

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 22nd July, 2010

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

### ORAL ANSWERS TO QUESTIONS

*Question No.208*

FACTORS HINDERING INTRODUCTION OF  
DIRECT FLIGHTS BETWEEN USA/KENYA

**Mr. Speaker:** Is the Member for Saboti not here? Hon. Members, we will revert to that Question a little later.

*Question No.239*

CONSTRUCTION OF “TRAUMA HOSPITAL” IN NAIVASHA

**Mr. Mututho** asked the Minister for Medical Services:-

(a) when the long awaited “Trauma Hospital” will be constructed at Naivasha to limit casualties in view of the high road carnage, particularly along the Nakuru–Nairobi Highway;

(b) when he will provide a functional ambulance at Naivasha District Hospital to replace the Nissan Van (Reg. No. GK J565) and also sell the bonded ambulances (Reg. Nos. GK 896X and GKA 279); and,

(c) whether he could consider providing an ambulance to Gilgil Sub-district Hospital.

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

(a) The Ministry has no plans to construct a Trauma Hospital at Naivasha. The only hospital of this nature that the Ministry plans to construct will be situated at the Salгаа area in Rongai.

(b) In the current financial year 2010/2011, the Ministry has been allocated Kshs30 million to procure ambulances. Naivasha District Hospital will be considered when the ambulances are procured. Meanwhile, the hospital is using a Toyota Hiace Ambulance Reg. No.GKA760A which is in a fair condition.

(c) Gilgil Sub-District Hospital has a Toyota Hiace Ambulance that was given to the facility in 2003. The ambulance was involved in an accident in March 2010.

However, it has now been repaired, serviced and is functional. Given the small allocation that the Ministry gets for procurement of ambulances, it is not possible to procure an additional ambulance for Gilgil Sub-District Hospital for the time being.

**Mr. Mututho:** Mr. Speaker, Sir, the decision to construct a trauma hospital was arrived at by the World Health Organization (WHO) in the 1980s. We do acknowledge and appreciate the Presidential directive to construct one at Salгаа but that is based on a political consideration rather than really a feasibility study. Could the Assistant Minister reconsider again to follow the WHO guidelines and consider Naivasha and Voi for urgent trauma hospitals?

**Mr. Kambi:** Mr. Speaker, Sir, as a Ministry, we are aware of the WHO report which was done in 1983. It had recommended that trauma hospitals be constructed in Voi, Naivasha and Nyanza. However, due to budgetary constraints, we are not able to do so. But, as a Ministry, we have a plan to send our staff to do the feasibility study so that we can embark on constructing one at Naivasha.

**Mr. Speaker:** Is there any other hon. Member interested?

Last question, Member for Naivasha!

**Mr. Mututho:** Mr. Speaker, Sir, I want to acknowledge what the Assistant Minister has just said, that a report exists in guiding the Ministry on where to construct the trauma hospital. I believe that when they get the funds, he will consider Naivasha as a first priority and then, perhaps, Nyando and Voi.

**Mr. Speaker:** Next Question by the Member for Baringo Central!

*Question No.260*

UPGRADING OF MARIGAT POLICE STATION

**Mr. Lessonet**, on behalf of **Mr. Mwaita**, asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he could consider upgrading Marigat Police Station to a fully-fledged Police Division; and

(b) when he will post a senior officer to this station.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I seek the indulgence of the Chair for me to answer this Question on Tuesday. I have an answer which is not quite satisfactory. I had also spoken to hon. Mwaita to allow me, through the Chair, to answer the Question on Tuesday next week.

**Mr. Speaker:** Mr. Lessonet, since you are holding brief for hon. Mwaita, what do you have to say?

**Mr. Lessonet:** Mr. Speaker, Sir, since that would even give a good opportunity for the hon. Member to come and interrogate the Assistant Minister himself, I concur that he answers the Question on Tuesday.

**Mr. Speaker:** Very well! We will defer the Question to Tuesday next week!

*(Question deferred)*

*Question No.293*

INTERPRETATION OF KENYA/CHINA BILLBOARD  
ADVERTISEMENT ON MOMBASA ROAD

**Mr. Speaker:** Is the Member for Mutito not here?  
Hon. Members, we will again revisit that Question a little later.

*Question No.281*

NOCK'S FAILURE TO STABILIZE/INFLUENCE FUEL PRICES

**Mr. Speaker:** Is the Member for Emgwen not here?  
Hon. Members, we will now do the second lap of Questions.

*Question No.208*

FACTORS HINDERING INTRODUCTION OF  
DIRECT FLIGHTS BETWEEN USA/KENYA

**Mr. Speaker:** Is the Member for Saboti still not here? The Question is dropped!

*(Question dropped)*

*Question No.293*

INTERPRETATION OF KENYA/CHINA BILLBOARD  
ADVERTISEMENT ON MOMBASA ROAD

**Mr. Speaker:** Is the Member for Mutito still not here? The Question is dropped!

*(Question dropped)*

**Mr. Litole:** On a point of order, Mr. Speaker, Sir. I thought that you should be aware hon. Wamalwa is out of the country on official duty.

**Mr. Speaker:** Order, hon. Litole! We are now dealing with Question No.293. Where were you when I called Question No.208?

**Mr. Litole:** My apologies, Mr. Speaker, Sir.

**Mr. Speaker:** Sorry, you are out of order! I am afraid, I cannot revisit that Question.

Next Question, hon. Member for Emgwen!

*Question No.281*

NOCK'S FAILURE TO STABILIZE/INFLUENCE FUEL PRICES

**Mr. Speaker:** The Member for Emgwen still not here? The Question is dropped.

*(Question dropped)*

Order, hon. Members! From this point onwards, you will be guided by the Supplementary Order Paper.

**Mr. Lessonet:** On a point of order, Mr. Speaker, Sir. There are some outstanding Ministerial Statements and the Ministers are not there---

**Mr. Speaker:** Order! We will move to the next order.

## **MINISTRIAL STATEMENTS**

### **SECURITY SITUATION IN KAKAMEGA TOWN**

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, on Wednesday, 21<sup>st</sup> July, 2010, hon. Dr. Khalwale, the MP for Ikolomani Constituency rose on a point of order requesting a Ministerial Statement on the security situation in Kakamega Town. In the statements, he wanted the Minister to give reasons for the sudden upsurge of gang crime in Kakamega and what the Government is doing to bring normalcy to Western Province. He further sought to know whether the Government would compensate the families of the affected and what the Government intends to do with the PPO, Mr. King'ori Mwangi, in view of the crime upsurge.

Finally, he also sought to know why the OCPD Kakamega has been left with only one patrol vehicle for the four districts in Kakamega; that is, Kakamega Central, South, North and Kakamega East. I wish to state as follows:-

On 28<sup>th</sup> June, 2010, at around 2.00 p.m., an Asian businessman was fatally shot while leaving his residence during a robbery incident in Kakamega. An unknown amount of money, a car registration number KBH 092Z, a Toyota Corolla Saloon was robbed from him. However, the car was later recovered within the town. On 8<sup>th</sup> July, 2010 at around 3.55 p.m., three Asians while travelling from Mumias to Kakamega in a motor vehicle registration number KBL 690C a saloon car were attacked by an armed gang at Mwitoti area of Ekeru Sub-location. During the attack, one of them sustained a bullet wound on the left leg and another was injured on the forehead. The victims did not stop and managed to drive to Nala Nursing Home in Kakamega for treatment. At the scene, three spent cartridges of 7.62 millimetres (mm) were recovered and have since been sent to ballistic experts for analysis. Investigations are underway with a view to apprehending those who were involved in the crime.

Investigations conducted indicate that the recent wave of crime has been as a result of the 122 convicts who were recently released from the Kakamega GK Prison through a Presidential Pardon, out of which 20 were hardcore criminals. Further, the vast constituencies of Ikolomani and Shinyalu are served by Kakamega Police Station. To curb the crime in the region, the following measures have been put in place:-

One, highway patrols have been intensified along the main highways and roads. There are plans to construct police posts to beef up security in that area. In this regard, the local community has been approached to donate land towards the intended constructions. The community policing committees have been strengthened at the station level to enhance intelligence collection. Beats and patrols have been intensified in the

crime prone areas by both regular and administrative police. Joint operations by OCPDs Busia and Siaya have been launched to flush out suspected criminals operating across the border. Snap road blocks are currently being erected to deter crime in the affected area. The neighbourhood watch initiative has been intensified. That initiative brings together the police and the business community in policing activities. The police and bus owners operating or transiting Western Province have agreed on conducting searches before departures; the buses are being escorted by police along the Kakamega-Kisumu Highway.

These security measures have started bearing fruit. On 4<sup>th</sup> July, 2010 at about 4.30 pm, along Kakamega-Mumias Road near Ishisuru Centre, police engaged suspected criminals in an exchange of fire. Three criminals were fatally shot and the following recovered. A motor vehicle registration number KBK 390S, a Toyota station wagon, one pistol and four rounds of ammunition were recovered. Nine suspected criminals have so far been arrested and charged before the Chief Magistrate Court, Kakamega with various charges of robbery with violence.

The issue of compensation can only be handled through the court of law. The Government is not culpable for such criminal acts. The incidences are under investigation and once the culprits are arrested, they will be arraigned in court.

The two incidences where one Asian was killed and others attacked cannot be blamed on the person of the Provincial Police Officer, Western Province, Mr. King'ori Mwangi. Those incidences, though unfortunate and regretted, are isolated and, hence, cannot be used to draw a conclusion that there is an upsurge in crime and that, the PPO has so far failed in his duties. The area has not experienced any other incident since 8<sup>th</sup> July, 2010. It is not true that the four districts of Kakamega, South, Central, North and East are patrolled by one vehicle. The following police vehicles are currently patrolling the area. One is GK 914G a Toyota Land Cruiser, GK A947H, Toyota Land Cruiser, GK A539E a Toyota Land Cruiser that belongs to the CID Department. However, after the Government procures additional vehicles during this financial year, the district will be considered for additional allocation alongside other police divisions and stations which do not have vehicles.

I rest my case.

**Dr. Khalwale:** Mr. Speaker, Sir I want to thank the Assistant Minister. However, he seems to think that there is no crime upsurge. Indeed, there is because I have a list of six incidences which have taken place within a period of less than three weeks. Mr. Sanjey Patel was shot dead. Mr. Kalpesh Rakesh was robbed and shot. Mr. Rakesh Prakdesh was shot and robbed. Mr. Niresh Patel was shot. Mr. Shurdish Khedia of Yako Supermarket was shot. Mr. Shandey Jandi was shot and robbed and then eight other people were shot. Those are the incidences. The Provincial Police Officer (PPO) of Western Province is a friend of mine and I have nothing personal against him. But why the people of the province have asked me to ask the Government to consider moving him is because---

**Mr. Shakeel:** On a point of order, Mr. Speaker, Sir. Could Dr. Khalwale also give the names of the eight others? That is because it seems to me that he is only concentrating on people of Asian origin who have been shot? I am sure other people were shot.

**Mr. Speaker:** Order, Member for Kisumu Town East! I gave you that opportunity because I thought you were finding something that was drastically and urgently out of order by the Member for Ikolomani. But I do not see that you have lived

up to my expectation. So, Member for Ikolomani, you may proceed! Hon. Shakeel, if you want a clarification, you may stand on a point of order and if you catch the Speaker's eye, you will be allowed to seek a clarification.

**Dr. Khalwale:** Mr. Speaker, Sir, I have nothing personal against the PPO, but the people of the province have approached and asked me to ask the Minister to remember that when the PPO was here in Nairobi, the incidents of crime were very high. When he was transferred to Mombasa as PPO, again, the incidences of gun crime went up in Mombasa. Now that it is happening in Western Province, the area residents have asked me to seek clarification from the Assistant Minister. Is it possible that he can ask this PPO to try his talents elsewhere instead of being in charge of provinces?

Mr. Speaker, Sir, could he tell us what he intends to do about tax drivers, matatu operators and some *boda boda* motorbike operators, who under the camouflage of doing these businesses, are actually thugs who are known to have a racket with the police where they pay some stipends to the police, so that the police close one eye when they approach them? Finally, could he clarify whether it is purely a coincidence that some of the suspects arrested in these incidents are actually police officers?

**Mr. Njuguna:** Mr. Speaker, Sir, while I thank the Assistant Minister for giving a very lengthy and elaborate answer, it has come out very clearly that the rate of crime shot up after the convicts were released. What specific measures has he taken against this group that is really terrorizing innocent wananchi in Western Province?

**Mr. Konchella:** Mr. Speaker, Sir, could I ask the Assistant Minister to consider handling this situation in a different way? When these people are being released or pardoned by the President as it normally happens, they are taken to areas closer to their homes for a period of a month or so, to be inducted into the society, so that people can understand their behaviour and know who they are. In that way, the police officers can actually handle the situation on the ground and know who these criminals are. Secondly, could he also consider investigating officers in the police force who have worked in cahoot with these criminals before they were arrested because when they go back to the society they actually work together with them to cause problems? Some of these problems are caused by police officers who involve themselves with these criminals.

**Mr. Mungatana:** Mr. Speaker, Sir, I am still on the point raised by hon. Njuguna. The Assistant Minister has said that investigations showed that one of the reasons for the increasing crime was because of the release of these convicts. This raises the questions of the exercise of the prerogative of mercy by the President under Section 27 of the Constitution. In fact, there exists an Advisory Board under Section 28, which consists of the Attorney-General and three people who are appointed by the President. The President does not act on his own. He is properly advised. There is a report that is referred to him and there is a whole procedure that is followed Under Section 29 of the Constitution that is currently in force.

Is he admitting that, in fact, the Advisory Committee on Prerogative of Mercy is failing in its duties? Is he admitting that they have been misadvising the President and, therefore, releasing hardcore criminals or criminals who are not reformed? If this is the case, is he saying that this committee is exposing, in fact, not only Kakamega, but the rest of the country to a possibility of increase in crime rate? If so, could he state that he wants that Board dissolved, so that we can have a proper functioning Advisory Committee on

Prerogative of Mercy? We do not want criminals coming back to the society. Could he clarify that? He has made a very grave Statement in this House.

**Dr. Nuh:** Mr. Speaker, Sir, prisons are supposed to reform those who have committed crimes or mistakes before. They are not just institutions of punishment. When these hardcore criminals are released on the prerogative of mercy, is there any mechanism of giving them some life support systems to establish businesses to sustain their livelihoods and put into use whatever training they have obtained in prisons?

**Mr. Affey:** Mr. Speaker, Sir, I want to thank the Assistant Minister for the Statement. Both the Assistant Minister and Dr. Khalwale have confirmed that a group of Kenyans, particularly Kenyans of Asian origin, seem to be the ones who are affected by this crime. It is quite evident that these Kenyans are now panicking and some of them might already have decided to close down their businesses. What have you done to re-assure them? Have you had any meeting of any nature with them, in order to re-assure them that their own security and that of their businesses will be secured, so that they do not close down their businesses?

**Mr. Mututho:** Mr. Speaker, Sir, Dr. Khalwale has alluded to the fact that most of the arrested criminals are, indeed, police officers. In today's rating of corruption, the police are topping. What measures is the Assistant Minister putting in place including, perhaps, separating the traffic Department from the Police Force, to ensure that for once, we have a clean Police Force?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Speaker, Sir, first, it is quite unfortunate that we have lost lives in Kakamega as a result of criminal activities. I sympathize with the situation that Dr. Khalwale has experienced of lives lost. There are allegations made in this House, that there were incidences of criminal activities in Nairobi, some transferred to Mombasa and later to Kakamega. It is quite unfortunate that I do not have the statistics for me to agree with what Dr. Khalwale has said. What has happened in Kakamega is not something that we can sit back and watch. If you go to Kakamega now, you will see something else. The whole Government is in Kakamega. I have beefed up security to patrol 24 hours within Kakamega Town and its environs.

I have deployed detectives to identify the taxi drivers who are colluding with the criminals. So far, I have managed to arrest six taxi drivers out of the nine who were suspected. I am doing that in order to bring normalcy in Kakamega. This is not something which we can sit back and watch. I am extending the same to the motorcyclists because the criminals are using them to ferry the same gangs to rob within the environs of Kakamega Town. We have identified the cyclists who ferry the gangs to rob the villages within the environs. I will give you one example. A month ago, an Assistant Chief's daughter was killed in Shinyalu. We have arrested the two fellows who committed this heinous act, and they have been charged with murder.

Mr. Speaker, Sir, we are not going to let go anybody who feels that he can take the life of an innocent person any time. He is going to face the wrath of the police. Equally, police officers who are involved in any criminal activity, whether paid or not paid, even before we implement the reforms, you will see what we are going to do to them. The law is there. It will take its own course. We are not going to leave anybody who is involved in any criminal activity.

There was a time when the Chair called me, when three watchmen were hacked to death in Emuhaya. Heads will roll. I want to assure this House that if, indeed, police officers were involved – although I know that my police officers are innocent – I will have no choice because the law is very clear.

Mr. Speaker, Sir, I have been asked what it is that we are doing to hardcore criminals who were released recently. If a hardcore criminal has been released, and he continues with his criminal activities, he will be taken back to prison. In fact, out of the nine suspects, one or two are amongst those who were released recently. It sometimes really pains me to divulge even the names of those who have been arrested, because we are still pursuing some of their colleagues.

As to whether the Advisory Board is doing the right job or not, that is left to the Attorney-General; the Attorney-General is a member of the Advisory Board. They are the people who decide on who to be released and who is not to be released.

Mr. Speaker, Sir, Dr. Nuh asked whether the hardcore criminals got some training while in prison. I might not know that because my docket does not include training of inmates in prisons.

**Dr. Nuh:** On a point of order, Mr. Speaker, Sir. Unless the Assistant Minister misunderstood me, I asked whether his Ministry, or the Government, has availed some funds for them to utilize on whatever training they get in college.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, that is a good question, but I would not know it, unless I check with the Department to establish whether there is some money set aside for the training.

Hon. Mututho asked whether the police are clean. I want to say that yes, the police officers are clean. A suspect remains a suspect until such a time that he is proved guilty.

Reforms are coming. We are implementing reforms. I know for sure that my police officers cannot engage themselves in this kind of activity, because they know the consequences.

I have also agreed that we increase some vehicles for patrol purposes. Those vehicles will be patrolling past Kakamega Town, all the way to Mukumu, in order for us to get those suspects. I want to assure this House that we will, definitely, get the suspects who have been terrorising Kakamega residents.

Mr. Speaker, Sir, I want to urge the businessmen of Kakamega Town to open their businesses without any fear, because the Government is there. The Government is going to provide security. I have already sent detectives from Nairobi to patrol Kakamega area and get us the names of the suspects. Within a week's time, you will see those suspects arraigned in court, in Kakamega.

I want to rest my case and tell hon. (Dr.) Khalwale that he should go home a happy man, because we are doing all it takes to arrest those who have not been arrested to date.

Thank you, Mr. Speaker, Sir.

**Dr. Khalwale:** Mr. Speaker, Sir, Mr. Affey raised the issue of the need to re-assure the business community. Could the Assistant Minister commit himself to go there and meet members of the business community? They have addressed to me a document on the letterhead of the National Chamber of Commerce and Industry; he should meet



them. The economy of Western Province is down on its knees. Pharmacies and hardware shops are closed because the owners fear that they will die. I will give him a copy of this letter, so that he can use it to go there and talk to them.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I can go and meet these fellows any time.

**An hon. Member:** When?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I will arrange with the hon. Member, who is a friend of mine, so that we go and give them the confidence that they require. I am ready to go and meet the businessmen next week or the week after. In fact, I will also go to Emuhaya with Dr. Otichilo, so that I meet those in Luanda for purposes of restoring normalcy and sanity in those areas.

**Mr. Speaker:** Assistant Minister, since this is a matter of life and death, can you do it next week, and not the week after?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I will go through the dates with Dr. Khalwale and then do it immediately, because this is a grave matter. I concur with you.

**Mr. Speaker:** Are there any other Ministerial Statements which are mature? Are there any concerns about Ministerial Statements which ought to have been ready by now?

GOVERNMENT POSITION ON CIVIL SERVANTS  
PARTICIPATION IN REFERENDUM CAMPAIGNS

**Mr. Lessonet:** Mr. Speaker, Sir, I did make a request for Ministerial Statement on Tuesday, and the same Assistant Minister, hon. Orwa Ojode, promised to issue it today.

**Mr. Speaker:** Yes, hon. Ojode!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I seek the indulgence of the Chair to allow me to issue the Ministerial Statement next week, because it was not ready.

**Mr. Speaker:** On what subject is it?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, it is on the civil servants who are campaigning for the "Yes" side of the referendum on the Proposed Constitution. That is the allegation which the hon. Member made. Let me, or my colleague, respond to this particular request for Ministerial Statement next week, on Wednesday.

**Mr. Speaker:** Mr. Lessonet, what are your reactions?

**Mr. Lessonet:** Mr. Speaker, Sir, looking at today's Order Paper, my fear on this one is that I may be accused of anticipating debate.

**Mr. Speaker:** Yes, indeed, and you know it! So, please, do not! You will be out of order if you do! So, leave it there!

**Mr. Lessonet:** Mr. Speaker, Sir, I find Tuesday to be very far away. I do not know whether we can give the Assistant Minister time to rush back to his office and bring the Ministerial Statement. I am very sure that his office is not very far away. He was very confident that he would bring the Ministerial Statement today. In fact, when I walked in

with him, he assured me that he had the Ministerial Statement. So, I do not know why he is chickening out at this time.

**Mr. Speaker:** Order! Order! That is not parliamentary language. Ministers do not chicken out.

Assistant Minister, do you at all want to react to that one?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, with the indulgence of the Chair, let me issue that Ministerial Statement on Wednesday afternoon because it is a simple thing.

**Mr. Speaker:** Fair enough! I defer the issuance of that Statement to Wednesday, next week at 2.30 p.m.

## MINISTERIAL STATEMENT

### SALARY AND ALLOWANCES PAID TO COTU SECRETARY-GENERAL

**The Minister for Labour** (Mr. Munyes): Mr. Speaker, Sir, I am supposed to issue a Ministerial Statement sought to clarify the issue of the salary and allowance of the Central Organization of Trade Union (COTU) Secretary-General. I would like to inform the House that I am still getting information on that aspect. I have not found enough information and, therefore, I seek your indulgence because I would like to get an appropriate answer. So, I will issue that Statement next week.

**Mr. Speaker:** Do you want to do that on Tuesday, next week?

**The Minister for Labour** (Mr. Munyes): Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Very well! It is so ordered!

## POINT OF ORDER

### CLOSURE OF BUTALI SUGAR FACTORY

Is there any other concern on Ministerial Statements?

**Dr. Khalwale:** Mr. Speaker, Sir, I sought another Ministerial Statement and I was assured that it will be issued on Tuesday but my concern is that following that Ministerial Statement, there seems to be a fight between the Minister for Housing, on whose constituency the mills that is, the Butali Sugar Company is located and the Minister for Agriculture. In fact, the Minister for Housing has written a very “hot” letter to the Minister for Agriculture and copied it to me. In that letter, there is a hidden threat at the end where the Minister seems to imply that farmers are getting organized to engage in a very agitated and dangerous demonstration. I thought that I should bring this to the House because having brought up this matter if all of a sudden back in our backyard people go on a spree of demonstration, it can be looked like I am the one who mobilized them. I wanted to be clear, through this letter, that this is a fight between the Ministry of Housing and Ministry of Agriculture and I am patiently waiting for my response.

**Mr. Speaker:** You may table the letter and the Ministerial Statement will be issued on the due date as earlier directed. That is on Tuesday, next week.

*(Dr. Khalwale laid the letter on the Table)*

**Mr. Mututho:** On a point of order, Mr. Speaker, Sir. The matter to do with sugar factories is substantially before our Committee. Would I be in order to comfort this House that the issue has been very comprehensively dealt with in the Report that we will table, perhaps on Tuesday, depending on your authority?

**Mr. Speaker:** You will be out of order because you have to await and give that indication and comfort after the Ministerial Statement is issued.

That then brings us to the end of Order No.7. Let us move on to the next Order!

## MOTION

### RESCINDING OF HOUSE RESOLUTION ON ADOPTION OF AKIWUMI TRIBUNAL REPORT

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

THAT, whereas the House on 30th June 2010 passed a resolution to adopt the Report of the Tribunal appointed by the Parliamentary Service Commission to review the Terms and Conditions of Service of Members of Parliament; Cognisant of the fact that the resolution had urged the Deputy Prime Minister and Minister for Finance to introduce Draft Bills to give legal effect to the Tribunal Report within the next seven days; considering that the seven days have lapsed ; this House, pursuant to S.O. 49 rescinds the resolution in respect of the period of seven days and resolves that the period be extended to enable the Minister obtain the President's approval as provided for under Section 48 of the Constitution of Kenya.

Mr. Speaker, Sir, earlier today, hon. Members were in a Speaker's meeting and we reached certain conclusions in order to facilitate this House to get a way forward out of the stalemate which we have had for the last few weeks. This particular Motion rescinds the Motion that had asked the Deputy Prime Minister and Minister for Finance to within seven days publish the Bills. The seven days have elapsed but the import of this move should mean to hon. Members that we want to preserve the contents and the recommendations in the Akiwumi Report. Therefore, by rescinding this decision, nothing will be lost. In fact, a window will be left so that in future the Deputy Prime Minister and Minister for Finance will not say that the time which was stipulated has lapsed so that we can open a new window. We leave that window for the Deputy Prime Minister and Minister for Finance to come back here, as per our agreement, to do what is right for hon. Members.

Mr. Speaker, Sir, the explanation in the Motion speaks for itself and I plead with hon. Members that by doing this, we will be moving this process forward. I request Mr. Mudavadi to second the Motion.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Speaker, Sir, in seconding this Motion, I just want to make one very important point. It should be known by the Kenyan Public that the Akiwumi Report was very specific that hon. Members will pay tax. At the same time, hon. Members here are agreed that taxes will have to be paid so that the accusation that hon. Members get the

benefit of not paying taxes on their allowances can be put to rest once and for all. I am saying this because the notion that has really been peddled is that Members of Parliament want to avoid the payment of tax. I think it should go on record that, that is not the case. Hon. Members are committed to paying tax and, indeed, even in the support of the new Constitution, they are fully aware that the provisions are incorporated in that Constitution to make sure that all state officers, and that will include, Members of Parliament will pay tax.

Mr. Speaker, Sir, I think this is an important Motion, bearing in mind that what it seeks is a very minor issue, that is, to rescind the decision which had the specific tag of seven days on the earlier Motion where Parliament adopted the Akiwumi Report a few weeks ago. It is a straightforward Motion that the decision be rescinded. This will give an opportunity for hon. Members to discuss a little further on this issue. They will also put it on record that what they want to do and what they proposed has been seriously misinterpreted by the Kenyan public. We hope that by rescinding the decision requiring the Deputy Prime Minister and Minister for Finance to bring such a Motion within seven days, we will also kill the notion that there was haste in this process. This is because when the tag of seven days was attached it appeared as if Members of Parliament wanted to rush something through. Definitely, this did not go down well with the public. By rescinding this decision, and I appreciate the fact that this matter may require more time before a solution is found, it is only proper that this House adopts this Motion in accordance with the spirit of the discussions held by hon. Members this morning.

With those few remarks, I second this Motion.

*(Question proposed)*

**Mr. Mungatana:** Mr. Speaker, Sir, I rise to support this Motion. I just want to make two fundamental points. Kenya is not the first country that has gone through constitutional change in a successful and peaceful manner. The Republic of South Africa during the adoption of the new constitution, there were negotiations between the party that was led by the then leader of National Party, President De Klerk, and the then to become President Mandela. Everything was done and the new constitution was supposed to be passed, but then the Members of Parliament from the old Parliament that were going to leave wanted to know what was going to happen to their gratuities, pension, terms and conditions of service and how they were to relate with the new parliament. It was a very big issue. In fact, the then members of the party of De Klerk were very adamant and members of the other side were also very adamant. What broke the stalemate was negotiations. These negotiations involved Mandela himself and De Klerk himself. They had to leave out the emissaries who were negotiating so that they could resolve the question that was causing the stalemate between the parliament that was in transition and the parliament that was supposed to take over. When the Joint Chief Whip moves a Motion before this House and asks for time so that negotiations can be done so that some reasonable agreements can be reached, negotiations is the way to go because history has shown us that indeed negotiations is the way that saved the final lap of the making of the constitution in the Republic of South Africa.

Mr. Speaker, Sir, the second point I want to support in this Motion is that of the legalities around this whole question of emoluments. This Motion is actually grounded on

Section 48 of the existing Constitution. If you look at Section 48, it states very clearly; “Except upon the recommendation of the President” signified by a Minister, the National Assembly shall not, proceed upon a Bill---“, that is we cannot discuss any Bill or anything that has the effect of imposing taxes or charge on the Consolidated Fund or withdrawal from the Consolidated Fund or composition or remission of a debt due to the Government of Kenya. That is under Section 48 (a). That concerns a Bill.

Section 48 (b) states that the National Assembly shall not proceed upon a Motion (including an amendment to a Motion), the effect of which, in the opinion of the person presiding, would make provisions for any of those purposes; that is the purposes I have already stated out.

So, Mr. Speaker, Sir, in fact, seriously speaking, there should not have been a proceeding of the earlier Motion if the intention or the effect would have been to bring any of those four issues that I have laid out before as outlined in the Constitution. Therefore, in order for us to make things proper, under the current Constitution, even the Report which we adopted in this House cannot be discussed if the effect is a charge on the Consolidated Fund without the consent of the President, without the recommendation of the President as signified by a Minister. In effect, I want to ask my colleagues to see that we have no other way around this Motion but to support it because whatever negotiations that must go on, they must be grounded on the law, the current Constitution and in my opinion, even the initial Motion should have had the approval or the recommendations of the President as signified by the Minister in this House. Otherwise we should not in fact have proceeded with the debate.

Mr. Speaker, Sir, now that, that is a past event, what is pending is a question of the Bills that must be brought before this House. The correct thing to do is for this House to give the Minister time to do his consultation with the President and then when he receives the correct recommendation, the correct approvals, then he can bring the necessary Bills that shall be supported or opposed on the Floor of the House. So with those two points, I want to urge my colleagues to see to it that this Motion is passed without much debate because it is actually a constitutional issue. We need to do things correctly. We need actually to get the President’s approval before any debate can proceed on the Floor of this House. In fact, the Constitution does not give us any choice and I would urge my hon. colleagues that this is the way to go, this is a harmless Motion, this is a constitutional thing, we need to do it properly so that we get a resolution that is backed by the Constitution as we know it.

Mr. Speaker, Sir, I would very strongly urge that we pass this Motion as moved by hon. Midiwo without much debate.

With those few remarks, I beg to support.

**Mr. Njuguna:** Thank you, Mr. Speaker, Sir; I also rise to very strongly support this Motion. It is important to follow the necessary procedures so that we do not create any disharmony in the society. On this issue of salaries for Members of Parliament, it is almost clear in our minds that wananchi have already spoken. They have even started going to the streets to express their position. Some churches in this nation have also expressed their dissatisfaction and even workers and trade unions have already spoken. According to the discussions and feelings of these various groups of people, they have been very negative on the intention that the Akiwumi Report has.

Mr. Speaker, Sir, it is also noted that the Akiwumi Report is not going to die. Its spirit will also be translated as per the Constitution of this land. It is therefore imperative that the Minister for Finance be given adequate time to present his position to the Bill drafters to develop those Bills and thereafter consult the President. This is to enable the President to have enough time to come up with the desired approval on the drafts. The President is the symbol of unity in this nation and whatever decision he is going to take, it will be for the interest of this House and the people of Kenya. Therefore, the Presidential consent on this matter is very important and it is from this background that I fully support this Motion so that the Bills will be sent to the President for the way forward.

I support and thank you.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Mr. Speaker, Sir, the subject matter of this Motion was debated informally this morning and it looks to me that we are all in agreement. Therefore, would I be in order to ask that you put the Question?

*(Applause)*

**Mr. Speaker:** It is true that hon. Members have adequately acquainted themselves with the subject matter of this Motion and that those who have contributed have raised the requisite concerns. So, hon. Members, I will put the Question.

*(Question, that the Question be now put, put and agreed to)*

*(Question put and agreed to)*

Next Order!

## **MOTION FOR THE ADJOURNMENT**

ADJOURNMENT TO A DAY OTHER THAN  
THE NEXT NORMAL SITTING DAY

**Mr. Midiwo:** Thank you, Mr. Speaker, Sir. I wish to move the following Motion:-

THAT, this House do now adjourn until Tuesday, 17<sup>th</sup> August, 2010 at 2.30 p.m.

Mr. Speaker, Sir, I want to move that we do adjourn for very many reasons. The first one is that we are all aware that the House was supposed to adjourn almost two weeks ago but we could not because of obvious reasons. The reason which was pertaining was to do with the Akiwumi Report and I think this morning, we tried to resolve the stalemate. I want to thank His Excellency the President for agreeing to indulge us in the last few days so that we could find a way forward.

Mr. Speaker, Sir, Members of this House have been condemned roundly and very wrongly for the last few days and it is only fair to put the record straight. When the Parliamentary Service Commission (PSC) formed the Commission led by retired Justice Akiwumi, it did so according to the Constitution. It is what the Constitution calls for and

no Member of this House sat in those proceedings. I was the first and among the last witnesses if you look at the appendix, to appear before the Commission. We have to obey the law in this country. We must follow the law. I want to thank everybody involved and I want to plead with Members that despite all the negatives which are being peddled, you must stand tall because you are obeying the law.

This morning, there were commitments made to us. There were commitments made in writing. The Attorney-General has put a commitment of his opinion before this House which we must put on record of what will happen. The Commissioner-General of the Kenya Revenue Authority (KRA) has agreed with that opinion. The Minister for Finance has agreed with that opinion. The President agreed with that opinion. Therefore, we will hold them to their commitment because they have committed the Government to obey the law.

Lastly, Mr. Speaker, Sir, I would like to say that despite everything which is being said, the truth shall come out. I was listening to a certain radio station which kept saying how Members of Parliament are trying to increase their salaries and they will not go home until they do so. Nothing could be further from the truth. I think it is wrong to use the airwaves on untruths. I want to end there and ask Ms. Martha Karua to second.

I beg to move.

**Ms. Karua:** Mr. Speaker, Sir, I beg to second the Motion.

We all know that the referendum is beckoning. Most Members are involved in making sure that their constituents are aware of the issues. I, myself, have not been able to attend the Chamber normally because of the campaigns. I am now on my feet headed for one such campaign in the neighbourhood of Nairobi. I think it is good that we give ourselves time until after the referendum so that we are able to participate.

Mr. Speaker, Sir, apart from being Members of Parliament, we are citizens of this country. We do have the interest of the country at heart. We would like to see change in this country. We would like to see our constituents reaping benefits from the reforms that will ensue after the Draft Constitution is passed. We have a responsibility as Members of Parliament to ensure that the things agreed upon during the Serena Talks are implemented; the Constitution being one of them.

The Constitution will unlock much of Agenda 4 which is of immediate benefit to the citizens. We cannot eradicate poverty without a new legal framework. We cannot be able to assure our constituents of their rights. We cannot reform the Judiciary or the police properly without constitutional review.

I think that each Member of this House owes a duty to their constituents. We accepted our positions. If it were not for the National Accord, most probably, we would have had to have elections again. So, we are a product of that agreement. That is how we gained our legitimacy and this is a very serious national issue. Our constituents should hold us to account if we mislead them on this national issue.

For those reasons, it is good we free ourselves to go and do our duty to the country and to our constituents.

I beg to second.

*(Question proposed)*

**Mr. Speaker:** Hon. Members, please, note the restrictions that this Motion will last a maximum of 30 minutes and that you must confine yourselves strictly to the question of adjournment.

Mr. Duale, please, proceed!

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Speaker, Sir, I stand to support this Motion.

I am supporting for one fundamental reason and that is the Constitution. We are remaining with close to 13 days before the 4<sup>th</sup> August Referendum. This Constitution is so dear to this country. This Proposed Constitution and the referendum is part of the Agenda 4. It is what this country has been waiting for, for the last 20 years or so. It is time that Members of this House take leave, go on recess, organize themselves, educate their constituents and the larger Kenyan population on the pros and cons of the Draft Constitution.

Mr. Speaker, Sir, it is this period that Members of Parliament will need and will be involved in arranging agents for the referendum and to be part of the last few days' campaigns for those supporting or those opposing the Draft Constitution.

I feel that the fundamental issue that was keeping us here was resolved this morning at the informal *Kamukunji* held here under your chairmanship Mr. Speaker. I want to thank His Excellency the President of the Republic of Kenya, Hon. Mwai Kibaki, the Deputy Prime Minister and Minister for Finance, the Attorney-General and the Members of this House for us to reach a conclusive decision on the controversial issue of the Akiwumi Report.

Finally, I want to say it here that the genesis of the Akiwumi Report was pegged on the issue of whether Members of Parliament of this country are ready to pay taxes. That Report has recommended that Members of Parliament, like all other public officers, will pay taxes. I am sure the way forward that was agreed upon is in the interest of everybody; the Ministry of Finance, the Kenyan people and Members of Parliament.

With those few remarks, I beg to support.

*[Mr. Speaker left the Chair]*

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

**Mr. Affey:** Madam Temporary Deputy Speaker, I rise to support this Motion. As I support, I want to ask my colleagues to ensure that we all go back to our respective places and regions of this country where we come from and see how best we can reconcile this country and move it to the next constitutional dispensation.

As I say that, I want to request the President during this period, to ensure that he signs into law the Bill that we passed in this Parliament, the Indemnity (Repeal) Act, which is part of the statutes of this country. The President, after four months has not found it relevant to sign it into law. I want to plead with him. I even pleaded with him yesterday and I want to thank him for his visit to the North Eastern Province where he acknowledged the challenges we have there. These include the road network, universities and districts. I realize now that anytime the President makes a directive like this, an organ of the Government is ready to challenge him. Just now the Interim Independent



Boundaries Review Commission (IIBRC) challenged the decision of the President to create more districts. We require these districts. They bring services closer to us and we want them to confirm them.

Madam Temporary Deputy Speaker, there is an issue that is very much in the Kenyan domain regarding the Draft Constitution. This is the Kadhis Court. I would like to request those Kenyans who have made the Kadhis Court an issue that this is not an issue anymore. In fact, not only is it not an issue in the Coast Province, because we know how it came to be, but also in the North Eastern Province. In 1927, the British Government appointed the son of Mohammed Abdul Hassan as the Chief Kadhi in the north eastern part of Kenya. So, this is historical. We would like Kenyans who use this issue not to use it to confuse the public because after 4<sup>th</sup> August we want a reconciled, united country.

I beg to support.

**The Assistant Minister for Tourism** (Ms. Mbarire): Madam Temporary Deputy Speaker, I rise to support this Motion for the very reason that we have a very important national duty ahead of us. This is a very historic moment for this country which is to bring a new constitutional dispensation in this country.

As we continue with the duty as Parliamentarians in this House, we are losing very valuable time to go out there and inform Kenyans about what is in this Draft Constitution. For that reason, I feel that we need to free ourselves from this important duty in Parliament and go out there and do a more important duty of making Kenyans know the truth about this document.

It is important that we participate, not just as Kenyan citizens, but as Members of Parliament in our various constituencies so that by 4<sup>th</sup> August, 2010, we can have a new Constitutional dispensation.

Madam Temporary Deputy Speaker, the other thing that I would like to really appeal to hon. Members is that, as we go out there to talk about the new Constitution, whether we are “Yes” or “No”, we do so in a very peaceful manner. We urge Kenyans to be tolerant and remember that come 5<sup>th</sup> August, 2010, we still need one Kenya, one nation and one people.

With those few remarks, I beg to support.

**Mr. Outa:** Madam Temporary Deputy Speaker, I rise to support this Motion of Adjournment. In the past few weeks, it has been very hard for hon. Members to juggle their time between going to campaign for the proposed Constitution and coming back and do their business in the House. For that very reason, we, as hon. Members, have a duty. It is now time to go back to our respective constituencies and seek God. I am saying that especially to those hon. Members who have been going round and trying to purport that this new Constitution is bad for Kenyans. They should seek and search their souls so that God could intervene and make them see the new light that the new Constitution is the future for this nation. By going home, we will reach the other parts of the nation that have not truly understood the good that this new Constitution will bring. I, personally, would like to encourage our hon. Members to go back home and support this new Constitution. All Kenyans must be all green! When we come back, we will have a new Constitution.

Thank you, Madam Temporary Deputy Speaker.

**Mr. Mbugua:** Thank you, Madam Temporary Deputy Speaker. I stand to support this Motion. I want to first congratulate hon. Members of the Tenth Parliament for

working so hard despite the problems that we have been having. The reason why I support this Motion strongly is because we are going out there to make history. We have waited for this Constitution for 20 years and, God willing, when we come back on the 17<sup>th</sup> August, 2010, the Constitution will have passed. So, we will go into the annals of history as people who worked so hard to deliver the new Constitution to this country. As we go out to campaign for the Constitution, let us make sure that this country remains united. We do not want to find ourselves where we were in 2007.

We should also work in harmony, as the Speaker said, with the other arms of Government. That way, we can see this country achieve greater heights of development.

With those few remarks, I beg to support.

**Mr. M’Mithiaru:** On a point of order, Madam Temporary Deputy Speaker. Reading from the mood of the House, we are all in support. So, could you, please, call upon the Mover to reply.

**Mr. Ethuro:** On a point of order, Madam Temporary Deputy Speaker. I just wanted to bring to your attention that I have an amendment to this particular Motion. So, the interest to contribute is still there!

**The Temporary Deputy Speaker** (Prof. Kamar): Okay! We will continue with contributions. This is a timed Motion and we have only about 15 minutes more.

**The Assistant Minister for Higher Education, Science and Technology** (Dr. Mwiria): Madam Temporary Deputy Speaker, thank you for giving me the opportunity to contribute. I am delighted that we have an opportunity to go, as hon. Members, to campaign officially for the new Constitution. It is important because when we debated the Motion on the new Constitution, we could not agree on any amendments. We all agreed - as hon. Members - that the Constitution was okay. It is very unfortunate that we are seeing serious divisions that are sometimes leading to violent demonstrations, people calling others names and leaflets circulating. I hope that we are going to be peaceful; we are not going to be abusive and we are not going to threaten any people because they believe in a different stand from our own. We will let the majority of the people to make a decision about the future of this country. It should not be up to hon. Members to politicize and divide Kenyans as has always been the case when there are these kinds of issues.

I also hope that any hon. Member who has been associated with inciting the public along tribal lines or going around with leaflets and so on will be dealt with seriously and strongly by the law. That way, we will not have those kind of people coming in to fight democracy or preventing people from saying democratically what they believe in and not appreciating the fact that we all belong to the same country, for which we must have a new Constitution that will unite all of us for the sake of the progress of this country and those who will come after us.

With those few remarks, I beg to support.

**Mr. Ethuro:** Madam Temporary Deputy Speaker, I want to thank you for this opportunity to contribute to this Motion. As I contribute to this Motion I want to start with an amendment. First, I want to confirm that I support this Motion, subject to this amendment: That the word after Tuesday which is “17<sup>th</sup>” and before “August” be deleted and substituted therefor with “10<sup>th</sup>”. I am bringing this amendment two fold; one we have passed a Motion by Mr. Midiwo that is asking us to extend the period in which the Minister for Finance will consult the Head of State to get the consent to certain Bills

because the resolution of this House had given it seven days. Surely, that must be brought within reasonable time! In fact, if you look at our Standing Orders that formulate the Implementation Committee, it is very clear that, that Committee will be scrutinizing resolutions of this House. The overriding expression is “within reasonable time”. I want to believe that this is reasonable time.

The second point why I am making this amendment is: Why do we really need a recess? Essentially, and even the speakers who have spoken before me have talked about it, we are going to get an opportunity to go and campaign for or against the Constitution. Of course, I am praying that we will campaign for the Constitution and it will come to pass. But, thereafter, that is after 4<sup>th</sup>, why do we want to squander much more time when everybody is saying that Parliament is not doing enough work? This House cannot be used by a lazy Executive that cannot bring business to this House. Let them use their vigour in the campaigns to bring Bills to this House. Under Section 46 of the Constitution, the legislative business of the House comes through Bills.

The third reason which is the most important is that by 31<sup>st</sup> August, our Standing Orders and the Fiscal Management Act requires that we should have completed all the Votes of the Ministries. So, if we come back on 17<sup>th</sup>, we will have only two weeks. I do not think we will have done sufficient justice to the fundamental role of Parliament of approving Government expenditure. I think I made myself loud and clear.

Madam Temporary Deputy Speaker, Sir, I beg to move and I wish to request Dr. Nuh to second me.

**Dr. Nuh:** Madam Temporary Deputy Speaker, I beg to second the amendment. The reason for adjournment, as some hon. Members have put it, is to have some rest, go to our constituencies and ensure, for those of us who are campaigning for the new constitution, that we are able to exert all our energies towards passing of this new constitution. But on 4<sup>th</sup> of August, this Proposed Constitution will be passed, if all goes well.

As Mr. Ethuro has put it, we have so much business. The allegation that this House has no business to transact, that has been pedaled in the media for the last one week, arises from failure by the Government to put business on the Order Paper. It has nothing to do with lack of business. If the Executive would want to say that this House has no proposed laws to enact, or that it has no business at all, we should even go home for good; is it that the Government has no business?

This issue is neither here nor there; that there is no business for this House to transact. It is just that the Government side is adamant and does not want to bring any business before this House. Hon. Members have been frustrated for a very long time. We have business that has been pending for a very long time, only for it to be put on the Order Paper in the last one or two weeks, yet it has been lying on it.

We also have reports of this House for which there is no adequate time.

Madam Temporary Deputy Speaker, I beg to second.

*(Question of the first part of the amendment, that the word to be left out be left out, proposed)*

*(Question of the first part of the amendment, that the word to be left out be left out, put and agreed to)*

*(Question of the second part of the amendment, that the word to be inserted in place thereof be inserted, proposed)*

*(Question of the second part of the amendment, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(Question of the Motion as amended proposed)*

*(Question of the Motion as amended put and agreed)*

*Resolved accordingly:*

THAT, this House do now adjourn until Tuesday, 10<sup>th</sup> August, 2010 at 2.30 p.m.

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Prof. Kamar): Hon. Members, that brings us to the end of the business of today. The House, therefore, stands adjourned until Tuesday, 10<sup>th</sup> August, 2010, at 2.30 p.m.

The House rose at 4.05 p.m.