence. That policy was implemented. As a committee when we visited there, we were in concurrence that, that area where our plot was located was slowly turning into a slum and there was need---. What shocked us was that the proceeds from that particular property were not used for the intended purpose.

Mr. Speaker, Sir, one of the documents that I will show to Parliament is a product of what we were given by the Governor of the Central Bank of Kenya, who is the custodian of all Government money; it says – this is one thing that were also shocked about – that first of all, 10 per cent of the proceeds had not reached the Ministry concerned. We all know that the use of appropriations-in-aid must get the consent of the Treasury. This is a reality. We have not seen the consent of the Treasury. Ten percent is missing. It has not reached the account of the Ministry. This is one thing where we feel

that, as an administrative measure, or as a prudent financial mechanism, the Ministry must be prepared to find out what happened to the remaining 10 percent. We have disputes over the issue of the price. All the same, the remaining 10 percent must be secured.

Mr. Speaker, Sir, we sold the property at US\$677,246. We did not have a new ambassador's residence. Ten percent is missing. Even if we did not need an entire marionette or bungalow, that money was enough to buy us at least two or three floors. One common denominator in all these five countries is that--- If you look at Egypt, it is a key importer. It is one of the very important economic partners of this country. They import a lot of tea from this country.

If you look at Pakistan, they import a lot of our tea. If you look at Brussels, it is the headquarters of the European Union. If you look at Nigeria, it is the giant of West Africa. If you look at Japan, it remains the biggest multi-lateral and bilateral donor to the Republic of Kenya. So, we are dealing with countries that are relevant to our economic diplomacy.

These are not countries about which we can say because of regional interest and integration we need to have a mission in. The Governor of the CBK in his submission to the Committee, which again is part of the report that we have tabled, said he did not want to bother about how much was sent but he acknowledged that he received it and it was 10 per cent less the purchase price. It is an issue that the Ministry needs to explain.

Mr. Speaker, Sir, after Egypt we went to Islamabad. We bought a plot again in Islamabad in the early 1980s. Sometime back, the Ministry, through a consultant, designed a programme to construct a new ambassadors house and a chancery. Shockingly, because of the deteriorating security situation in Pakistan, the construction cost has been varied twice. Our mission has moved both the chancery and the ambassador's residence but the property is not complete. It is up to 40 per cent done. I know right now there is an attempt to vary the cost. One of the things that we noted is that if there were prudent institutional mechanisms that variation would have been avoided.

When we went there, the contractor was not on site. But when he was told that a Committee of Parliament was visiting there, taking into account the unique circumstances or challenges facing Pakistan, the contractor came back to the site, and belatedly put in place a number of issues just to pretend that something was happening on the ground.

I am not a lawyer, but legally if you have taken possession of something that was under construction and the guy has moved out of site, is there any obligation on you as a client to force that individual to complete the contractual obligation? This is something that I need to be told. For us, we are persuaded that first of all, it is in our economic interests, as a country, that, that project in Pakistan be completed. The budgetary provision was about Kshs366 million, and as at the time when we were there, the cost stood at almost Kshs523 million, and it is still not complete. I know there is a request for a variation. This is something that we need to address.

Mr. Speaker, Sir, Belgium is a very important country as far as our history is concerned. It is the headquarters of the European Union. It is the headquarters of the European Parliament. Kenya enjoys very cordial bilateral relations with all the European States.

In 2008 there was an attempt to comply with the requirements. The first requirement was that before the Ministry acquired any property abroad, it was to form an Inter-Ministerial Committee. In this particular instance there was an attempt. What shocked us was that our own valuers did a valuation. They came up with a value of 3 million Euros. The Ministry was not satisfied with that. They got another valuer in Brussels. They came up with a valuation of about 3.1 million Euros. Again, with the knowledge and, I believe, deliberate attempt by the Ministry, the value of this property, using things that are not allowed in Europe--- Second hand furniture in Europe is something that all of us know has no commercial value.

The vendor was asked to include in the purchase price a figure for furniture, fittings and refurbishment. When we went there all these things had not been carried out, yet we ended up paying almost 850,000 Euros more for a property that would have cost us 3 million Euros. That property was constructed in 1920. As we speak, it is a national monument. We cannot use it as we want. The Government of Belgium will have to call a Cabinet meeting. They will have to call the mayor, revise their rules, call in the architectural association. It was constructed in 1920.

The essence was that we were not in a state of war. What prompted that unwise decision by the Ministry? Why was the Ministry in a hurry just to acquire that property? Why were we prepared to pay over 800,000 Euros more for a property that we knew was constructed in 1920? These are issues that we felt were not prudently handled. I will explain the reason later on why all this had to happen before I move to the next issue.

Mr. Speaker, Sir, acquiring property is noble, but these are long-term investments for 40 million Kenyans. Whoever is doing it is undertaking that particular project on behalf of the Republic of Kenya. That aspect is not explainable. We visited there. We have photographs of the cracks and even the building. It does not look like something that our mission can use. The only good thing about it is that it is located in a central area in Brussels. But everything else is wrong. That is one issue that we need to have explained.

Another thing that we felt touches on Belgium--- Belgium is the headquarters of the European Union. We are not questioning the aspect of the costing. We needed a technical person who understands the intrigues of international trade and diplomacy.

I need to say in the presence of the entire Parliament that there are letters by our own Mission staff that have been copied to the President of the European Union (EU). We are washing our dirty linen that touches on our Ministry of Foreign Affairs, in particular that Mission. I am sure my friend, hon. Wetangula, has received a copy of that letter. So far, no action has been taken. We have a copy of that letter which touches on a number of very serious issues that touch on our sovereignty as a country. It is copied to the Speaker of EU, EU Commission and me as the Chair of the Departmental Committee on Defence and Foreign Relations. It is also copied to the Minister, Permanent Secretary and to date no action--- As we debate this Report, I want to appeal to the Ministry of Foreign Affairs to take that issue as a matter of national importance and bring that acrimony in our Mission in Brussels to an end, so that, at least, that can enhance our image as country.

Mr. Speaker, Sir, we acquired three prime properties in Nigeria in 1972. I do not know whether it was a donation because the records are not clear. But sometimes in 1991, the Federal Government of Nigeria decided to move its political capital from Lagos to Abuja. As a result of that decision, the Federal Government of Nigeria allocated all

friendly countries with diplomatic representation prime properties in Abuja and Kenya was one of the beneficiaries. The three prime properties in Lagos are right at the beach. In the words of one Nigerian professional, a valuer, indeed, he says: “The three properties are the *choicest* piece of land in Nigeria.” Those are not my words, those are not the words of the Ministry. The reason is that the immediate neighbour is the home of the former President Babangida. You can figure out how influential President Babangida was or still is. Next is the British High Commission. Next is the French Mission and then the British Airways. Right opposite is the Office of the Governor of Lagos.

Mr. Speaker, Sir, the Ministry of Foreign Affairs sent a team headed by the current Director of Immigration Services, Amb. Musasia. Amb. Musasia came to the conclusion that although we moved our Mission from Lagos to Abuja, there was need for the Kenya Government to retain that prime property and he made a recommendation. But one month down the line, he was transferred from being the Director of Administration, Ministry of Foreign Affairs, to the Director of Immigration. Immediately he left, that decision was disregarded and the three properties were sold. Also, the lawyer and the estate agent who were involved were disregarded completely. Likewise, our Mission staff were not involved and it became an issue just for the Permanent Secretary and the buyer.

Mr. Speaker, Sir, again, I want to demonstrate that when this transaction took place, the Nigerian lawyer who was involved took the Kenya Government to court. There is a demand note from the Ministry of Foreign Affairs of the Federal Government of Nigeria for the Government of Kenya to, indeed, pay Kshs94 million to the lawyer. This issue has not been addressed. I am afraid that it is going to cause a diplomatic problem between Kenya and Nigeria. If prudent mechanisms were followed and the rule of law adhered to and the Government financial management system followed, that lawyer would not have taken us to court. Whatever price we decided to sell our property, the professionals who were involved would have our respect and got their legal fees. That has not been addressed and it is an issue pending.

Mr. Speaker, Sir, one of the reasons our prime properties in Lagos were sold was that the Government said that because we moved our Mission from Lagos to Abuja, they needed money to construct a new chancery and Ambassador’s residence in Abuja. When, finally, the Ministry got the money, they had a new idea. Their new idea was that there was something very urgent somewhere in another continent, in a place called Tokyo. When we called the Ministry to explain --- The HANSARD is here, dated 3rd June, 2010, and it will bear me witness. This is the presentation by the Minister and he is the one who signed. He said that the Appropriations-in-Aid was transferred to the Treasury. The Attorney-General of the Republic of Kenya was our first witness who made an extensive submission on the policy. We also met the Minister for Lands; hon. Orenge, the Minister for Public Works; hon. Obure, the Director of Public Procurement Oversight Authority and the Minister for Foreign Affairs on a number of occasions, the Deputy Prime Minister and Minister for Finance, hon. Kenyatta; Amb. Awori and Mr. Osogo who was a cook. Those are the Kenyans actually we met. When we compared and counter-checked the information we were given by the Ministry of Foreign Affairs, what we were told by the Governor of the Central Bank and the Ministry of Finance, we found that there is something missing completely. The money ended up in the Development Account of the Ministry of Foreign Affairs, through their account in London – it is a procedural thing. So, that aspect that the money went directly to Treasury was misleading.

Mr. Speaker, Sir, again, when they thought the transaction was over, one Mr. Muchiri, on behalf of the Permanent Secretary, wrote to our High Commissioner in London. This letter is dated 16th December, 2009 and addressed to our High Commissioner in Abuja. It says:

“Please, make arrangement to transfer the entire proceeds of Pounds 8,815,000 from the sales of the Government of Kenya property in Lagos to the current account indicated in our letter earlier.”

Mr. Speaker, Sir, shockingly, in between, 14,000 Euros which is equivalent to Kshs1.2 million was used as charges by the bank. Another 70,000 Euros up to now is unaccounted for. But cleverly, the Governor of the Central Bank wrote an official letter because I think he did not want to reprimand the Ministry, confirming that the money received actually was less 84,000 Euros and passed on to the Ministry a copy of the Swift transfer plus a letter up to date. The explanation was that this money was used as rental expenses by our Mission. But rent expenses are provided for in the budgetary system. I am not a financial ace but Appropriations-in-Aid can only be utilized when there is authority from Treasury. That authority has not been given or any evidence of that authority has not been passed on to the Committee up to now. So, as we speak, we must have lost 14,000 Euros in transferring the money to London. We must have lost another 14,000 Euros in transferring the money back to Nairobi and eventually to Tokyo. So, in the process, we have lost thousands of Euros that would have been saved if there was a prudent financial mechanism.

First of all when the Ministry got this money, they suspended their project in Lagos and Abuja. They suspended it for about nine months because the money that should have been used for that project was transferred to Tokyo. As I speak now, our mission staff who were moved from Lagos to Abuja are squatters in a small building owned by the Kenya Airways in Lagos. There is a letter here addressed to the Ministry asking for money to rent a new premise in Lagos. How do you explain this? Where are the mechanisms because we are talking about the state? You moved out of this. You sold your property and eight months down the line, you are asking for money from the Treasury in order to rent a building. When we interacted with our Immigration Officer, and immigration is a *quasi* security institution, he said he has to carry a bag that contains his rubber stamp, visa forms and he cannot be given a diplomatic facility because there is no where to put it. That must be addressed as a matter of urgency. That is the predicament facing our mission staff.

Mr. Speaker, Sir, finally, we went to Tokyo. One of the things that shocked us is that there was a deliberate attempt to disregard completely all Government procedures. First of all, the proceeds that were meant to construct our chancery and Ambassador’s residence in Lagos were illegally transferred to Tokyo and in the process a new venture started. I decided to give hon. Members here a map to show the location of our mission. Every country prides in having a diplomatic enclave because it is one of the new requirements. It is true that the mission that we bought currently, or where we are currently in Tokyo, we have occupied that place for quite some time. If you compare its rent with that paid in the adjusted areas, you will find that is very high. Something must have happened.

I do not know where I kept the map. This is the diplomatic enclave. For those who can see, this is where we have our mission. This is the diplomatic enclave. This is where

we were offered a prime property by the Government of Japan. It is three minute's walk to the Ministry of Foreign Affairs of Japan and five minute's walk to the Emperor's residence. It is five minute's walk to the Japanese National Assembly and there are 80 missions scattered here. Where we are right now, nine months ago there were a few missions. Today, it is only Rwanda and Kenya as we speak. So, where was the sense of this?

Mr. Speaker, Sir, one of the things that also shocked me is our laws. A Presidential directive, in my opinion, is one of the sources of law in the context of Kenya. We have the Constitution, delegated legislation, statutes and common law. When hon. Yano visited His Excellency--- That itself is being disputed and I need to put it on the record. We have a letter in our possession written by the Permanent Secretary saying they do not know Senator Yano. I want to put it on record that Senator Yano is the President of the Upper House of the Government of Japan. He is a very important person. He came here in 2008 and had a meeting with His Excellency the President. As a result of that meeting, His Excellency the President put a request to Senator Yano. I am sure the Ministry of Foreign Affairs does not have time to revise or look at the documentation in their file. This letter dated 22nd July, 2008 was addressed to our Ambassador in Tokyo. It talks about the meeting between His Excellency the President and Senator Yano. In the process His Excellency requested Senator Yano to get us a prime plot for the construction of both a chancery and an ambassador's residence.

Mr. Speaker, Sir, this issue was disregarded completely and in the process we bought a plot. It is like you are offered a plot here next to Parliament and you say that Ruai is spacious and you want to go there. That is where we are. That is the position. It is a fact. So, instead of going for a prime plot here, where we have acquired is where everybody else is moving from. The plot we were offered by the Government of Japan, our immediate neighbour would have been the European Union and the United States of America. They are 89 embassies. The reasons given were not convincing.

Mr. Speaker, Sir, what shocked us was that in this transaction, there were Japanese lawyers who were involved. I need to read to the House the sentiments of the Japanese lawyers. Indeed, two of them have withdrawn. They are lawyer Yana Dawa and Kijima. Lawyer Kijima said: "The price that was offered and agreed here is extremely high". I want to provide this letter because I do not want to go through it. He said: "Payment of 80 per cent of the purchase price is something unheard of in Japan". All of us in one way or the other must have had some sort of transaction. Where on earth do you pay 80 per cent of the purchase price without a lawyer, valuer, the Attorney-General's involvement, an inter-ministerial committee and the Ministry of Public Works?

(Applauses)

Finally, he begged for mercy because this is a lengthy letter. He says:-

"I know that what I have stated here, the decision of my Government is not totally recommended. Please accept my apologies opposing your decision"

He concludes:-

"It is because I respect the Government of Kenya and the Embassy that I want to protect the property of the Government of Kenya and the people of Kenya since I have been dealing with them for quite some time".

As a result of this he pulled out of the deal.

Mr. Speaker, Sir, what shocked us was when the Minister appeared before us. Eventually, I will come to the reason the Minister has to take some responsibility for some of this. The Minister told us when he appeared before the Committee that the lawyer was demanding Kshs45 million. However, the lawyer's fee here is Kshs3.2 million. That is Kshs3.2 million against Kshs45 million. The reason the Ministry gave as to why it did not include this is because what was offered was too high. Again, we have a renowned Kenyan architect in Japan called "Mr. Olago". He gave an opinion that was not followed. The technical team of the Ministry in this country made an opinion and it was not followed. We got representations from the Ministry of Finance of Japan. We got representations from the Ministry of Foreign Affairs, Japan. We got submissions from the Ministry of Lands Infrastructure, Japan. We also got documents from the Municipal Council of Tokyo. We also met Kenyans in the Diaspora. The Kenyans in the Diaspora said that these people have ashamed Kenya. Do not join them. Take them to the firing squad. It is not my letter. It is their letter. It is something they have put in writing. They said Japan is a very important economic partner and a very important country. How can we shame ourselves?

Mr. Speaker, Sir, this Ministry sought permission from the Director of Public Procurement Oversight Authority. He wrote a letter advising them not to use certain procedures. They went ahead and used the same. The Director of Public Procurement Oversight Authority asked, if, indeed, their intention was not to use what is clearly provided for in the Public Procurement and Disposal Act of 2005, why were they notifying that department. The query has not been answered.

This process was concluded without adherence to the regulations. As I said, there was no lawyer or valuation. The only valuation that was done during that time was the one done in 2007. Subsequently, there were other price indications. If a property was costing Kshs600 million in 2007 and each year the price has been appreciating at 16 per cent, the value of that property--- When we told the vendor that this has happened and asked him to take back his property, he said he could only offer about Kshs450 million. This is the case and yet we paid Kshs1, 750,000,000. Today, the exchange rate of the Yen and Kenyan shilling is almost equivalent.

Mr. Speaker, Sir, what we found was very interesting. The Ministry formed a small audit team. First of all, when the Minister appeared before us, he said that this agreement was signed by Amb. Awori. Amb. Awori appeared before the Committee on 17th Century when the Ministry said that he signed an agreement in Tokyo---

Hon. Members: 17th Century!

Mr. Keynan: Mr. Speaker, Sir, on 17th January 2009. I am sorry about that.

(Laughter)

Indeed, on that particular day, Amb. Awori was in Gaborone, Botswana, representing the African diplomats who were based in Tokyo. So when the Minister told us that Amb. Awori is the one who signed the agreement; again, we had a case with the Minister when Amb. Awori came and said that this is a fraud and that he did not sign the agreement. We have every reason to believe his version. He brought his passport and air ticket and all evidences appertaining to his hotel accommodation.

As if that is not enough, there are two agreements here. Those of you who are lawyers will know what two agreements are. One of the agreements has been signed by the Permanent Secretary (PS). I will have to confirm from the Minister; did Mr. Thuita Mwangi go to Tokyo on 30th June? The answer is, no, he did not go. Now, how did he sign this agreement which was done in Tokyo? That is fraud! I have letters here from five senior staff from the Ministry. This agreement was meant to sanitize an earlier one which was signed on our behalf by one Allan Mburu who gave himself power of attorney.

Mr. Speaker, Sir, I am not a lawyer but the Minister is. Under the Government Contract Act, Section 3 says that if one has to enter an agreement on behalf the people of Kenya outside this country, that person must have authority from the Minister. The Minister delegates to the accounting officer and the accounting officer delegates to the person who is concerned. Shockingly, Allan Mburu decided to grant himself power of attorney. There is a letter he has written for himself here which says:-

“I Allan Mburu the Charge De’Affairs is entrusted by the Republic of Kenya in this real estate transaction including signing, purchasing and sale contract, payment transfers of ownership between the Republic of Kenya----.”

Indeed, I have a photograph here of Mr. Allan Mburu and his team. What shocked us is that this agreement was signed inside the vendor’s bank. What motivated the entire procurement team of our mission to move to the vendor’s bank is something that we need to investigate.

Mr. Speaker, Sir, we paid 80 per cent of the price. Which of these two agreements is valid? In our opinion, the first one signed by Allan Mburu is a nullity because he was not authorized in law to sign the same. The second one is also illegal and fraudulent because Thuita Mwangi did not visit Tokyo. This means that we do not have a valid agreement in place. I know the Minister will say they have a title, but that title is a product of a fraudulent process and we need the intervention of the Attorney-General to move and sanitize that process and ensure that our interest is secured.

There are a number of challenges; 80 per cent of the purchase price was paid at a go. There are cheques here; the first one is dated 1st July. If you look at the payment voucher, it is addressed to one Kuruyama. But when it came to the actual issuance of the cheque it says: “Pay against this cheque cash”. Here it is and I can table it.

(Mr. Keynan laid the document on the table)

Mr. Speaker, Sir, the first payment was Kshs1, 477,630,000. There were individual accounts by a company called Roji under the names of Allan Mburu, a lady called Grovin and two other individuals, who were minors. Those are the details that Kenya Anti-Corruption Commission (KACC) has. I am sure that the Government of Japan has the details of that. If 80 per cent of what was agreed on was paid, yet there was no lawyer, valuer, inter-ministerial committee and proper government directives were not followed, our conclusion is that this was an outright act of fraud; it was a rip-off, and the individual concerned must take responsibility.

That is why, as a Committee, we sat down and agreed that the individuals concerned must be held accountable. For them to be held accountable---The Minister, in his own wisdom, after getting wind of the contents of our Report wrote to the KACC. We

concluded our Report on 28th of last month. On 1st of this month, the Minister wrote a letter to the KACC, asking the institution to investigate this matter.

The Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Speaker, Sir. I do not want to interrupt the Chairman. Indeed, I wrote to KACC to invite them to investigate this matter. However, at no time did I know when and how the Committee was preparing a Report. So, I had no idea that the Committee was preparing a Report.

However, more importantly, is the hon. Member in order to impute an improper motive on me by indicating that I wrote because I knew what was coming, yet I also have a lot to say? I would want to urge my Chairman to be factual.

Mr. Keynan: Mr. Speaker, Sir, let me put it on record that the KACC went to the ground in May this year and the Minister, certainly, had that information. The Minister interacted with his mission staff in Tokyo. Why would he be in a hurry to write a letter when he knows that there are some questions about some of his staff?

That is something that all of us can interpret, and we all know the answer to it. It is because of this that, as a Committee, we said that the Minister misled the Committee. We know the provisions of the Powers and Privileges Act.

The other thing that shocked the Government of Japan was that the Minister said that the plot was an archeological site. When we ascertained the facts from the Ministry of Infrastructure in Japan, we found that the whole of Tokyo lies on an archeological site. So, to that extent, the statement that, that aspect was unique to Kenyan property was not true.

Our conclusion on this matter is that we are not saying that there is anybody who is culpable. We are saying that certainly money has been lost. Since the Minister, in his own wisdom, has invited the KACC, is it fair for him to preside over his own investigations? Can he preside over his own investigations? In his letter, the Minister says that he will ensure that--- It reads in part:

“You may be aware that the matter has attracted inordinate negative publicity and attention to the extent that, as the Minister responsible, I feel that it is necessary for the KACC to undertake a thorough forensic investigation with a view to returning a verdict on the nature of the transaction and whether in this particular acquisition of a plot the Government got value for its money. I am conscious that this matter is still before the relevant parliamentary oversight committee----“

The letter by the Minister has raised sufficient public concern to warrant a thorough and immediate investigation.

It continues to say that “In the event that there is any culpability on any individual then due process should be followed”. He says that he undertakes to ensure that officials of his Ministry would co-operate fully in availing any documentation as well as personal interviews by KACC should they be required to do so.

Mr. Speaker, Sir, we have already set precedence. We have had Ministers stepping aside. We have had hon. Kimunya, hon. Mwiraria, hon. Kiraitu, hon. Saitoti and just now, we have hon. Ruto. Nobody is saying that the Minister is culpable. Indeed, I thought that by making these recommendations, we are doing the Minister a favour. The Minister is on record saying that he is going to be a presidential candidate in 2012. To that extent, he is a man who is supposed to enjoy unquestioned moral authority for him to get that. The best thing he would have done is to step aside, with his Permanent

Secretary, and allow the KACC and other investigating arms, because certainly, money has been lost, to investigate and come up with a verdict.

I am also conscious of the fact that in the past, there have been a number of Parliamentary reports---. I have here the Public Investment Committee (PIC) Report on State Corporations for 2007, and my brother, hon. Wetangula, is adversely mentioned in this Report, which was adopted by Parliament. In fact, here, he was surcharged. It recommended that the Minister must be forced to refund all the money due to the Electricity Regulatory Board, where he happened to have served as the Executive Chairman. I believe that, that is one of the issues that contributed to his sacking from that corporation. There is another report by the PIC on the Electricity Regulatory Board. Here again, the Minister and his firm are again listed. It says: "Prudent mechanisms must be put in place by the Authority to recover the money lost, individually to the Minister and also to his company". Again, there is another Report of 2002 by the Kenya Sugar Development Authority. This is in regard to the Minister and his company. This report was adopted by Parliament. It says that the Government must put prudent mechanisms in place in order to recover this money from the Minister and his company. Again, there is another PIC Report on the East African Portland. It says the same thing. So, it is like a trademark of the Minister.

The Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to impute improper motive on me? There is no substantive Motion before this House to discuss my person, my conduct and my character. The reports he is mentioning were all dealt with and all those matters that he is saying were put to rest. This is not right. We are debating a Report of a Ministry and not the Minister for Foreign Affairs. We have to be objective and not subjective. Unless there is a substantive Motion, because those points that he is mentioning have to be relevant to this matter and they are not true either, I urge the Speaker to expunge them from the record. Unless the Member brings a Motion to discuss me, and I will have ample time to defend myself, he should not discuss me.

I have spent more than 30 years to build my reputation as a good lawyer in this country. The issues he is mentioning related to a law firm that I was with that gave services to this firm and the orders were that bills be taxed and in many of them, bills were taxed by lawyers who inherited the firm and were even paid more money by those firms. Is he in order to drag my name unfairly into a matter where we are investigating the Ministry of Foreign Affairs, to which I am going to dutifully, as is expected by the House, make my responses? There are many things that have been said that I will respond to. I will have my time. My Assistant Minister is here and he will also have his time to mention things.

I want to urge that fairness be the cardinal and the underlying rock principle of debate and not just speaking things and throwing them on the Table for purposes of prejudicing public opinion.

Mr. Speaker: Order, Mr. Minister. You have made your point.

Mr. Keynan, do you have any reactions to that?

Mr. Keynan: Mr. Speaker, Sir, these are the reports and it is not my invention. These are the reports of the Kenya National Assembly. I am not inventing anything and it is not something new. I have it here and it is in the Parliamentary library. I was just

making reference that there has been a pattern. One of the recommendations in this report is that the Minister should be barred from holding public office. That is not my creation.

Mr. Speaker: Order, Mr. Keynan! Are you saying that those are reports of different Select Committees of Parliament that were adopted by Parliament?

Mr. Keynan: Yes, Mr. Speaker, Sir. These are the reports of the Public Investment Committee (PIC) on different dates and years.

Mr. Speaker: If that is so, I would like to verify that position before I can give direction on whether or not that remains on record.

Could you please table that report?

Mr. Keynan: Yes, Mr. Speaker, Sir.

(Mr. Keynan laid the document on the Table)

Mr. Speaker, Sir, what I am trying to emphasize is whether there is a pattern. In our opinion we feel we are doing a favour to the Minister and his team because we want him to enjoy maximum respect. In fact, he would have done himself a favour if by now he would have stepped aside.

I have documents here by none other than a number of mission staff, which I will share with you for purposes of confidentiality. The entire Ministry is up in arms.

Mr. Speaker: Order, Mr. Keynan! If there is any information that you want to share with Parliament, then you will have to share it with the House, as a whole and not to see me in private.

Mr. Keynan: Mr. Speaker, Sir, I wish to put it again on record that there is a letter here from one Senior Counsel in the Ministry. This is the latest central posting.

Mr. Speaker: What is that, Mr. Keynan?

Mr. Keynan: Mr. Speaker, Sir, the central posting is an inter-Ministerial transfer within the Government and it is normally co-ordinated by the office of the Permanent Secretary, Secretary to the Cabinet and Head of the Civil Service. As a result of this second agreement, which was purportedly signed by the Permanent Secretary, Mr. Thuita was given to one James Gikwaka who used to be a senior counsel in the Ministry of Foreign Affairs. He left here for Tokyo on 31st January, 2010. He was in Tokyo between that day up to 3rd February, 2010 but because he could not accomplish what he sent to do-- In fact, he was asked to use every opportunity available to replace the earlier agreement--

Mr. Speaker: Order, Mr. Keynan! Be conscious that your time will be up in two minutes.

Mr. Keynan: Mr. Speaker, Sir, the main work of that individual was to “sanitize” the deal. He was supposed to get hold of the Permanent Secretary, Mr. Thuita’s sale agreement, go to Japan’s Ministry of Lands and replace it with the one earlier signed by Ambassador Mburu. However, in Japan things are very transparent and that did not work. When he came back, the lawyer was moved as an Under-Secretary. I table these documents. He was transferred from the Ministry of Foreign Affairs to another Ministry as an Under-Secretary and yet he is supposed to be the Chief Legal Officer in the Ministry of Foreign Affairs. Two days before we left, there were threatening transfers that were addressed to different staffs of the mission. This letter is dated 28th June, 2010 and these people were asked to come back. Due to all these irregularities---- I want to

table this to show the extent to which the Ministry has gone. Therefore, there must be something abnormal that has happened in our missions and that is why we are asking the Kenya Anti-Corruption Commission (KACC) to investigate. Because of time, I want to move this and invite Mr. C. Kilonzo to second the Motion.

Thank you, Mr. Speaker, Sir.

ADJOURNMENT

Mr. Speaker: Order, Hon. Members! Hon. Members, we have come to the end of today's sitting. Therefore, the House stands adjourned until Tuesday, 26th October, 2010, at 2.30 p.m.

The House rose at 6.30 p.m.