

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 22<sup>nd</sup> December, 2010

The House met at 9.00 a.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### NOTICE OF MOTION

#### REPEAL OF INTERNATIONAL CRIMES ACT

**Mr. Ruto:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion.  
THAT, aware that Kenya promulgated a new Constitution on 27th August, 2010, which has had fundamental changes in circumstances upon which several statutes had been enacted in the past, including the International Crimes Act which domesticates the Rome Statute, this House resolves that the Government takes immediate action to have the International Crimes Act repealed and further that the Government takes appropriate action to withdraw from the Rome Statute pursuant to Articles 127, 19 and 17 of the Rome Statute as read together with the Principle of Complementarity emphasised at Paragraph 10 of the Preamble to the Rome Statute and further that any criminal investigations or prosecutions arising out of the post election violence of 2007/2008 be undertaken under the framework of the new Constitution.

Thank you, Mr. Deputy Speaker, Sir.

### QUESTIONS BY PRIVATE NOTICE

**Mr. Deputy Speaker:** Question No.1 by Private Notice, hon. Ochieng!

#### GOVERNMENT SHIFT IN POSITION ON FUEL PRICE CONTROL

**(Mr. Ochieng)** to ask the Minister for Energy:-

(a) What is the reason for Government shift in position with regard to fuel price control, considering that the Minister has previously indicated that he was unable to control fuel prices?

(b) Is the Minister aware that the recent astronomical increase in fuel prices was as a result of faulty machines at the Kenya Petroleum Refineries, demurrage charges accrued from the imported crude oil and the delay in offloading which is due to under-handling capacity at Kipevu which can only store up to 33,454 metric tonnes of petrol?

(c) What urgent measures is the Minister taking to address the issues in "b" above?

**Mr. Deputy Speaker:** Is Mr. Ochieng not here? We will come back to the Question.

Question No.2 by Private Notice, hon. Mututho!

MOISTURE CONTENT/GRAIN ANALYSIS REPORTS  
OF CARGO AT MOMBASA PORT

**Mr. Mututho:** Mr. Deputy Speaker Sir, I beg to ask the Minister for Industrialization the following Question by Private Notice.

(a) What was the moisture content and grain analysis reports of the cargo aboard *MV Aguila* at the port of Mombasa in June 2009 and *MV Siam Opal* whose cargo was offloaded and trailed to Nakuru depot on 15th June 2009, and could the Minister list the eventual millers and consumers of the grains, including any agencies?

(b) Could the Minister also provide to the House the grain analysis Report by SGS at the port of dispatch by the Kenya Bureau of Standards and, eventually, upon arrival at the National Cereals and Produce Board (NCPB) stores with respect to the two vessels, and also indicate why the Minister ordered the Kenya Bureau of Standards to allow importation of the contaminated grains?

(c) What quantities of Genetically Modified (GMO) maize have been imported into the country in the last 3 years, and what law is the Government using to allow uncontrolled GMO imports into the country?

**Mr. Deputy Speaker:** The Minister for Industrialisation is not here? We will come back to this Question.

Next Question, Mr. Warugongo!

COLLAPSE OF GATUBIA BRIDGE IN KIENI EAST

**Mr. Warugongo:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Roads the following Question by Private Notice.

(a) Is the Minister aware that Gatubia Bridge in Kieni East collapsed about a month ago, cutting off communication between Warazo Jet and Kimahuri completely?

(b) What urgent action is the Ministry taking to reconstruct the bridge?

**The Assistant Minister for Roads** (Mr. Kinyanjui): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Gatubia crossing on rural access road 28 was washed away a month ago. The crossing comprised of three lanes of culverts, the backfill of which was washed away by the recent rains. Temporary reinstatement of the washed out area has been carried out by back-filling of the crossing with hardcore and gravel. The reinstatement is planned to be completed by 24<sup>th</sup> December, 2010 at a cost of Kshs155,000. The works are being carried out by Rungare Contractors. The work is contracted by the Kenya Rural Roads Authority (KERRA).

(b) As a permanent measure, KERRA has planned to install a box culvert at a total cost of Kshs4 million under the Constituency Roads Committee. This should be done within this financial year.

**Mr. Warugongo:** Mr. Deputy Speaker, Sir, I want to thank the Ministry for taking action on the issue of repairing this bridge in my constituency. I just wanted to

know why it took one month for them to take action, while two communities were separated from each another? What I am saying is that people from the two areas could not move to one another's place. This has been a big problem for the last 30 days. Could he tell us why it took this long?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I appreciate what the hon. Member has said because, indeed, the two communities from the opposite sides were not able to communicate for the said period. However, as the House is aware, my Ministry does not do the actual construction. It has to procure works from the eligible contractors. Therefore, we have to follow the laid down procurement procedure, which took the one month period the hon. Member has talked about. However, the contractor is under clear instructions to ensure that the work is completed as soon as possible.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, I would like to thank the Ministry for doing a commendable job but could the Assistant Minister undertake that the planned installation of a box culvert at that crossing will be given priority in the next financial year?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, I want to give an undertaking that, indeed, the planned installation of the box culvert at a cost of Kshs4 million will be given priority in the coming financial year. Procurement will start as soon as the financial year starts.

**Mr. Deputy Speaker:** Last supplementary question, hon. Warugongo!

**Mr. Warugongo:** Mr. Deputy Speaker, Sir, I am happy that people of Warazo Jet and Kimahuri will enjoy Christmas. I mean, they will move around through this bridge as I have been assured by the Assistant Minister. But could he tell us what the community should do in the event that another bridge collapses?

**Mr. Kinyanjui:** Mr. Deputy Speaker, Sir, we obviously do not expect that another bridge will come down from the same area. But more importantly, it is important for us to be able to have audit of all the infrastructure that we have so that we do not have to wait until the bridge has actually come down. We should be able to anticipate breakage of the infrastructure before it happens and, therefore, do the necessary remedial works.

## ORAL ANSWERS TO QUESTIONS

**Mr. Deputy Speaker:** Next Question by hon. Lucas Kigen!

*Question No.621*

### SETTLEMENT OF SQUATTERS IN BANITA SETTLEMENT SCHEME

**Mr. Deputy Speaker:** Mr. Kigen not here? We will come back to that Question. Next Question, hon. Koech!

*Question No.383*

### FUNDS FOR CONSTRUCTION OF NANDI NORTH DISTRICT HEADQUARTERS

**Mr. Deputy Speaker:** Mr. Koech not here?  
Next Question, Mr. Mwangi!

*Question No.654*

EXISTENCE OF INFORMAL SCHOOLS IN  
URBAN UNPLANNED SETTLEMENTS

**Mr. Mwangi** asked the Minister for Education-

(a) whether he is aware of the existence of informal schools in the urban unplanned settlements and, if so, how many such informal schools are operational in Nairobi;

(b) if the Ministry recognizes such schools and, if so, how much money was allocated to the schools during the 2010/2011 financial year; and,

(c) the plans the Ministry has towards taking over all informal schools in the unplanned settlements in the country.

**Mr. Mwangi:** I have not received a written answer.

**Mr. Deputy Speaker:** Do you wish to prosecute the Question without the written answer or do you wish to have a written answer first?

**Mr. Mwangi:** I would wish to have a written answer. This is a very serious question and we would want to cross-examine the Minister. I have no written answer and the Question was deferred last week and yet no answer.

**Mr. Deputy Speaker:** Hon. Assistant Minister, why is it that you did not furnish the Member with a written answer?

**The Assistant Minister for Education** (Prof. Olweny): Mr. Deputy Speaker, Sir, I sent this answer last week; so, I expect the answer should have reached the hon. Member.

**Mr. Deputy Speaker:** Fair enough!

**Mr. Mwangi:** On a point of order, Mr. Deputy Speaker, Sir. The magnitude of neglect of these children in informal settlements is huge and since last week, the Ministry has not been able to provide an answer to me. So I would still request to get a written answer.

**Mr. Deputy Speaker:** Fair enough! Under the circumstances, if a written answer is available at the Clerk's Department, we will come back to this Question. In the meantime, the Clerk will give you the written answer.

Next Question, hon. Ali!

*Question No.583*

PROJECTS UNDERTAKEN IN MANDERA EAST

**Mr. M.H. Ali** asked the Minister for Water and Irrigation -

(a) what substantial projects, if any, the Ministry has undertaken in Mandera East, in the last three years;

(b) if he could consider constructing a dam in order to harvest runoff water from the nearby hills, which cause floods in the town every rainy season; and,

(c) what plans the Ministry has to ensure a sewerage system is constructed in the town, which now has a population of over 100,000 people.

**Mr. Deputy Speaker:** The Minister for Water and Irrigation not here? We will revisit the Question later on.

Next Question, Washiali!

*Question No.588*

MISMANAGEMENT/CORRUPTION AT MUMIAS  
SAVINGS AND CO-OPERATIVE SOCIETY

**Mr. Washiali** asked the Minister for Co-operative Development and Marketing-

(a) if he could explain why officers who have been surcharged by the High Court are still serving at Mumias Savings and Co-operative Society (MOSACCO) in Mumias; and,

(b) what the Minister is doing to address gross mismanagement and corruption in the said SACCO.

**The Assistant Minister for Co-operative Development and Marketing** (Mrs. Kilimo): Mr. Deputy Speaker, Sir, hon. Washiali had not received the answer and so, I sent for a photocopy of the answer. The person who had gone to get the photocopy has not arrived. There she comes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Hon. Washiali, you would wish to have access to the written answer before the Question is answered?

**Mr. Washiali:** Thank you, Mr. Deputy Speaker, Sir. I think it is important that I receive this answer so that I can---

**Mr. Deputy Speaker:** Fair enough! We will come back to this Question later on.

*(Mrs. Kilimo stood up in her place)*

Order, hon. Assistant Minister! You do not have to go all the way round, just give it to the Clerk's Department here and they will pass it on.

**QUESTIONS BY PRIVATE NOTICE**

**Mr. Deputy Speaker:** Next Question, hon. Ochieng!

**Mr. Ochieng:** Thank you, Mr. Deputy Speaker, Sir. Sorry, I came in late because I was held in a jam just next here. I would wish to ask the Minister of Energy---

**Mr. Deputy Speaker:** Order! Apologise to the House for coming late.

GOVERNMENT SHIFT IN POSITION ON FUEL PRICE CONTROL

**Mr. Ochieng:** I am very sorry, I came late because I was held up in a jam here. I want to be very honest. However, I beg to ask the Minister for Energy the following Question by Private Notice.

(a) What is the reason for Government shift in position with regard to fuel price control, considering that the Minister has previously indicated that he was unable to control fuel prices;

(b) Is the Minister aware that the recent astronomical increase in fuel prices is as a result of faulty machines at the Kenya Petroleum Refineries, demurrage charges accrued from the imported crude oil and the delay in offloading which is due to under-handling capacity at Kipevu which can only store up to 33,454 metric tonnes of petrol; and,

(c) What urgent measures the Minister is taking to address the issues in "b" above?

**The Assistant Minister for Energy (Mr. Magerer):** Thank you, Mr. Deputy Speaker, Sir. I wish to reply-

(a) It is true that previously, I had indicated that I could not re-introduce fuel control prices which were discontinued in October 1994 because the National Economic and Social Council had previously dis-recommended such a measure. However, upon my presentation to the Council on November 19, 2010, on the prevailing high retail prices of petroleum fuel, which by any measure were above what were considered prudent procurement and marketing costs--- It was agreed that limited price control which took into account procurement, transportation and marketing costs including a trading margin should be introduced. My action which is provided for under section No.102 of the Energy Act of 2006 has therefore been informed by the recommendation made by the National Economic Social Council on November 19, 2010.

(b) I am not aware that the alleged recent astronomical increase in fuel prices was due to reasons given by the hon. Member. The fact of the matter is that pump prices had consistently been set by oil companies at levels much higher than their procurement and marketing costs, including a reasonable trading margin. Such parameter could cover both imported and locally refined products. I would like to add that the cost of products generated by the Kenya Petroleum Refineries Limited (KPRL) through crude oil processing are higher than those of imported ones because of the simple nature of the refinery which generates more low value fuel/oil and lacks operational flexibility to match supply or production to demand.

It is for this reason that Government is committed to refinery modernization. Demurrage related to product costs were previously caused by the failure of the oil marketing companies to agree to orderly scheduling of the vessels carrying largely transit products destined for the neighbouring landlocked countries.

Mr. Deputy Speaker, Sir, I would also want to inform the hon. Member that the storage capacity at Kipevu oil storage facility is 41,773 tonnes which is much higher than what the Member has indicated as 33,454.

(c) I would like to inform the hon. Member that the following urgent measures have been put in place to address the raised issues.

1. With effect from January 2011, oil imported products for Kenya and neighbouring countries will be procured through an open tender system popularly known as the OTS. Private and transit products will therefore not be allowed to discharge at the Kenya oil Storage facility;

2. Both the Kenya Revenue Authority and the Ministry of Energy have agreed that taxes on the product imported for Kenya should therefore be collected within 15 days of products arrival so as to discourage oil companies using Kenya Pipeline System to store their products. While the depots continue to remain largely underutilized, this measure has been in place since November 2010, and it is intended to decongest the old pipeline system;

3. My Ministry has also informed the oil marketing companies that they will not be allowed to store transit products in the Kenya Pipeline system beyond the stipulated 30 days. Defaulters will therefore be denied access to the pipeline system as this has been observed to be one of the causes of port congestion with the attendant demurrages which is then passed on to consumers raising the prices of petroleum.

4. Oil marketing companies without flow metres which will allow them to receive products from the Kenya Pipeline Company while concurrently loading tankers have been directed by the Ministry to have such meters installed. Kenya Pipeline Company (KPC) is further upgrading the Kipevu Pump Station No.14 in order to pump both petrol and kerosene at the rate of 831 cubic meters per hour just like what is happening to diesel currently. This PS No.14 upgrade will be completed by July 2011.

Mr. Deputy Speaker, Sir, on medium term measures, a parallel 14 inch pipeline which is called Line 4 from Nairobi to Eldoret is currently under construction and more than 64 per cent of the works have been completed. This project, on completion, which is anticipated to be on June, 2011 will totally decongest both Kipevu and Nairobi terminals as the flow rate will be raised from the present 220 cubic meters per hour to 600 cubic meters. Currently, KPC Western Kenya storage facilities in Nakuru, Eldoret, Kisumu are grossly under-utilized due to the current pumping constraints relative to much higher and rising demands.

On long term measures, we are upgrading the refinery facility and I would like to report to this House that a study has been completed and construction of additional storage depots between Mombasa and upcountry terminals has been commissioned. The decision on the refinery upgrade will be made, hopefully in January, 2011.

Thank you.

**Mr. Ochieng:** Mr. Deputy Speaker, Sir, the answer he has given is very long. My only concern is in Part (a) of the Question. I would like the Assistant Minister to tell this House how the modernization of the refinery has resulted to high fuel prices.

**Mr. Magerer:** Mr. Deputy Speaker, Sir, if the hon. Member heard me clearly, I said that some of the costs have been occasioned by low quality fuel that is being produced. That is the more reason why the Ministry has undertaken to upgrade the functions of the refinery to ensure that more high quality fuel is produced at the refinery. That will not lead to more loses as we have currently seen.

**Mr. Hussein:** Mr. Deputy Speaker, Sir, the Assistant Minister has recommended profit margins for wholesale prices at Kshs6 and Kshs3 for retailers. What is the operating cost at the retail level? Could he tell this House why the wholesale profit margins are higher than the retail profit margins? Most of the independent dealers are at the retail level and they will not be able to do any business if that margin is sustained at Kshs3.

**Mr. Magerer:** Mr. Deputy Speaker, Sir, it is true that we have recommended Kshs6 as the peak value for wholesale margin and Kshs3 for the retailers. That is because within the wholesaling levels, we have several other aspects that contribute to the cost.

Mr. Deputy Speaker, Sir, if you can allow me, I can just enumerate some of the areas that we envisage as part of the cost on the issue of building up the prices.

One, we have taxes which are legal by Government entities. By that, we mean the Ministry of Finance, the Ministry of Roads, the Energy Regulating Commission (ERC) and others.

We also have the transport charges cost by the KPC and we have also factored in the transportation by private business people who normally transport up to 20 per cent of all the fuel that is available in the country.

We have also factored in some level of loses. You will agree with me that in the process of handling that commodity, there are bound to be loses. My Ministry has recommended the peak in terms of what is acceptable, assuming that the system is efficient. We have, therefore, factored in pipeline loses, depot loses and the rates on delivery, either at the wholesaling point or from the wholesale to retailers. All those have been computed in terms of the highest imaginable figures. That is why the Ministry has been able to advice the dealers to ensure that they are within the expected levels by the Ministry.

**Mr. Hussein:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House by saying that the Kshs6 he has given to wholesalers is to cover taxes, transport costs and storage charges, whereas those have already been factored in the cost?

**Mr. Deputy Speaker:** Mr. Assistant Minister, are you sure about the statement of facts that you are stating?

**Mr. Magerer:** Mr. Deputy Speaker, Sir, I am sure. That is basically what I was trying to say. The reason the profit margin was set at that point for the wholesalers is from zero point at Mombasa up to where the retailers access the fuel. Much of the cost is borne by the wholesalers.

**Mr. Deputy Speaker:** The presumption of the Chair is that when you say a “profit margin”, it is after all the costing, including what you are saying. That is transport cost, loses and everything. Is that not what you call a profit margin? A profit margin is what you make as a profit, unless you want to give it a different definition!

*(Mr. Yakub and Mr. Letimalo stood up in their places)*

What is your point of order, Mr. Yakub?

**Mr. Yakub:** Mr. Deputy Speaker, Sir, mine is a question.

**Mr. Deputy Speaker:** Are you on a point of order, Mr. Letimalo?

**Mr. Letimalo:** No, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Yakub, please, proceed!

**Mr. Yakub:** Mr. Deputy Speaker, Sir, the purpose of having price control is to assist the poor. On kerosene, the price has gone up by Kshs7. This is the area we thought poor Kenyans would have affordable prices and access to the item they use. What measures is the Assistant Minister taking to ensure that the price of kerosene is lowered?

**Mr. Magerer:** Mr. Deputy Speaker, Sir, it is true that after the application of this formula, the price of kerosene seems to have shot up a little bit. You will, however, agree with me that there is no way we can apply a formula that applies differently on the same product. Kerosene is not the major product we are dealing with. We are dealing with gasoline and the lower quality fuel contributes to kerosene. Unfortunately, the formula will have a slight incremental cost on paraffin. However, my Ministry is trying to see which other ways we can have so that we ensure we bring down the cost of paraffin.

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, the Assistant Minister will recall that on 23<sup>rd</sup> June 2010, we passed the Price Control of Essential Goods Bill (2009) that was sponsored by Eng. Ephraim Maina. Among the listed goods in that Bill were petrol, kerosene and diesel. As we are aware, the President did not give assent to that Bill. Those opposed to the Bill were saying that if the Government needs to fix the end prices of those goods, they should also fix the prices of the inputs so that the margins are clear. The Assistant Minister has stated here very clearly that the main problem is the refinery. They have not been able to upgrade the refinery. What Kenyans want to know is this: The Assistant Minister has asserted that they are going to upgrade the refinery. How much money has the Ministry of Energy committed towards that end? If the money is not committed, what is the problem if the Minister, in the short term, allows direct importation of all those fuels so that we do not suffer because of inefficiency in your parastatal?

**Mr. Magerer:** Mr. Deputy Speaker, Sir, I do not really want to go into the issue of price controls because it has not been approved yet. The effect of the Bill may not have been factored into and we should not be discussing it at the moment.

On the issue of the improvement of the refinery, the Ministry has already commissioned feasibility studies. It has commissioned a firm to look at single going mooring that will ensure that we build a new jet among other issues. You will recall that the ownership of the factory is between the Government of Kenya and a private partner. Talks are underway to ensure that the agreement that was reached in terms of the partner bringing in more money to improve the refinery is enforced. By January, 2011, we, as a Ministry, will have made a decision on the way forward in terms of ensuring that the facility is well equipped and efficient. I am not so competent in terms of commissioning of the amounts. I do not want to give a figure that I am not very sure of. We are relying on the outcome of the feasibility study to budget and see how much time and money the refinery will require to be upgraded.

**Mr. Mungatana:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister did not answer the last part of the Question. In the meantime, as they are upgrading and making all the plans about the refinery, why can they not allow direct imports of refined fuel, so that Kenyans have access and there are no limitations? This will enable the market to regulate itself and we have better prices.

**Mr. Magerer:** Mr. Deputy Speaker, Sir, it is not true that the Government is not allowing direct importation of refined fuel. We are importing fuel in two categories, namely, crude oil that is supposed to be cleaned at the refinery and a certain percentage which is already processed fuel.

**Mr. Ochieng:** Mr. Deputy Speaker, Sir, the Assistant Minister has indicated that the demurrage charges accumulated as a result of ships clogging the port were passed on to the consumers. Since the Ministry is streamlining the docking of ships at the port, what is

he doing to make sure that he further reduces the cost of fuel because I believe the imported oil had already benefited in the past?

**Mr. Magerer:** Mr. Deputy Speaker, Sir, I have indicated that the Ministry has already published the regulations on fuel prices. We brought the cost of petrol down from around Kshs105 per litre to around Kshs94 per litre. We are still moving on to ensure that the clogging within the pipeline system is opened up by the measures that I have just outlined. My Ministry is committed to ensure that the players in the industry play by the rules.

**Mr. Deputy Speaker:** Let us now go back to Questions by Private Notice. Hon. Mututho's Question!

MOISTURE CONTENT/GRAIN ANALYSIS REPORTS  
OF CARGO AT MOMBASA PORT

**Mr. Mututho:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Industrialization the following Question by Private Notice.

(a) What was moisture content and grain analysis reports of the cargo aboard *MV Aguila* at the port of Mombasa in June, 2009 and *MV Siam Opal* whose cargo was offloaded and trailed to Nakuru depot on 15<sup>th</sup> June, 2009 and could the Minister list the eventual millers and consumers of the grains, including any agencies?

(b) Could the Minister also provide to the House the grain analysis Report by SGS at the port of dispatch by the Kenya Bureau of Standards and, eventually, upon arrival at the National Cereals Produce Board (NCPB) stores with respect to the two vessels and also indicate why he ordered the Kenya Bureau of Standards (KEBS) to allow importation of the contaminated grains?

(c) What quantities of Genetically Modified (GMO) maize have been imported into the country in the last 3 years and what law is the Government using to allow uncontrolled GMO imports into the country?

**The Minister for Industrialization** (Mr. Kosgey): Mr. Deputy Speaker, Sir, I apologize for coming late. However, I beg to reply.

(a) The moisture content for the various hatches of grains imported by Lois Dreyfus Commodities Ltd., aboard *MV Aguila* that docked at the Port of Mombasa in June, 2009 and tested by the Kenya Bureau of Standards (KEBS) on arrival at the port were as follows:- Sample BS/12023/9 has a moisture content of 13.45 per cent. Sample BS/1204/09 had a moisture content of 14.07 per cent and sample BS/12026/09 had 13.5 per cent. Two hatches on aboard *MV Aguila* had higher moisture content than specified in the KBS, but within acceptable limits. The maize was classified as non-GMO. The maize was imported directly by Lois Dreyfus Commodities Ltd. and not for the National Cereals and Produce Board (NCPB). It was imported directly by this company.

I further wish to state that the moisture content for the various hatches of grains imported by the NCPB aboard *MV Siam Opal* that also docked at the Port of Mombasa in June, 2009, and tested by the KBS were as follows: Sample No.1, had a moisture content of 13.6 per cent, sample NO.2, 12.37 per cent and sample No.3 11.5 per cent. One of the hatches of the consignment had a moisture content that was above the KBS standards, but was within the limits. The maize was labeled as non GMO. The NCPB released maize from the *MV Siam Opal* as relief food to the South Rift depot, Nairobi, Central and

Eastern provinces. My Ministry is, therefore, not in a position to know the people, millers or other agencies who were involved in the distribution or the consumption of the maize. This information is available at the NCPB.

(b) The grain analysis (Pre-Verification) report presented by the SGS at the port of dispatch were as follows:- The maize test from the country of origin for *MV Aquila*, colour – white, moisture content – 14 per cent; damage kernels – 1.9 per cent, broken grain/foreign matter – 2.7 per cent, corn of other colour – 1.1 per cent, aflatoxin – less than 5 ppb.

The maize test report for *MV Siam*, which was imported by the NCPB, was as follows:- colour – white, moisture content – 14 per cent, foreign matter – 0.2 per cent, inorganic matter – 0.2 per cent, broken grains – 2.7 per cent, pest damaged grains – 0.1 per cent, rotten/diseased grains – 0 per cent, discoloured grains – 0.1 per cent, shriveled or immature grains – 0.1 per cent, filth - 0 per cent, total aflatoxins – less than 2 ppb, total defective grain – 0.6 per cent, heavy metals; lead - less than 0.0001 ppm and cadmium – less than 0.0001 ppm.

In view of the information detailed above, the maize imported by *MV Aquila* and *MV Siam Opal* was not contaminated. Further, I did not order any maize to be imported. The importers were the NCPB and the Lois Dreyfus Commodities Ltd. Our job is just to test and give the information to the customer. The approval for the importation of the GMO maize is carried out by the National Bio-Safety Authority and the licenses are issued by the Ministry of Agriculture under the Bio-Safety Act, 2009. The National Standards Council, 2010, approved a Kenya Standard (KS) 225:2010, for use on GMO and derived products, labeling of foods and feed to guide the testing laboratories and certifying companies contracted by KEBS. The quantities of Genetically Modified Organism (GMO) maize imported into the country for the last three years can be verified by the Ministry of Agriculture, who are the custodians of the records.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, I forgot to table the analysis by the SGS, the Kenya Bureau of Standards (KEBS) and Russell Marine Group, a company that did pre-shipment verification.

*(Mr. Kosgey laid the documents on the Table)*

**Mr. Mututho:** Mr. Deputy Speaker, Sir, the Minister has confirmed that, indeed, the KEBS allowed maize with moisture content in excess of 13.5 per cent. That is against all known international norms and that is the basis of the problems we have to do with aflatoxins. Could he confirm that the same consignments are both GMO and they have caused widespread aflatoxin poisoning across the country and particularly in the Internally Displaced Persons (IDPs) camps?

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, I was told that 14 per cent was within limits for moisture content. One sample had 14 per cent and another one in *MV Aquila* had also 14 per cent. I do not authorize the importation of maize. I also do not authorize the distribution. We give the analyses which are within limits. I also cannot say that because of the moisture content, that maize later acquired aflatoxin because when it arrived, it did not have aflatoxin. I do not know where the maize was distributed.

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

**Mr. Deputy Speaker:** Allow the Minister to conclude his statement!

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, I have said that the National Cereals and Produce Board (NCPB) distributed the maize in its various depots in Nairobi, South Rift, Central and Eastern provinces. I do not know the extent of aflatoxin and I cannot attribute the reports we heard that the aflatoxin-affected maize which was reported in Eastern Province was that maize. I thought that, that maize was harvested last year by farmers.

**Mr. Koech:** Mr. Deputy Speaker, Sir, on the issue of maize, when our farmers take their maize to the NCPB, the NCPB is very particular about the moisture content. I am surprised that that maize was allowed in with high moisture content. I want the Minister to confirm receiving a letter dated 10<sup>th</sup> June, 2009 which indicated that the KEBS had actually ordered the cargo to be re-shipped, returned or destroyed.

*(Applause)*

Mr. Deputy Speaker, Sir, at the end of the letter, which is addressed to the Minister it indicates:

“Please direct the KEBS to immediately permit the discharge of the *MV Aguila*, containing 19,000 metric tonnes of cargo of USA.”

The letter is signed by Michael Ranneberger, Ambassador of the United States. Could the Minister confirm that he was forced to allow this maize in, contrary to the regulations? I table the letter.

*(Mr. Koech laid the letter on the Table)*

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, I think that maize was allowed in. The CPB had options. It could have taken the maize and dried it because it had almost one per cent moisture content above the normal 13 per cent or 13.5 per cent. However, it was within limits. If I recall correctly, it was a subject of debate whether 14 per cent was way above limits, but it was decided that it was within limits at that time.

**Mr. Mututho:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to avoid answering the question? Is it a normal practice of this country for the Ambassador of the United States of America to Kenya to prevail upon a Kenyan standards authority to allow import of sub-standard goods because they are from the United States of America?

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, it is not normal.

*(Laughter)*

**Mr. Deputy Speaker:** Order! Order! Hon. Members, indeed, the letter that was sent by the American Ambassador to the Minister for Industrialization, hon. Henry Kosgey, dated the 10<sup>th</sup> of June, 2009, is signed with the emblem of the Coat of Arms of the United States of America and it is acceptable, at least, under our rules.

**Mr. Wamalwa:** Mr. Deputy Speaker, Sir, could the Minister confirm that the price being paid at the time for a 90-kilogram bag of maize was Kshs3,700 and what was being paid to the farmer at that time was Kshs2,300? Could he confirm that?

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, I will not know what price was prevailing at that time. I think the NCPB can answer that question. However, if I recall, when the Government imported maize at that time, it was about Kshs3,000. I recall very clearly that we deliberated, as a Government, and said that if we sell maize at this price, the consumer will have to pay. So, we actually provided a small subsidy and we sold maize to the millers at Kshs1,750 or thereabouts.

**Mr. Koech:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to avoid answering the question? I know him as a true farmer who supplies maize to the NCPB. Is he in order to avoid confirming that the NCPB bought maize from farmers at Kshs2,300 while it paid the Americans Kshs3,700 per bag?

*(Applause)*

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, first of all, Mr. Koech should know that I stopped growing maize long time ago when it became unprofitable. I am a milk farmer. However, I know – because I represent maize farmers – that at that time, the purchase price of maize from farmers was Kshs2, 300. We bought the maize as a country from various countries, namely South Africa and from the USA. At that time, the international price of maize was very high – it was over Kshs3,000 per bag. I can confirm that.

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, this House passed the Biosafety Act, which created a clearing house. The clearing house was supposed to be operated by a board that was supposed to decide the safe GMOs that must be allowed into the country.

Mr. Deputy Speaker, Sir, right now it appears that because of the lack of that board, even an ambassador can direct what can come in. Last week at home, the Gasa elders in Tarasaa complained that in fact, there was a big increase of diabetes and hypertension in the area. Could it be that these GMOs have infiltrated into the villages? When will the Minister set up that board that is supposed to be set up under that Act, so that we can be safe from GMOs?

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, I know that this House passed the Biosafety Act and set up the National Biosafety Authority, and that authority is under the Ministry of Agriculture or the Ministry of Higher Education, Science and Technology. It is not under the Ministry of Industrialization.

**Dr. Nuh:** Mr. Deputy Speaker, Sir, early this year, acting on the advice of this Ministry, the Government gave an alert on aflatoxin maize over the whole Republic but more specifically, in Coast Province and Eastern Province. Now that the trend seems to be the Government importing sub-standard maize at high prices in times of calamities, could the Minister confirm that this was a scheme to create a purported shortage of maize, so that Rannenberger and others can give sub-standard maize to Kenyans through the Government?

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, there was no scheme. There was drought in the country in 2008, and we also had post-election violence, which resulted in lower levels of productivity in the country. So, come 2009, we had to import maize from wherever we could get it. It so happened, that one of the areas that had surplus maize which we imported was the United States of America. We also imported maize from South Africa. So, there was no scheme by anybody to bring drought to the country, so that we could import maize.

Thanks for the efforts of farmers and Members of Parliament, we now have enough maize.

**Mr. Mututho:** On a point of order, Mr. Deputy Speaker, Sir. Kenya is a sovereign country. We have our own Constitution and laws. I would like to seek direction from the Chair on how a Cabinet Minister in this Government can get direction from a foreign embassy, specifically from Amb. Ranenberger to release to the public goods that are sub-standard, allow and supervise consumption of the same by Kenyans. This is a very grave matter. How many other goods of sub- standard nature has this ambassador forced into Kenya? How many other instructions has this Minister and other Ministers been given by this “prefect” of the Minister, Mr. Rannenberger?

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, that is a heavily loaded statement. I do not know how many instructions have been issued to various Ministers by the US embassy. All that I know is that concerning this particular consignment of maize of June 2009, there was a request by the US Government that we allowed this importation to take place because at that time, the 14 percent moisture content was deemed to be within limits. It was high but within limits.

**Mr. Deputy Speaker:** Order. Hon. Minister, I think that was the question you could answer on your part. The Chair observes that there is an anomaly here; the Chair does observe, to begin with, that the ambassador wrote to you and asked you, the Minister for Industrialization, to, through the Kenya Bureau of Standards, permit the immediate discharge of 19,000 metric tonnes of cargo of US white maize that was awaiting offloading at the Mombasa Port.

**Hon. Members:** Shame!

**Mr. Deputy Speaker:** In another paragraph, the letter further says:-

“The US White maize loaded on *MV Aguila* was tested by inspectors from the US Federal Inspection Service and found to be in near perfect condition”.

The Chair observes that white maize moisture content in excess of 13.5 percent, does not, *ipso facto*, pose a health threat. The Kenya Bureau of Standards (KEBS) issued a non-conforming report and ordered that the cargo be re-shipped, returned or destroyed. It further states in the final page:-

“Please, direct KEBS to immediately permit the discharge of the *MV Aguila* containing 19,000 metric tonnes of cargo white maize; I also look forward to your reassurance regarding moisture content with respect to future shipments.”

Hon. Minister I have two observations. One, of course, is self-explanatory and you have all heard it. The Chair and the National Assembly also have a duty to the people of Kenya, a sovereign State. The other is, of course, the moisture content; he says the moisture content of white maize exceeding 13.5 percent--- Fourteen percent exceeds 13.5 percent. Fifteen percent exceeds 13.5 percent. Seventeen percent exceeds 13.5 percent. He further says it does not pose, *ipso facto*, a health threat.

Hon. Minister, I think you have to submit an explanation to the House and the country at large.

Proceed, Mr. Minister.

**Dr. Nuh:** On a point of information, Mr. Deputy Speaker.

**Mr. Deputy Speaker:** To inform whom? The Chair or the Minister?

**Dr. Nuh:** The Minister.

**Mr. Deputy Speaker:** Mr. Minister, do you need the information of Dr. Nuh?

**Mr. Kosgey:** Let him say what he wants to say.

**Dr. Nuh:** I want to inform the Minister that the maize in Eastern Province and Coast Province, which was labeled aflatoxin infected and unfit for human consumption, had a moisture content of 14.2 percent.

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, let us distinguish two things. Maize which has 14 percent moisture content is prone to infection by aflatoxin, which is a mould. Although this maize had a high moisture content, it did not have aflatoxin. There is a difference between being susceptible to aflatoxin infestation and having it. It did not have it at that particular time. You cannot store it while it is at 14 percent. You have to dry it a little bit to come down to 13 percent.

So, it did not pose a health hazard if you consumed it straightaway. But if you stored it, then it could actually mould.

**Mr. Wamalwa:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to mislead the House that this maize was not unfit for human consumption when KEBS had actually recommended that the maize should be returned? On what basis did they recommend that the maize be returned?

**Mr. Deputy Speaker:** Hon. Minister, the Kenya Bureau of Standards is the statutory body vested with the responsibility or mandated to find out what is fit and not fit for human consumption in Kenya. Could you give an explanation as to why the maize was not destroyed?

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, the main reason the Kenya Bureau of Standards (KEBS) at that time recommended reshipment was because of the moisture content. That was because maize which came in could mould if it was stored. Apart from that, the argument is that if the maize was allowed in and milled straightway without storage, it was safe for human consumption. We can go on and on with this---

**Mr. Mureithi:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to say that, that maize was not destroyed whereas as we sit here, in the Internally Displaced Persons (IDPs) camps, maize with aflatoxin was distributed a couple of weeks ago and it is still stored there? Is he in order to say that this maize with aflatoxin is not being circulated in the country, whereas it is right now in the stores?

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to mislead the House that there is no direct co-relation between aflatoxicosis and moisture content when, indeed, he knows that maize that has already been dried which has a moisture content above the normal cannot be re-dried again because it is already dry?

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, regarding the maize which is in circulation at the moment, which hon. Mureithi is referring to as containing aflatoxin, only the National Cereals and Produce Board (NCPB) can confirm whether that is the maize which was allowed in at that time. I believe that this has already been consumed and finished. I do not believe that it is still circulating in Kenya. So, I cannot confirm that the maize which was distributed to the depots by the NCPB is still being held there.

Mr. Deputy Speaker, Sir, regarding the point of order raised by Dr. Nuh---

**Mr. Mwangi:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to continue telling a story about this maize when the organization that condemned the maize is under his portfolio? Is he in order to stand in the House and continue defending the American Ambassador?

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, I am not defending anybody. The facts speak for themselves. The analysis on this maize locally and also the port of origin shows that it had 14 per cent moisture content. When it arrived here, the United States (US) Embassy wrote to say that it did not pose a health risk. It was then decided that it did not pose a health risk. If it was stored, it would mould and then you would have a problem. What we should be asking ourselves is: When that maize was allowed in, did it mould or actually become dangerous for human consumption? I think that part of the question can be answered by the NCPB if we can trace---

**Mr. Mututho:** On a point of order, Mr. Deputy Speaker, Sir. The KEBS condemned the maize and the Ambassador of the United States of America (USA) ordered a Cabinet Minister in the Kenyan Government to allow that maize. I am seeking direction as to whether we can continue having these kind of Ministers who take orders from foreign embassies.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to evade the question? This is an American Ambassador running the Government, and in particular, his Ministry. Why did the Minister act on this letter, because all protocol was thrown through the window? Why did he not refer this matter to the Ministry of Foreign Affairs? If this Government is being run by foreign ambassadors, then it has no business being in Government. Did the Minister raise the issue of protocol with the Ministry of Foreign Affairs and the Cabinet?

*(Several hon. Members stood up in their places)*

**Mr. Deputy Speaker:** Hon. Henry Kosgey is responding to a point of order. Could you allow him to respond? Allow the Minister to respond to the point of order and then you can rise on.

**Mr. Kosgey:** Mr. Deputy Speaker, Sir, I think we have gone through the facts as they are. It is true that, that maize came in with all parameters correct except the moisture content. The request at that time was that it did not pose a health risk and, therefore, we allowed it in. I then passed it on to the KEBS, NCPB and, of course, the Kenya Revenue Authority. It was eventually allowed in and distributed in those areas. I have no reason to believe that after allowing in that maize, it moulded. I suppose that it was consumed straightaway and there was no health risk posed.

As to whether protocol was observed, I think we have learnt our lessons now and we will observe it in the future.

**Mr. Kabogo:** On a point of order, Mr. Deputy Speaker, Sir. This is not an issue of maize or the KEBS. It is an issue of governance and being forced by a foreign body. I rise under Standing Order No.36. We know that there is a Motion coming here to discuss the conduct of one Ranneberger. May I ask the Chair, through Standing Order No.36 (b), that, that Motion be prioritized so that we dispose of the issue of this *mzungu*?

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir. The matter is grave because it has to do with the lives of Kenyans. If we allow Kenyans to continue consuming substandard goods because of instructions from foreign counterparts, this is going to impact negatively on the lives of Kenyans. On that same note, because we cannot interrogate this matter in this House effectively, would I be in order to seek your guidance that this matter be directed to the Committee on Defence and Foreign Relations

and the Committee on Agriculture, Livestock and Co-operatives that the KEBS be called to determine whether it is under the directions of Ranneberger that this maize was released or it is because this maize was fit for consumption?

**Mr. Kabogo:** Mr. Deputy Speaker, Sir, I rose on a point of order---

**Mr. Deputy Speaker:** Order! Order! On the directions sought by hon. Kabogo, the Chair will give a ruling on the same when we get to the Motions. We are on Question Time now.

Hon. Members, I do understand the seriousness of the matter. Indeed, the Chair sees this with all the seriousness, urgency and what it deserves. You can only seek redress through other provisions of the Standing Orders. If you do not feel satisfied with the ruling that the House has given, hon. Mututho, or for that matter, any other hon. Member, you can seek an Adjournment Motion at the end of the Sitting under Standing Order No.21 to exhaustively deal with this. In the meantime, given the nature of the problem and the risks it poses to Kenyans, the Chair directs that a joint Committee of the Departmental Committee on Agriculture, Livestock and Co-operatives, Departmental Committee on Defence and Foreign Relations and Departmental Committee on Health to move with speed and report back to the House on this serious matter.

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. I appreciate your ruling and I think it is right. However, given that, that particular Ambassador has advised his country to deny some Committee Members of this House visas, are we not exposing Members of those Committees to the risk of being denied visas?

**Mr. Deputy Speaker:** Hon. Members, we have a lot of business to transact. Let us move on to the next Question by hon. Kigen. Mr. Kigen, it is the Chair's understanding that you are seeking more time.

## ORAL ANSWERS TO QUESTIONS

### *Question No.621*

#### SETTLEMENT OF SQUATTERS IN BANITA SETTLEMENT SCHEME

**Mr. Kigen:** Mr. Deputy Speaker, Sir, I am seeking for more time to look at the allocation lists that were given to me yesterday.

**Mr. Deputy Speaker:** Yes, indeed. The Chair takes note of the bulkiness of the document and directs that this Question appears on the Order Paper tomorrow.

**Mr. Kigen:** Mr. Deputy Speaker, Sir, I need more time,

**Mr. Deputy Speaker:** How much more time do you need?

**Mr. Kigen:** Mr. Deputy Speaker, Sir, perhaps, I need a week or two.

**Mr. Deputy Speaker:** Fair enough! The Chair directs that this Question appears on the Order Paper two weeks from today.

*(Question deferred)*

**The Assistant Minister for Lands (Mr. Bifwoli):** On a point of order, Mr. Deputy Speaker, Sir. I have been made to sit here since morning. Next week, I will have

other things to do. I hope that when the Question comes next time, the hon. Member will not seek for more time.

**Mr. Deputy Speaker:** Fair enough! The Chair also hopes the same.

**Mr. Mututho:** On a point of order, Mr. Deputy Speaker, Sir. You cannot allow that. You heard the hon. Member say that he has been sitting here the whole morning. We sit here the whole year and Ministers must sit here and carry out their duties. He is paid to sit here.

*(Applause)*

*Question No.383*

FUNDS FOR CONSTRUCTION OF NANDI  
NORTH DISTRICT HEADQUARTERS

**Mr. Koech** asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he could inform the House how much money was allocated for the construction of Nandi North( Mosop) District Headquarters in the 2010/2011 Financial Year;

(b) whether he could provide the estimated total cost of the construction; and;

(c) whether he could tell the House when the construction will be completed.

**Mr. Koech:** Mr. Deputy Speaker, Sir, I apologize for coming late. I was stuck in a traffic jam.

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

(a) No funds have been allocated to construct the Nandi North District Headquarters during the 2010/2011 Financial Year. However, the District will be considered among others in the next Financial Year, 2011/2012.

(b) According to the current module of district headquarters developed by the Ministry of Public Works, the cost of constructing a single district headquarters is estimated to be Kshs30 million.

(c) Completion of the proposed Nandi North District Headquarters will depend on availability of funds and the signed contract agreement.

**Mr. Koech:** Mr. Deputy Speaker, Sir, while I thank the Assistant Minister for that answer, Nandi North District is one of the districts that were created in 2007. It is now three years since it was started. I am aware that there are many other districts that were created recently and already have district headquarters. The district headquarters is situated at Kabiyet which is far from the main road. Heads of departments use rough roads which, at times, are impassable. It is unfortunate that the same officers will arrive there and not find themselves in comfortable offices. The Assistant Minister is aware that even his own officers, police officers, are living in very deplorable conditions. I have even invited him to come and see it for himself. I would have expected the Ministry to consider this a priority so that, as they suffer, they eventually get good offices.

The Assistant Minister has said that he will consider the district, among others in the next financial year. Could he confirm that funds will be factored in the next financial year to take care of his own officers?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, I want to confirm that once we get some funds, we will allocate some money for the construction of that district headquarters. In the meantime, I am going to consider giving a total of Kshs2 million for the refurbishment of the building, so that the DC can start working from the district headquarters. Again, I will also plead with him to look for some land so that we can show the architect where the district headquarters will be constructed. I will try my level best to get him, among other districts, Kshs2 million for refurbishment purposes.

**Mr. Kigen:** Mr. Deputy Speaker, Sir, the district commissioner's office cannot be divorced from the district commissioner's house. We can have a district commissioner's office and yet, the DC comes from very far and arrives late every day. What are you doing to ensure that together with the construction of the district headquarters, the DC gets funding for a house so that he can live near his office for effective service?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, it is true that we must also look for funds to refurbish the district commissioner's residence. We normally ask the Treasury to give us funds. However, when we get an allocation which is not enough, we disburse it according to the need. When we get funds from the Treasury, we will disburse the money to build the DC's office and house.

**Mr. Koech:** Mr. Deputy Speaker, Sir, the Assistant Minister has indicated that the cost of the project will be Kshs30 million. I am aware that the district headquarters at Kapsabet, which was our former district headquarters, cost the Government Kshs200 million. I wonder what type of an office Kshs30 million will construct. The Assistant Minister has also indicated that the completion of the construction will depend on the availability of funds. The funds he is talking about is Kshs30 million. If he will only use Kshs30 million, could he give a time-frame when the work will be completed?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, it is very difficult to give a time-frame when we do not have money available for construction. Let us, first of all, get the money and then ask for the time-frame. Otherwise, as we stand now, I cannot give a time frame for something that is not available. The Kshs30 million is for the new model of the architectural drawing that we have. We are going to spread it all over the other districts. So, I will give a time-frame once we get the money and disburse it to the districts for construction purposes.

*Question No.654*

EXISTENCE OF INFORMAL SCHOOLS  
IN URBAN UNPLANNED SETTLEMENTS

**Mr. Mwangi** asked the Minister for Education:-

(a) whether the Minister is aware of the existence of informal schools in the urban unplanned settlements and, if so, how many such informal schools are operational in Nairobi;

(b) whether the Ministry recognizes such schools and, if so, how much money was allocated to the schools during the 2010/2011 Financial Year; and,

(c) what plans the Ministry has towards taking over all informal schools in the unplanned settlements in the country.

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

(a) I am aware of the existence of non-formal education centres or non-formal schools in the urban unplanned settlements of which there are all 1,000 schools in Nairobi area.

(b) The Ministry recognizes only non-formal educational centres/non-formal schools that meet our current criteria for funding. A total of Kshs72 million has been allocated in this financial year and will be disbursed to these schools in January, 2011.

(c) The Ministry is currently developing guidelines to mainstream all the non-formal educational centres/non-formal schools in the education sector investment portfolio. This includes assessment and development of necessary guidelines for registration and identification of priorities for intervention. The plan of the Ministry is to bring on board all these institutions that meet the criteria for funding by the next financial year.

**Mr. Mwangi:** Mr. Deputy Speaker, Sir, while I appreciate the answer given, I am not satisfied with it. The issue of non-formal schools in our country is appalling.

*(Loud consultations)*

Mr. Deputy Speaker, Sir, there are loud consultations!

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

**Mr. Mwangi:** Mr. Deputy Speaker, Sir, I want to draw the attention of the Assistant Minister to Article 43 of the Constitution. Article 43 talks about the economic and social rights of our people. Allow me to read subsection (f) which states:-

“Every person has a right to education.”

If you look at the answers provided by the Assistant Minister, you will find that he says in part “b” that the Ministry recognizes only---

*(Loud consultations)*

**Mr. Deputy Speaker:** Order, hon. Members! Order, Mr. Bifwoli, Mr. Mbadi and Mr. Nyamweya! Order, Mr. Kigen! We cannot turn this august House into a fish market.

Proceed, Mr. Mwangi!

**Mr. Mwangi:** Mr. Deputy Speaker, Sir, I was drawing the attention of the House to that right of our children. In Nairobi, for example, we have only 205 public schools that receive what we would call “subsidized efforts” by the Ministry. That is only 23 percent. What happens to the other percentage of the schools? They are either private or non-formal. The children in the non-formal settlements in the urban areas are as a result of some of the clashes we have had in this country over time. Their parents migrate to the urban areas and settle in the slum areas. These children are not being given adequate attention. I want to inform the Assistant Minister that the Kenya Institute of Education

(KIE) has a policy on what to do about non-formal schools and yet in part “c” of his answer the Assistant Minister says that the Ministry is planning. This answer is inadequate. Could he undertake to get these schools considered and the issue factored in the next budget so that education for children in the slums is given priority like any other in public schools?

**Prof. Olweny:** Mr. Deputy Speaker, Sir, may I remind the hon. Member that KIE is part of the Ministry of Education. So, what the KIE has as a policy, is the policy of the Ministry of Education. May I inform the hon. Member that part “b” of the answer is very satisfactory. This is because these non-formal schools must conform to our rules so that they can get money from the Ministry. If Government money is not properly spent, it is this House that will summon us to interrogate us on how the money has been spent. Let me tell the House the criteria we use to give money to these centres:-

1. They must be community based and not private.
2. They must be registered by the Government as CBOs or Societies.
3. They should offer the formal 8-4-4 curriculum.
4. They should open an account with the banks that have signed an MoU with the Ministry of Education and that account should have three mandatory signatories.
6. The institution should have a school management committee; school infrastructure management committee and must be willing to be---

**Mr. Mwangi:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to continue referring to accounts in the Ministry while the Question is about consideration of education for children in the slum areas? The Act and even the Constitution does not address the accounts he is talking about. Could the Assistant Minister provide a list of the schools he is referring to? Is he in order to mislead the House? We are not asking for the accounts.

**Prof. Olweny:** Mr. Deputy Speaker, Sir, I am in order because money requested by these schools must be given through an account. The money cannot be given as cash to individuals. That is what I am telling the hon. Member and the House.

**Mr. Deputy Speaker:** Mr. Mwangi ask your last supplementary question on the same!

**Mr. Mwangi:** Mr. Deputy Speaker, Sir, this Question has been inadequately answered. The Act and the Constitution talk about accessibility, affordability, and financial costs by our poor community. The Ministry has failed to address the issue of non-formal schools and yet the Assistant Minister is talking about registration. The schools in the slum areas cannot be registered according to the guidelines given by the Ministry because of land tenure. The communities running these schools cannot afford to get two acres or five acres that the Ministry requires for a school to be registered. Is the Assistant Minister in order to indicate that the Government will deny the children of this country in the non-formal sector education and yet it is their right as given in our Constitution?

**Prof. Olweny:** Mr. Deputy Speaker, Sir, if the hon. Member was listening to me, I did not indicate in the guidelines any limit of amount of land as a requirement for registration. What I indicated as requirements are simple management issues. Since 2004, for the benefit of the hon. Member, the Ministry has been supporting the non-formal schools. Since that time, there are 410 of these schools with an enrolment of 89,569 children who have benefitted. A total of Kshs265.7 million has been used. So, we support

these schools irrespective of where they are. Some of the schools are just in people's houses but we still allocate them money.

**Mrs. Shebesh:** On a point of order, Mr. Deputy Speaker, Sir. This matter has been brought many times to the Ministry and a satisfactory answer has never been given. Majority of children in the slums in urban centres are in informal schools. The Constitution is being violated because it talks of their right to education. Free Primary Education is not reaching the majority of children in Nairobi. Would it be in order to ask the relevant Departmental Committee to look into these issues so that it can give us a long-term solution to the issue of informal schools in Nairobi?

**Mr. Deputy Speaker:** Yes, indeed, the Chair takes the cognizance of the fact that this is a very serious matter. It, essentially, is a matter that is guaranteed under our new Constitution which has just been promulgated. In the same tone and breathe the Chair directs the relevant Education Committee headed by none other than our educationist himself, hon. Koech, to proceed with speed and also report back to the House.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. While thanking you for the direction, would it be in order for the Committee also to look into the issue of Early Childhood Education (ECDS) because FPE cannot be achieved without it? This must be part and parcel of FPE.

**Mr. Deputy Speaker:** Order, hon. Karua! Indeed, yes, you are right. The Question captures that one. It says informal schools that include also ECDS.

Order, hon. Members. The Chair directs that Question No.583 and 588 be deferred to tomorrow afternoon.

*Question No.583*

PROJECTS UNDERTAKEN  
IN MANDERA EAST

*(Question deferred)*

*Question No.588*

MISMANAGEMENT/CORRUPTION  
AT MUMIAS SAVINGS AND CO-OPERATIVE SOCIETY.

*(Question deferred)*

**MINISTERIAL STATEMENTS**

EXPLOSIONS AT KAMPALA COACH OFFICE IN NAIROBI

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Deputy Speaker, Sir, I wish to issue a Ministerial Statement on explosions that occurred at Kampala Coach Office along Duruma River Road junction on the evening of 20<sup>th</sup> December, 2010.

Mr. Deputy Speaker, Sir, on the evening of 20<sup>th</sup> December, 2010, at about 8.15 p.m., Nairobi Area Police Operation's Control Room received a report that an explosions had occurred at the entrance of Kampala Coach Public Service Bus Company offices as one of the buses, KBN 918F, was preparing for departure to Kampala, Uganda. According to the eye witnesses' accounts, the bus company security personnel were on a routine check of the passengers and their luggage as they boarded the bus when one person carrying a plastic paper bag started resisting the inspection. In the process the said passenger dropped the paper bag on the ground, immediately after which the paper bag exploded. The explosions killed the resisting male passenger identified as Mr. Albert John Olanda, whose nationality has been established to be Tanzanian. It also injured 40 passengers and passersby, and the breakdown is as follows: Number killed is only one that particular person. I do want to correct what has appeared in the media that, indeed, there was an extra person who died. That is not the case. It is only that particular person, who was carrying the bag. Those admitted to the hospital are 12. Those who were treated and discharged were 28 and the total number is 41.

Mr. Deputy Speaker, Sir, the nationalities of those involved include Kenya, Uganda, Tanzania, Burundi, Sudan, and two are unknown as far as nationalities are concerned. Investigations by the specialized police team are at an advanced stage, in collaboration with security personnel from neighbouring countries. The Government has directed the team to comprehensively address the subject matter because of the emerging use of hand grenades by criminals. I do wish to assure the hon. Members that the Government is taking this matter very seriously and measures to deal with these types of complaints, organised crimes, including piracy, kidnapping and terrorism have now been scaled up. These measures also include improving appropriate capacity in technology and specialised skills and equipment to address these challenges.

Mr. Deputy Speaker, Sir, in conclusion, special arrangements have been made to enhance the security of Kenyans during this festive season.

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, first, I want to congratulate the Minister for coming on his own volition to the House to explain this issue that is bothering all of us.

Mr. Deputy Speaker, Sir, as we approach Christmas, what are the standard measures of security in terms of checks, and what should Kenyans expect when they are boarding either matatus or aeroplanes? We need to know these standards, so that we do not get inconvenienced or fail to co-operate with the relevant authorities. This has never come out clearly either from the police or the Minister. We need to know so that people do not start complaining unnecessarily.

**Dr. Nuh:** Mr. Deputy Speaker, Sir, while I equally thank the Minister, I do not want to doubt his urge and zeal to ensure that Kenyans are safe.

However, this grenade attack has been the second in a span of few days. What is more worrying is with all the length, breadth and capacity of the intelligence in this country, the Ugandan intelligence were able to have an alarm alert on the same issue hours before these explosions happened. Is the Ugandan intelligence more superior to the Kenyan intelligence? Should this be a wake-up call for Kenya and should we seek for the assistance of Uganda in future to help us to get information as to what is bound to appear as attacks perpetuated by some people we seem not to know?

**Mr. Wamalwa:** Mr. Deputy Speaker, Sir, I also wish to thank the Minister for coming promptly to the House to explain what happened. I also want to thank him for enhancing security. This morning I saw sniffer dogs in the Continental Offices. The security has been up scaled.

However, this is the second blast since the Uhuru Park blast. Could he tell the House what he has done about the Uhuru Park blast up to now as we go into Christmas? The families of the victims will be spending Christmas as orphans or widows. Please, tell us what you are doing about that as well.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, like my predecessors, I wish to commend the Minister for seeing the need to update the country on what they are doing regarding the security situation, particularly at this festive season.

Mr. Deputy Speaker, Sir, I notice that the police report indicated that the type of device that was used was identical to the one that killed a police officer recently. I expect the Minister, while giving this Statement, to also update the Kenyan nation on the investigations relating to that particular incident where the police officer died. Could he indicate to us the nature and state of these investigations?

**Mrs. Noor:** Mr. Deputy Speaker, Sir, I also want to thank the Minister for coming up with this statement. However, I would like to know why certain communities such as Muslims and Somalis are being targeted when such unfortunate incidents happen in our country?

**Ms. S. Abdala:** Mr. Deputy Speaker, Sir, could the Minister tell us whether the Government has enough equipment to detect explosive devices, particularly at border points?

**Mr. Deputy Speaker:** Hon. Minister, please, make those clarifications.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Deputy Speaker, Sir, let me begin with the clarification as to whether the police have specialised equipment to be able to detect the presence of those weapons. I would like to say that they do have such equipment but, of course, technology changes continuously. Terrorists always try to change continuously. The challenge, therefore, is for our security personnel to be one step ahead of terrorists. It is on that account that I would like to inform this House that we are already sourcing resources from the Treasury to ensure that the police are equipped so as to make sure that they are, indeed, a step ahead, because of the emerging crimes. They are sophisticated, and we cannot take the security of our people for granted.

As regards hon. Noor's sentiments that whenever these things happen, it is certain communities that are targeted, I would like to assure this House that criminals are criminals, and we must make a distinction between criminals and religion or ethnicity. The firm instructions to the police are that what they should pursue are criminals, irrespective of one's religion, ethnicity or colour. That is the position.

**Mr. Joho:** Jambo la nidhamu, Bw. Naibu Spika.

**Mr. Deputy Speaker:** Order! Allow the hon. Minister to finish what he is saying.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Deputy Speaker, Sir, perhaps, if I were to add something, the hon. Member would understand. Indeed, we have had two very serious incidents where grenades have been used in the last two weeks. Firstly, around Roysambu, there were two people who were on a motorcycle. When they were flagged down by traffic police, they

stopped. However, the passenger on the motorcycle decided all of a sudden to shoot. He managed to kill two policemen. Fortunately, there were other police officers and wananchi around. One particular person amongst those who were on the motorcycle also had a grenade, which he threw at the people. Fortunately, it fell between tyres. For that reason, it was not able to explode. Of course, the police were chasing him. He was shot dead.

The other person on the motorcycle also decided to run away. When he found that he was actually being pursued by the police and wananchi, and because he had been shot and hurt, he could not remove the grenade pin with his hands but he decided to do so with his teeth. In the process, he was blown off.

Mr. Deputy Speaker, Sir, if hon. Members would like to know the identities of those people in terms of their ethnicity, one was a Kikuyu and the other one was a Mkamba. So, I just want hon. Members to understand. Crime is getting more and more sophisticated. It is really emerging that we have to believe the case.

May I also say that I think that the issue---

*(Mr. Joho stood up in his place)*

**Mr. Deputy Speaker:** Minister, there is a point of order from hon. Joho! What is your point of order, hon. Joho?

**Mr. Joho:** Jambo la nidhamu, Bw. Naibu wa Spika. Jana, nilipokuwa nikitazama runinga, nilimwona Kamishna wa Polisi akieleza kwamba uteguaji wa mabomu siku hizi umekuwa ukitendwa na watu waliojiunga na uislamu hivi karibuni. Ninaona mambo mawili. Kwanza, hakuna uwezekano kwamba uchunguzi wa kisa cha basi la kampuni la Kampala Coach ungefanywa siku hiyo na kukamilika siku hiyo ndipo isemekane ni fulani. Je, ni haki kwa Waziri kusema kwamba hawahusishi sana waislamu na ugaidi na hali Kamishna wa Polisi amesema wazi kwamba ni Waislamu wapya wanaotekeleza mashambulizi ya mabomu?

**Mrs. Noor:** On a point of order, Mr. Deputy Speaker, Sir. The HANSARD will bear me witness. I talked of “innocent Kenyans” and that there is a phobia so that immediately something happens, the police harass members of the Somali community specifically, and the Muslims. Immediately something happens in down town, the police start harassing people in South “C” and Eastleigh. I am asking about innocent Kenyans. We do not want to protect any criminal.

**Mr. Deputy Speaker:** Conclude, Minister!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Deputy Speaker, Sir, let me disabuse hon. Members of the notion that whenever an explosion takes place, it must be related to Muslims or members of the Somali community, for that matter. I want to reiterate very strongly that our duty is to fight crime. Definitely, when an explosion takes place in a particular area, it is important to also start finding out whether there may be other explosives around, which could be detonated at any time.

That was, indeed, the case when a grenade exploded in a District Commissioner’s vehicle in Eastleigh. So, it was important to find out whether there might have been other grenades around there. I would also like to say that in respect of that incident, there was a major search all over Nairobi and its environs, including Kawangware and Ongata

Rongai. Security personnel had to make sure that they carried out a thorough search and surveillance.

Mr. Deputy Speaker, Sir, in the case of Eastleigh, people were told that a grenade was lobbed into the vehicle. We carried out investigations. We also brought in some very qualified people in the area of explosions from some of our friendly countries. It was established clearly that the particular grenade was actually under the front passenger seat of the Land-Rover vehicle. So, it was established that the grenade was not lobbed into the vehicle. It happened that the person who was killed was a police officer, who was in that vehicle. Even the way that police officer was killed is that he was actually blown upwards.

We are carrying out investigations to establish how a grenade could have been taken to a Government vehicle and put underneath the vehicle. Unfortunately, that particular police officer died.

Mr. Deputy Speaker, Sir, it is important that we, as Members of Parliament, understand that crime is getting more and more sophisticated. Secondly, we cannot deny the truth, that some of our neighbouring countries are going through a period of instability, and there are far too many weapons there.

The truth of the matter is that there has been a continuous proliferation of light weapons and arms. That is a fact. So the onus is upon us to increase the surveillance and our preparedness and ensure that we get the sophisticated equipment to be able to deal with this matter. That is where we are now. That has happened in Uganda and you saw what happened.

Mr. Deputy Speaker, Sir, there was also another question that was asked; how come it appears like officers in Uganda are more sophisticated in matters of surveillance than we are. I want to inform this House that as a matter of fact, the Ugandans have been able to get quite a bit of collaboration from us. Even on this particular material day, because when this person died, the police were able to get hold of this gentleman's mobile and were able to offload it and find out the contacts that this person had and who he had rang. One contact was actually housed in Kampala. The information was conveyed to the Ugandan intelligence about a certain vehicle. That vehicle was stopped by the Ugandan security personnel and it was found to have some weapons too. So we are doing the best we can.

**Mr. Deputy Speaker:** Order, hon. Members! Today is a Private Members' Day. The Chair will allow only two points of order.

*(Several Members stood up in their places)*

**Mr. Mungatana:** On a point of order, Mr. Deputy Speaker, Sir. The first clarification I sought has not been addressed and I think it is more critical for Kenya because we need to know--- If the Minister cannot do it now, he can give an undertaking. Alreaday, we have heard what the police are doing about the road safety, but what about these kind of things?

**Mr. Joho:** Mr. Deputy Speaker, Sir, immediately after the bombing at Kampala Coach, which I am very sad about, and I appreciate the efforts the police are putting into this matter, but how fast did the Commissioner of Police move to conclude that the bomber or the suspect was a newly converted Muslim so that he could issue that

statement that the recent bombings were done by newly converted Muslims? That is a very serious allegation. So I want the Minister to tell us how the Commissioner of Police arrived at that conclusion.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. Allow me to, first, congratulate the police for quickly moving to nab the suspect, which has not happened with respect to the Uhuru Park bombing. So this is an improvement. I also want to support that they must get sophisticated equipment to be able to deal with this menace. Could the Minister give an undertaking to this House about fast-tracking police reforms and also ensuring that our borders are secured to stop the proliferation of explosives and arms? Searches are necessary and I want to support searches in situations like this. What is he going to do to ensure that searches are done with decorum and with respect to the human rights and dignity of those being searched and that they do not only search the low income areas but also high income areas?

**The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti):** Thank you very much, indeed, Mr. Deputy Speaker, Sir. Let me begin with hon. Karua. First of all, she wanted to find out the Government commitment to implementing the police reforms. I would like to inform this House that indeed we have moved very far and had we actualized the Commission on the Implementation of the Constitution, the first lot of the Bills which would have come here would have been the Bills related to the police reforms. We already have got five Bills ready, fully prepared and validated by all the stakeholders. I talk here of the following fundamental Bills - the one very important Bill is the Independent Oversight Authority. We have a Bill to set up an independent oversight authority which, once it is in place, if the police do something, any person, any citizen can lodge a complaint. That will be an independent body which will be chaired by a person qualified to be a judge. That will be done in a transparent manner. We also have another Bill which has already been validated by the relevant stakeholders; the Police Service Commission Bill. It will detach the employment of the police from the Public Service Commission so that they can have their own police service commission. That Bill is ready.

There is also a Bill on policing; fundamentally re-arranging the entire police including the appointment of the Inspector-General of the Police. There are quite a number of them. I can assure you that immediately the Committee on the Implementation of the Constitution is in place, when we come back after recess, we are going to be able to introduce about five Bills.

Mr. Deputy Speaker, Sir, it is true we are going to make sure that we are sensitizing the police, especially that chapter on the Bill of Rights. This is important. We are holding quite a number of seminars to sensitize the police about the rights of individuals and the fact that if they are carrying out investigations, it must be done with decorum.

Regarding the issue raised by hon. Joho, I did not at all in my own submission here say that we are pursuing Muslims or this ethnic group. We are pursuing criminals. That is the only thing and I think we need to look into that one. Let us forget about ethnicity or religion. Let us all resolve to fight crime because it is a very serious bit. As far as hon. Mungatana is concerned, he wanted me to unveil the tactics that we are going to use to increase police surveillance on the criminals. There will be more plainclothes policemen, and there will be use of more sophisticated weapons to detect these weapons

and devices. We are going to have more patrols all over the country. Even public vehicles and private ones will be checked but I cannot go further than that.

*(Mr. C. Kilonzo stood up in his place)*

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

## **POINT OF ORDER**

### **FUNDING OF KENYA PARLIAMENT BY USA**

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. I rise on a different issue. I rise on a point of order to seek the Chair's guidance on the issue of the funding of the National Assembly by foreign countries and in particular the United States of America.

Mr. Deputy Speaker, Sir, the United States of America (USA) has been funding Parliament through the State University of New York (SUNY), and hon. Members have been raising their discomfort on this matter privately. My concern is the statements by the American Ambassador to the effect that he is in control of Parliament.

It is now apparent that the funding of Parliament by the American Government was not in good faith. I was one of the Members of Parliament who met a delegation from the USA here in Parliament on a fact-finding mission on the role of SUNY. Members present did make it very clear that they did appreciate the support of SUNY, but on condition that there were no strings attached. It now appears that the intention of the USA was to compromise the decisions of the National Assembly. A good example is a certain Committee which made a Report and the House adopted it. The Ambassador had a different view. When the Chair of that Committee was going to the USA on parliamentary duties, he found his visa had been revoked. That amounts to blackmail which is not acceptable.

Mr. Deputy Speaker, Sir, to allow this House to perform its duties freely and independently, this House; I and others, are of the strong opinion that no country should be funding the National Assembly.

With those few remarks, I seek your guidance on that matter.

**Mr. Deputy Speaker:** Order, hon. Members. The Chair has heard. Indeed, the Speaker of the Kenya National Assembly is the Chairman of the Parliamentary Service Commission (PSC). The PSC is composed of Members of Parliament and the Speaker is the one who runs the affairs of Parliament, including the funding in areas that might be of interest to us. The Speaker will address this. I am not saying the Chair, I am saying the Speaker.

**Hon. Members:** Louder! Louder!

**Mr. Deputy Speaker:** Order, hon. Members! Do you hear me now?

Hon. Members, I said the Speaker is the Chairman of the PSC and this falls within the mandate of the PSC. Funding for Parliament is the first charge on the Consolidated Fund. The independence of Parliament in any sovereign State is as far as the financial independence itself is concerned. It is a sanctified issue. The Speaker of the Kenya National Assembly will address this matter at an appropriate time.

The Chair will, indeed, relay the same to the Speaker. The Deputy Speaker of the Kenya National Assembly is not a member of the PSC.

Order, hon. Members! Today is a private Members' day and, indeed, you realize that the bulk of time was taken by business other than private Members' business. Any other Statements either sought or delivered will be issued today in the afternoon, tomorrow or any other day.

Next Order!

## MOTIONS

### ADOPTION OF REPORT ON DEATH OF DR. OUKO

THAT, this House approves the Report of the Select Committee Investigating Circumstances Leading to the death of the late Dr. the Hon. Robert John Ouko, E.G.H., M.P. laid on the Table of the House on Wednesday 8th December 2010.

*(Mr. Imanyara on 15.12.2010)*

*(Resumption of Debate interrupted on 15.12.2010)*

**Mr. Kabogo:** On a point of order, Mr. Deputy Speaker, Sir. I rose on a point of order earlier and you directed that when we get to Motions, under Standing Order No.36 (b), you will deal with my request to prioritize Order No.10 to discuss the conduct of the American ambassador.

**Mr. Deputy Speaker:** Order, Members! There is a Motion whose debate was to resume today. The Chair directs that the Motion be disposed of. Should Members want the priority of other subsequent Motions to be determined in a manner other than it is now, you are at liberty to raise it at that moment. As of now, we are on Mr. Imanyara's Motion and hon. Sally Kosgei was contributing!

Dr. Kosgei, do you wish to contribute further or you had concluded?

**The Minister for Agriculture** (Dr. Kosgei): Mr. Deputy Speaker, Sir, I did not finish because I ran out of time.

**Mr. Deputy Speaker:** Please, proceed!

**The Minister for Agriculture** (Dr. Kosgei): Mr. Deputy Speaker, Sir, just for the benefit of those who were not here, I made reference to chapters 102, 103, 104 and 105 of the Report. In those chapters, it is stated that one of the possible reasons for the killing of Dr. Ouko was to do with his foreign trips. One of the foreign trips mentioned was the one to the United Kingdom (UK). I said that I was the ambassador at the time and all that was said there was definitely not true. If you look at the source of that formation on another page, it says it was one Herine Ogembo.

The Report says on page 41 that she was Dr. Ouko's second wife. I do not know that but, in any case, if, indeed, that is true, I would have assumed that something so important should have been corroborated somewhere else because most of us who were mentioned as having been in those missions were in this country. At no time was I asked

whether, indeed, it is true what happened at Checkers or at CBI. That is because I was involved in both events.

Mr. Deputy Speaker, Sir, I find the Report quite insensitive in other areas. Its conclusion that some members of the Ouko family were hostile is, indeed, very strange. I do not know whether the Members who signed this Report actually sought to get information from elsewhere to corroborate what they were saying. As I said before, and let me say it again, anyone who knew Dr. Ouko would surely not want to believe that such a seasoned diplomat would have been calling somebody considered a girlfriend or second wife to tell her how he was relating to his own staff in the Ministry of Foreign Affairs. That is not normal diplomatic behavior.

*(Loud consultations)*

**Mr. Kigen:** On a point of order, Mr. Deputy Speaker, Sir. We are not able to follow what is going on because of the level of consultations. Could the level of consultations be lowered?

**Mr. Deputy Speaker:** Order, hon. Members! Indeed, yes, if you must consult on any other business other than the business being transacted, there are very cozy and nice couches that we have in other lounges where you can go, sit and consult.

Proceed, Dr. Kosgei!

**Mr. Keter:** On a point of order, Mr. Deputy Speaker, Sir. I just want to seek some clarification from the Chair on the Report. I was there in the last Parliament and, if I am not wrong, I think Ms. A. Abdalla was a Member of the Select Committee. I am not sure whether the Committee approved the Report. The title of the Report is the Departmental Committee on Legal Affairs. I just want to find out from the Chair whether it was approved.

**Mr. Deputy Speaker:** Mr. Deputy Speaker, Sir, the institutional memory of Parliament tells me that it was an *ad hoc* Committee. Indeed, there is also an admission that Ms. A. Abdalla was a Member of that Committee. Should she wish to contribute she will do so as soon as it is practically possible.

Proceed, Dr. Kosgei.

**The Minister for Agriculture (Dr. Kosgei):** Mr. Deputy Speaker, Sir, the reason I am able to interrogate this Report is that my name is mentioned on page 42. It talks of things as if they were facts when they are not. As I explained last time, this could not have been possible. It would not have been possible for the British Government to invite the Minister for Industry directly. That did not happen. The invitation was issued by the Kenyan High Commission. We discussed it with the East African Association (EAA) and the CBI. It was, in fact, my idea that he should come to London. To have a report, therefore, that says that somebody told the Committee that the British Prime Minister invited the late Minister and this is put in the report as the gospel truth, I find that very strange. I can say without any fear of contradiction that what is here is not definitely true. The importance of this report is that, perhaps, it gives us a chance to find out what happened to this thoroughly nice Kenyan who lost his life in circumstances that we cannot understand.

Mr. Deputy Speaker, Sir, those of us who knew Dr. Ouko felt a serious sense of loss. However, we will not have done Dr. Ouko justice if we were to go with what appears to me as hearsay in this report.

**Ms. A. Abdalla:** Mr. Deputy Speaker, Sir, I wish to confirm that I was a Member of the Select Committee investigating the death of Dr. Ouko. I only joined the Committee after three other Members objected to being Members of that Committee because of the proceedings and how the Chair was carrying them out. Upon joining this Committee, we had a lot of debate about the unprocedural nature and the unpreparedness of our Committee in handling the investigations. In fact, we felt that the officer who was attached to us from the Attorney-General's Chambers was not assisting us in asking questions and getting information from the witnesses who came before us.

In addition, when we finally reached the point of writing the report, there was disagreement in our Committee in that some of the recommendations were not supported by the evidence that we had received. It is because of that, that report did not reach the Floor of this House. It is my opinion, therefore, that wanting to adopt a report of a Committee whose membership had problems with its accuracy, is not a fair process. We would be doing injustice to the next investigation that would take place to conclude the investigations on the death of Dr. Ouko. We will be doing a disservice by allowing this House to adopt a report that we had issues with. In fact, at some point, the Chair of the Committee was very mad with his political party and said that they had disowned him by not allowing the report to be prioritized and brought to the House.

I really would like to urge the House not to vote for this report, because we would be adopting inaccuracies. This would divert the attention of the investigators into this very serious crime to the wrong direction. I support that thorough investigations should take place. In fact, some of the evidence that we got in camera needs to be followed. But the House as constituted and any Committee that we constitute cannot deal in a thorough manner with some of the allegations that we heard, especially those in camera. I do not believe that adopting this report would aid this process.

With those few remarks, I beg to oppose.

**Mr. Keter:** On a point of order, Mr. Deputy Speaker, Sir. In light of what hon. A. Abdalla has just said, it casts a lot of doubt on the credibility of the report. So, is it in order for us to discuss this report when one of the Members of the team that produced it has some doubts? Could we have a ruling from the Chair on this?

**Ms. Karua:** Mr. Deputy Speaker, Sir, I rise in support of the report, especially the recommendation for further investigations. I have looked at the recommendations. The thrust of them is further investigations and nothing more. I agree that Parliament has no mechanism to investigate fully. Therefore, when we put names in reports, sometimes we may put names unfairly. I am appealing to Members not to refuse to adopt a recommendation that is merely telling us that we have unfinished business, because we have never found out who murdered the late Ouko. We are being called upon to ask the country's investigators to again open this file and bring to book the murderers. I fully understand the agony of being included without thorough investigations. Those who feel that their names are in here unfairly, someone can move an amendment to the Motion to adopt the recommendation to further investigate and expunge whatever names are there unfairly. Let us not kill the recommendations to investigate because we still need to find out who committed this crime.

This is a report of a Committee of Parliament. When we were discussing the report of the Artur brothers, I said then and I want to say now, that criminal investigations can never be conducted by Parliament. They belong to the Criminal Investigations Department (CID) and the law enforcement agencies. However, Parliament can generally look at how a matter has been handled and whether it has been conclusively dealt with. All that the Parliament of Kenya is saying in this report is that the Ouko case has never been concluded and the investigations have never been thorough. You will remember the Commission of Inquiry that was disbanded. Parliament has no machinery to investigate and cannot conclusively say “x” is guilty or “y” is innocent. So, I beg again that Members move to expunge names if they wish, but, please, think of our own security now and in the future. Let us not kill a Motion to further investigate.

I beg to support.

**Dr. Kones:** Mr. Deputy Speaker, Sir, I am just following up what hon. Keter has stated; that the Members of the Committee have raised very serious comments about the procedure of coming up with this report. Now that we are sure that there was no agreement within the Committee and allegations have been raised that the Committee was run as a one-man show, is it in order for us to continue taking Parliament’s time debating a report that was not generated by the entire Committee? Would it not be in order for the report to be withdrawn? Probably, we should ask the Mover to come up with another Motion asking the House to form another select Committee to start fresh investigations.

**Mr. Keter:** Mr. Deputy Speaker, Sir, thank you for giving me a chance to contribute to the debate on this report. From the onset, the death of any Kenyan and that of Dr. Robert Ouko must be investigated. We must know who killed him. At the same time, I find it very difficult to support a report that the Committee Members never agreed upon. I oppose the report on that principle.

As some of my colleagues have said, Parliament has no capacity to investigate criminal matters. However, it does not bar the police from using the evidence in the report to investigate the matter. We should not kill the report because it is recommending further investigations. The Government has always been there. Therefore, it should not wait for this report, to do further investigation. The report has been there for the last ten years. Therefore, unless we are satisfied that the Members of the Committee agreed on the report, I oppose it.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Thank you very much, Mr. Deputy Speaker, Sir. I would like to say this from the outset; the file on the death of Robert Ouko has never been closed by the police. It is very important to understand that. If the issue was for Parliament to recommend a continuation of the investigation, the truth of the matter is that investigations will continue. In other words, we will not be achieving much by just recommending that investigations should continue because this particular file has never been closed! That is number one.

Secondly, I would like to say that I knew Dr. Ouko and I am saying this because, indeed, I am now the Acting Minister for Foreign Affairs. There is no doubt that he was the finest Foreign Affairs Minister that his country has ever had, and it is unfortunate that we lost him. However, what is contained in this Report is a lot of hearsay and falsehood. I do not think---

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

**The Minister of State for Provincial Administration and Internal Security**  
(Prof. Saitoti): No! I am contributing, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order, Mr. Mbadi! Allow the Minister to make his contribution and you can also rise and make your contribution!

Proceed, Mr. Minister!

**The Minister of State for Provincial Administration and Internal Security**  
(Prof. Saitoti): Mr. Deputy Speaker, Sir, I would like to say why I do consider this Report to be both falsehood and full of hearsay. For example, on page 58, they talk about the evidence of a Ms. Marianne Brenner Marten, a director of a body known as BAK Group of Companies, who was supposed to have been liaising with Dr. Ouko for purposes of soliciting funds for the Kisumu Molasses Plant.

Mr. Deputy Speaker, Sir, if you read further, you will find the following statement being made:-

“The demand for commissions and kickbacks by Mr. Aslam on behalf of senior Government Ministers, from the Companies of BAK that had been introduced to undertake the revival of the project, contributed a lot to its abandonment and in particular Technit and Italcement”

In other words, demands for kickbacks by a Mr. Aslam on behalf of other people, that is already a hearsay.

It continues:-

“However, hon. Biwott was not alone in this war which was instigated to frustrate Dr. Ouko’s efforts to revive the project and to fight against rampant corruption in the Government of the former President Daniel arap Moi. Indeed, evidence on record points to similar interference from Prof. George Saitoti, the then Minister for Finance. By excluding the deliberations of the Molasses Project from the agenda of the bilateral talks between Kenya and Italy and substituting the same with a project associated with him, it demonstrates the dislike which the two Ministers had developed against the late Minister.”

Mr. Deputy Speaker, Sir, anybody who has been a Minister of Finance or even in another Ministry would know that the agenda between two countries – let us say Kenya and Italy or Kenya and France – is decided at a lower level and it cannot be altered. That is done and the Cabinet is informed. So, the Minister cannot just go at will and remove it.

This issue is being brought by those who want to demonstrate that I may have been involved in the death of Dr. Ouko. For those of you who have never known – and I will speak today loudly--- Those who have got institutional memory should remember that at the time Dr. Ouko was killed, I suffered from poisoning and I was totally unconscious. I want to ask this. Those who prepared this Report knew very well that Prof. Saitoti was actually on his deathbed, and I was! This skin you see is not my original skin. If you want I can always bring you a picture. Why did they not find it fit to carry out an investigation to find out why Prof. Saitoti was actually poisoned and Dr. Ouko died? Why is there this kind of selective investigation?

*(Applause)*

The disbanded Committee ought to have actually addressed this matter. I was the Vice-President. How come this Committee did not take any interest at all to find out how come a whole Vice-President of the Republic of Kenya was poisoned and was almost dying when Dr. Ouko died? This is why I call this Report falsehood and a selective investigation which is intended for no other purpose other than to spread untruths and distortions which we do not need any more. Let the police and other investigators – from wherever you want to get them from the world – come and carry out investigations. However, I oppose in the strongest terms possible this Report which says that investigations on me should be carried out when I was dying and yet I was the Vice-President.

**Mr. Ruto:** On a point of order, Mr. Deputy Speaker, Sir. It is obvious that a lot of this is hearsay and I suggest that you call upon the Mover to reply.

*(Applause)*

**Mr. Deputy Speaker:** Order! Order, hon. Isaac Ruto! That is too fast! The Chair will allow a few more. However, before the Chair allows a few more contributions before any Question can be put, Mr. Keter wanted to know whether this Motion is properly before the House. The Chair does note that this Committee has had its own tribulations and trials in that, the first time, the Members of the Committee were 15. They were hon. Paul Muite, Dr. Oburu Odinga, Prof. Kivutha Kibwana, Prof. Christine Mango, Mirugi Kariuki, Dr. Abdullahi Ali, Eric Gor Sungu, Njoki Ndung’u, Otieno Kajwang, George Khaniri, Henry Obwocha, Joe Khamisi, Soita Shitanda, Samuel Moroto and Samuel Leshore. This was the first Committee that was formed as an *ad hoc* Committee through a resolution of the House on 26<sup>th</sup> March, 2003.

Subsequently, hon. Paul Muite, hon. Mirugi Kariuki, Dr. Abdullahi Ali, Njoki Ndung’u and hon. Otieno Kajwang resigned from the Committee. They were replaced by hon. Boniface Mganga, hon. Kiema Kilonzo, hon. Raphael Wanjala, hon. Amina Abdallah and hon. Peter Munya. Subsequently, hon. Boniface Mganga became an Assistant Minister and had to resign.

Hon. Members, at the time of writing this Report, through appointments and resignations, there were only ten Members of the Committee. They were hon. Eric Sungu, Dr. Oburu Odinga, Prof. Christine Mango, hon. Joe Khamisi, hon. Samuel Moroto, hon. Leshore, hon. Raphael Wanjala, hon. Amina Abdallah, hon. Kiema Kilonzo and hon. Peter Munya. The Chair does observe that at the time of concluding the Report, other Members did not sign this Report. The Report had only the appendages of the signatures of hon. Gor Sungu, Dr. Oburu Odinga, Prof. Christine Mango, hon. Joe Khamisi, hon. Raphael Wanjala and hon. Kiema Kilonzo. That is six Members out of ten Members.

**Hon. Members:** Out of 15!

**Mr. Deputy Speaker:** Order! The Chair is addressing the House! You know the rules of the House. The rules of the House are that three members constitute a quorum. This was signed by more than Members of the Committee; the matter itself is properly before the House.

The hon. Members had concluded their Report, and it is up to the House now. You may chose to adopt or reject it. The cardinal rule of democracy is that always the majority will have their way and the minority will have their say.

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. As we continue to debate this Motion, I think the House is entitled to statements of facts and accuracy. Prof. Saitoti has referred to this Report recommending that he should be investigated. Looking at this Report, I cannot see anywhere where it has recommended investigation on hon. Prof. George Saitoti. Actually, what he has referred to is evidence that was presented to the Committee on how the former Minister was frustrated within the Government. But that does not really point a finger at Prof. George Saitoti. In fact, if you read the Report, you will see that evidence was given of the people who were present when the late Dr. Ouko left his home, and Prof. Saitoti's name is not in that list. So, I think it is not accurate for Prof. Saitoti to refer to this Report as recommending for his investigation.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): I think it is important to put records straight. I stated here that at the time when Dr. Ouko died, on a different day, I was poisoned and that was a fact. I was the Vice-President of the Republic of Kenya. That is the issue I put to hon. Members here in the hope that it would trouble any right-thinking person to have worse trouble. How come that nothing was done about the Vice-President's poisoning? How come that a Committee of this House did not even care to investigate one of the hon. Members here? That is the issue and I hope the hon. Member has a conscience.

**Mr. G.O. Nyamweya:** On a point of order, Mr. Deputy Speaker, Sir. Perhaps we need your guidance here. The Motion reads:

“THAT, this House approves the Report of the Select Committee investigating the circumstances leading to the death of the late Dr. hon. Robert John Ouko EGH, MP, laid on the Table of the House on Wednesday, 8<sup>th</sup> December, 2010”.

It is asking us to approve the Report of that select committee. It is not asking us to adopt the Report. Perhaps we need guidance here. If we do approve the Report shall we be authenticating, or legitimizing, something which seems to be questionable? Or, if we were adopting it, would we adopt it, and then ask for investigations to be undertaken?

**Mr. Deputy Speaker:** In my not so many years of being in Parliament, nonetheless many years, I do not remember coming across approving of a Report. The parliamentary practice and language has always been “to adopt”. Would the hon. Members want to put---

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Proceed, Ms. Karua.

**Ms. Karua:** Mr. Deputy Speaker, Sir, is it in order to query the word “approve” when the actual meaning of adopt is to approve? It is a question of English. If you google the word “adopt”, it will give you same meaning as the word “approve”. When you adopt you take as your own. You approve.

**Mr. Ruto:** On a point of Order, Mr. Deputy Speaker, Sir. The two words have got very obvious ordinary meanings in the English language. When you use “adopt”; this is the word we normally use. To adopt is to own and to say it is okay.

“Approve” means you have done a good job. We are giving you a tick. We cannot approve a job that is so shoddily done that half the hon. Members had to run away from the Committee. We are being told to approve such a job. I suggest that before this matter

raises too much tempers--- It is full of *fitina*. You could see the way the former Vice-President was visibly angered, and I really empathize with him.

Mr. Deputy Speaker, Sir, I suggest that we call upon the Mover to reply. Maybe he can tell us something about this *fitina*.

**Mr. Deputy Speaker:** Before I call upon the Mover to reply, I will use the prerogative given to the Chair under Standing Order No.,1 and direct that the Motion should read:-

“THAT, this House adopts the Report of the select Committee investigating the circumstances leading to the death of the late...” The spirit and object of the Motion is well understood, and the Chair is there to give directions. If you do not like it, you know what to do. If you like it, you know what to do. But for purposes of maintaining the continuity and tradition of the House the Motion should read:-

“This House adopts the Report of the select Committee investigating circumstances leading to the death of the late Dr. hon. Robert John Ouko EGH, MP laid on the Table of the House on Wednesday, 8<sup>th</sup> December, 2010”.

Having said that, Mr. Ruto rose on a point of order and moved that the Mover be called upon reply. I will now put the Question that the Mover be now called upon to reply.

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

Proceed, Mr. Imanyara.

**Mr. Imanyara:** Thank you, Deputy Speaker, Sir, for the opportunity to reply. Let me make it clear on the outset that---

*(Loud consultations)*

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

Proceed, Mr. Imanyara.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, let me make it absolutely clear at the outset, as I did when I was moving this Motion, that the mandate of the Committee was very clear. If you look at the preface of the Report, the mandate was in the terms of reference of the resolution which set up the Committee. The resolution stated as follows:-

“THAT, noting with grave concern that the murder of the late hon. Dr. Robert Ouko in 1990 has never been resolved; being aware that the Judicial Inquiry into the death was disbanded before concluding its proceedings; this House resolves to establish a select committee to investigate and report on the circumstances leading to the death of the late Minister...”

That was the mandate of the Committee. The Committee received funding from this House; it received support from the Clerk’s office; it received support from the office of the Speaker in order to carry out the functions that it was obliged to carry out.

Mr. Deputy Speaker, Sir, having done that, I wish to thank all those who have contributed to this Motion; I appreciate the comments that Dr. Kosgei has made, agreeing that this country will never rest until we find the murderer of the late Dr. Robert Ouko.

This report is very clear on what it recommends. Let me make it clear that this Report has properly come to this House. It has gone through the House Business Committee. It has been signed by majority of the Members of the House Committee, and it is very properly before the House. Let the truth be told and the guilty continue to be afraid.

Let the people of Kenya know that there are people in this country who will never rest until the culture of impunity is brought to an end. This is only one of the steps that will be taken to ensure that the culture of impunity is brought to an end and that this country is governed by the rule of law.

Mr. Deputy Speaker, Sir, there is nowhere in this Report where there is any recommendation which was directed at hon. Prof. Saitoti, who at that time was the Vice-President of this Republic. But it tells me so much that even the Vice-President to the Republic of Kenya could be poisoned on the very day that Dr. Ouko was killed and not he, himself, could bring that matter to this House. But I am glad that in this new dispensation, Prof. Saitoti can stand up and tell Kenyans that he himself went through this. He was poisoned but, fortunately, he did not die like Dr. Ouko. So, I would imagine that he would be supporting those who are calling for transparency and a thorough investigation.

Mr. Deputy Speaker, Sir, for the record, let me say what the Committee recommends finally on page 134 of the Report. The Committee recommended as follows:-

(i) “The Government should institute fresh investigations into the circumstances of the disappearance and death of Dr. Robert J. Ouko.”

Mr. Deputy Speaker, Sir, what harm can there be for calling for investigations to bring to justice or light the circumstances under which Dr. Ouko died? I urge this House to come to reason and let us agree that a proper investigation needs to be carried out. This House, as has been so ably pointed out, is not in a position itself to undertake criminal investigations. So, we are urging that the Government machinery moves in and conducts investigations that will enable even Prof. Saitoti to come forward and tell the Committee or investigators what he knows that he could not say during that regime when Dr. Ouko died.

Mr. Deputy Speaker, Sir, I beg this House to set the mood and circumstances under which we can enter this new dispensation where we recognize that institutions are far bigger than names and that the rule of law is bigger than one individual no matter how powerful or what position they hold in society. I urge this House with utmost respect and humility to adopt this Report, so that we can carry out a thorough investigation into circumstances under which this illustrious and bright Kenyan died and then the law can take its course. That is all that is being asked. I do not see why anybody would oppose investigation into circumstances of death.

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

*(Question put and negatived)*

*(Several hon. Members stood up in their places)*

**Ms. Karua:** We are many. Stand up! Stand up! Anybody else?

**Mr. Deputy Speaker:** Order! Order! Order, hon. Karua! You are out of order! You do not stand up whipping and saying “stand up, stand up!” That is not the tradition of the House.

Next Order!

#### MEASURES TOWARDS ACHIEVING MDGs

THAT, recalling that ten years ago, world leaders agreed to take decisive action to combat world poverty in its different dimensions using time-bound and measurable targets; further recalling that Kenya is among the 189 countries that signed the Millennium Development Goals (MDGs) in September 2000 and is committed to the purposes and principles of the Charter of the United Nations; concerned that apart from education and possibly HIV/AIDS, Kenya has fallen behind in the race, and has not made sufficient progress towards meeting the Millennium Development Goals; concerned that at the current pace of development with limited resources, Kenya may not meet most of the goals by 2015; convinced that Parliamentary engagement on the Millennium Development Goals will accelerate progress to achieving the MDGs; this House urges the Government to take concrete measures towards achieving MDGs and report its implementation status and challenges if any, including remedies within the next six months and at such regular intervals thereafter.

**Mr. M’Mithiaru:** Mr. Deputy Speaker, Sir, I am trying to tie up some information I have forgotten regarding this Motion. So, I seek your indulgence that I move this Motion after Order No.10.

**Mr. Deputy Speaker:** Fair enough! Is hon. Ruteere in the House? Are you in a position to move your Motion?

**Mr. Ruteere:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** It is so directed!

*(Motion deferred)*

*(Mr. Kabogo stood up in his place)*

Order! Order, hon. Kabogo! The Chair has accepted the order in which the hon. Mover wanted his business to be transacted, since hon. M’Mithiaru is not ready to move his Motion and hon. Ruteere is ready to move his Motion. This has been the tradition of the House.

Hon. Members, do not get into dictatorships; we are in a democracy! We have rules and you must appreciate them. When you do not like something, you accept it because the rules dictate so. Did you want to force hon. M’Mithiaru to move his Motion now? Under what provisions of the Standing Orders or the Constitution, do you have that authority?

Proceed, hon. Ruteere!

#### CENSURE OF H.E. MICHAEL RANNEBERGER

**Mr. Ruteere:** Mr. Deputy Speaker, Sir, thank you for allowing me to move this Motion, which is very important to this nation.

Mr. Deputy Speaker, Sir, Kenya is a sovereign State which has duly elected leaders and a functional Government.

**Mr. Deputy Speaker:** Order, hon. Ruteere! Move the Motion by reading it verbatim; word for word!

**Mr. Ruteere:** Mr. Deputy Speaker, Sir, I beg to move the following Motion:-  
THAT, deeply concerned about the conduct of the American Ambassador to Kenya, H. E. Michael Ranneberger in respect of his activities which portray Kenyan leaders in negative light; noting further that his recent activities in the country in dealing with the youth and during the pre-referendum period amount to undermining elected leaders in the country; cognizant that his conduct is indirect contravention of Article 41 of the Vienna Convention which states *inter alia* “without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State and that they also have a duty not to interfere in the internal affairs of that State;” this House censures H. E. Michael Ranneberger, the American Ambassador to Kenya for his undiplomatic conduct and resolves that he be recalled back and another official be deployed in his place in order to preserve the existing cordial relations between the two countries.

Mr. Deputy Speaker, Sir, I wish from the outset to say that Kenya is a sovereign State. Our forefathers fought for the Independence of this country. They gave up their lives and went into the forests. They left their families and went without food, so that Kenya could be free. We were given Independence after a trial period by the British.

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Mover to say that we were given Independence when we know that Kenyans died fighting for Independence of this country?

**Mr. Ruteere:** Mr. Deputy Speaker, Sir, we attained Independence in 1963 after fighting for it. That is what I said. I stated that we fought for it. That is why people were in the forest fighting. Having attained our Independence, we got our own Government. We have our own President, Prime Minister, Ministers, a Cabinet and elected Members. When institutions of Government are not respected by any diplomat posted to this country, then, he is not working for the good of our State. We saw recently, and this morning was a very good example, what His Excellency the Ambassador is doing to Kenyans. He is directing Ministers and writing letters to them. He is telling Kenyans to consume food which is not consumable in America. We know that he has written very derogatory letters to his country through the cables - the Wikileaks. The cables came out and are still being published. I want to give an example of how they view us and how His Excellency Michael Ranneberger has portrayed us to his Government. He has disregarded our leaders. I have a copy of a section of Wikileaks that I want to lay on the Table. I also want to quote them. There is one section that I want to quote.

One of Michael Ranneberger’s cable written in January talks about his efforts to reform the political system in the country. He says that while some positive reforms have been taken, the old guard associated with the culture of impunity continues to resist fundamental changes. He wrote that the culture has existed since Independence, adding that President Mwai Kibaki, Prime Minister Raila Odinga, and most Members of the Cabinet and leaders of political parties are part of it. If he is portraying our President and

Prime Minister as such kind of people, then who is he talking to in this country? Who is in charge of this country?

We ought to be ourselves. We cannot be ruled from outside. One of the things that are disturbing us is that he is going round telling people to make a change in the Government. We know that every five years, Governments are changed and we hold elections. Why can he not wait until the Government has changed?

In another communication, he shows our trade with another country like China. He says that the US is concerned because we are trading with China. Infrastructural development has been going to China and Americans should be serious about it. Owing to time, I urge hon. Members to support me. I call upon Mr. Njuguna to second me.

**Mr. Njuguna:** Thank you, Mr. Deputy Speaker, Sir. In support of this very important Motion, let me indicate that this Motion is very timely as it is. It has generated a lot of questions in the minds of Kenyans. I would like to thank the Mover of this Motion, hon. Ruteere, for listening to the cries of Kenyans. Let me also remember the major role that has been played by the US, as a super power, in the United Nations, together with other major players, namely, Russia, China, Britain and France. As a super power, the US should not forget the technical co-operation that has been extended to this country in the past, and also the bilateral trade credit that has been extended to our country. We should also remember the role that was played by the late John F. Kennedy in creating educational opportunities for our students when he was consulted by the late Tom Mboya. Of a major concern is that the US, as a super power, has no mandate to supervise sovereign independent nations anywhere in the world.

We recall - and it is vivid in our minds - the kind of suffering and anguish that has been caused to this country by the colonial powers, mainly the British. When they came to Kenya, they took the most fertile land. They also detained our people during the struggle for Independence. They were able to put in about 2.5 million people. They killed our people and raped our women. You will also remember how the Mau Mau freedom fighters really engaged that colonial master. Up to now, the Mau Mau freedom fighters have not been compensated.

Concerning the role of the American Ambassador in this country, we recognize and remember the *Wikileaks* reports that were generated from his office. It is clear in our minds that the American Ambassador has gone beyond the demarcated boundaries of diplomatic service and etiquette. He has really tarnished the image of this country. He has held political rallies in this country. We fear that the American Ambassador Michael Ranneberger is likely to go to our primary schools or even to one of our churches and become a choir member. That will interfere with the spiritual growth of our people in this country.

Therefore, it is important that any foreign diplomatic envoy, who does not recognize the important functions that are being conducted by the current leadership of this country, is not welcome and should pack up and go. It is in our minds that the political leadership in this country - His Excellency the President Mwai Kibaki and the Prime Minister Raila Odinga - are giving this country real healing and reconciliation. Any foreign diplomat who is going to interfere with the peace and tranquility in this country will not be tolerated by Kenyans. It is, therefore, from this background that we say, in order to improve our friendship and strengthen our co-operation with the US, the Ambassador, Mr. Michael Ranneberger, must be given United States Airforce 1 (USAF1)

that is used by the President and go back to the US. We will then get another dynamic and patriotic American diplomat who will partner with Kenyans in this country.

With those few remarks, I call for the urgent expulsion of that Ambassador.

I second.

*(Question proposed)*

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Deputy Speaker, Sir, I rise to support this Motion. I want to define what diplomatic immunity is. This is just a form of a legal immunity and policy held between different Governments. Under the Vienna Convention, in 1961 the diplomatic community was basically meant to allow cordial maintenance of good Government relationships. We are not discussing the USA Government; we are discussing the USA Government representative. We are not discussing the donor aspect of the USA Embassy in Nairobi, that is, the United States Agency for International Development (USAID). In my own constituency, 40 per cent of the donor support comes from the USA. We are discussing the character of the Ambassador---

**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to try to distinguish between a representative of the USA Government and an individual who happens to be the Ambassador? It would be misleading for the hon. Member to insinuate that if we are going to discuss the character of Mr. Ranneberger then we are not discussing the fact that he is the USA representative in Kenya.

Mr. Deputy Speaker: Proceed, Mr. Duale!

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Speaker, Sir, if you read through the last part of the Motion, you will find that it calls for a recall of the Ambassador. We are not calling for a complete diplomatic breakdown between Kenya and the USA. We are calling for a recall of the Ambassador. We have a problem as a leadership with the personal conduct of the Ambassador in terms of dealing with this country. We have more than 175 High Commissioners and Ambassadors in this country from the Middle East, Europe, Africa and Asia. We are discussing the conduct of the USA Ambassador to Kenya because of how he portrayed himself. I do not want to go to the *Wikileaks*. However, the issue of funding youth organizations is an open secret. The Ambassador in his own words said that they have pumped more than US\$500 million to bring a revolution in this country. I think that is against the tenets of the Constitution we passed four months ago. The new Constitution says that the Kenyan people have a right under the Constitution to elect their Government after every five years. It is not whether you will bring a revolution to the youth, empower the women or the elders, it is for the people of Kenya.

I want to say here clearly that we love our friends and we want them to come and build governance institutions. We want them to build the capacity of the youth and women and men leadership in this country so that one day the people of this country in their wisdom will elect Governments and representatives.

I have a problem with this Motion considering the Vienna Convention which has sections that provide how a Government can recall an ambassador. That is not addressed in this Motion. For example, there is the issue of terrorism, or if an ambassador is involved in smuggling. There are cases where ambassadors were involved in that.

However, the Ambassador has basically become a local councilor, in my opinion. He is in every part of this country. You will find him receiving defectors in Kitale or taking positions with regard to political considerations of the people of this country.

**Mr. Wamalwa:** On a point of order, Mr. Deputy Speaker, Sir. Kitale Town is in my constituency. Is the Assistant Minister in order to mislead the House that the Ambassador received defectors in Kitale when, indeed, he did that in Kisii? He came to help the *Boda Boda* youth of Kitale. What is wrong with that?

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Deputy Speaker, Sir, I thank Mr. Wamalwa. It does not matter whether it was in Kitale or Kisii; it is within the Republic of Kenya. When a foreign diplomat wants to visit Dujis, Kipkelion or Saboti, there must be prior consultation with the Ministry of Foreign Affairs. It has, however, come to our notice that a diplomat drives to Wilson Airport, takes a flight, goes to one part of a constituency in this country and addresses the youth.

I have attended one of the youth meetings that was conducted in my constituency. I can attest to it that the speech which was given to the youth of this country in that town hall meeting which I attended in Garissa, was outside the mandate of a diplomat in this country.

With those few remarks, I beg to support this Motion.

**Ms. Karua:** Mr. Deputy Speaker, Sir, I rise to oppose this Motion. It is a sad day that we can come to discuss a foreign diplomat as though we do not have a Ministry of Foreign Affairs. We are now affirming before the world that the Government is not working. If a country is unhappy with a diplomat, there are ways of dealing with that. Our priorities are upside down. At a time that the implementation of the Constitution has stalled because it is waiting for us to pass Motions here, we stop business to discuss a foreign diplomat, and I want to repeat, like we do not have a Ministry of Foreign Affairs. It is a sad day, indeed.

I listened to the President and the Prime Minister on 12<sup>th</sup> December, 2010 which is our sacred day. That is, Jamhuri Day. Instead of devoting the time to tackle local issues, they too focused on the ambassador. It is a nation with its priorities wrong. There are ways of expressing your unhappiness---

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

*(Mr. Midiwo moved to the Dispatch Box)*

**Mr. Deputy Speaker:** Order, Mr. Midiwo! You cannot address the House from the Dispatch Box!

**Hon. Members:** He is a Chief Whip!

**Mr. Deputy Speaker:** The Chief Whip is not a Minister, but nonetheless proceed!

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, you are perplexing me. Maybe, you want me to forget the point of order I wanted to raise.

Is it in order for Ms. Karua to try to suggest that the Prime Minister and the President, after having been called “demagogues”, were wrong to put things in proper perspective during Jamhuri Day? They address Kenyans on public occasions and they were trying to put things in proper perspective. Is she in order to say that, that was out of order?

**Ms. Karua:** Mr. Deputy Speaker, Sir, that is an opinion. I still express my disappointment that the two dwelt on what I consider a non-issue.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. We appreciate that our good sister has gone through a lot of evolution. When she was the Minister for Justice, National Cohesion and Constitutional Affairs she devoted most of her working time dealing with ambassadors starting with the British High Commissioner. So, I am just curious whether she is evolving as a human being or what is happening.

**Ms. Karua:** Mr. Deputy Speaker, Sir, it is clear that the young Member is the one undergoing evolution, specialty of hearing. He is hard of hearing. If there was a Minister who spent least time with diplomats, it was me.

Mr. Deputy Speaker, Sir, I stand for freedom of expression. Just like I have always expressed my position, even a diplomat living in Kenya has the same freedom. It is embarrassing that Parliament can discuss a Motion to curtail freedom of expression of an individual living within Kenya. For whom does a diplomat work? He does not work for Kenya. He works for his country. When we send our diplomats to other countries, they work for us. So, the interest of the country may not be mutual with the interest of their country.

**Mr. Koech:** On a point of order, Mr. Deputy Speaker, Sir. While I appreciate my sister, she is talking about a diplomat. She should be aware that we are talking about a Kaya elder, Kikuyu elder and Kalenjin elder because this diplomat has been crowned an elder of every community in Kenya.

**Ms. Karua:** Mr. Deputy Speaker, Sir, that is an irrelevant point as far as I am concerned because it is an opinion. If he is all that, then he is doing very well in integrating with the local situation.

When a country posts a diplomat, he is an ambassador of that country. Therefore, Mr. Rannerberger represents the interest of America in this country and is working for the Government of America, not the Government of Kenya. It is, therefore, his Government that should give him the scorecard.

*(Several hon. Members stood up in their places)*

Mr. Deputy Speaker, Sir, you ought to protect me. A Member who has contributed ought not to intimidate me.

**The Assistant Minister for Livestock Development (Mr. Duale):** On a point of order, Mr. Deputy Speaker, Sir. I want to refer the hon. Member to the Vienna Convention of 1961 and Vienna Convention on Consular Relationship. Let her read that and see how ambassadors are supposed to behave in host countries.

**Ms. Karua:** Mr. Deputy Speaker, Sir, the Member had already contributed on that. I think it is totally wrong and intolerant when you have just been speaking to interrupt another Member who is contributing.

Mr. Deputy Speaker, Sir, when we talk of each other without the person we are talking about --- This is communication that was not --- meant for us. If you want people to respect you, behave properly. The ambassador said that Kenya is a swamp of corruption. I believe so myself and I said as much when I was resigning.

Mr. Deputy Speaker, Sir, we should listen to the music by our musicians. It is saying worse than the ambassador said. Why do we not improve our governance, so that we can reach a point of envy? We are hitting at the wrong target.

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. Is hon. Karua, my very good friend, in order to mislead this House that we cannot discuss the issue of an envoy, when she is on record saying that if she was to be banned from going to America, America is not heaven? Secondly, on the Hardtalk Programme of the British Broadcasting Corporation (BBC), she said that the former British Ambassador, Sir Edward Clay was a *persona non grata*.

**Ms. Karua:** Mr. Deputy Speaker, Sir, now that that has come let go to that particular issue of visas. I am dismayed that some Members are almost in tears for being banned from going to America. Do we not realize that the good Lord gave us such a beautiful country that you need not cry, when you are banned from going to another country? We also need to know that a country is like your house, if your friends ban you from going to their houses stay still and do not weep. Develop your country to a point, where other people will envy coming to the country.

Mr. Deputy Speaker, Sir, I think it is a moment we are showing our weakness. Let us concentrate on developing our country. We have declared other people *persona non grata*.

*(Several hon. Members stood up in their places)*

Mr. Deputy Speaker, Sir, protect me!

**Mr. Deputy Speaker:** Order! Order!

**Ms. Karua:** Mr. Deputy Speaker, Sir, we must listen even to what we do not like. This intolerance is the one being referred to in *Wikileaks* and it needs to be exaggerated. There is intolerance in this House. We should make sure our country is subject of envy by others. We have already banned many people from Kenya, including a former British diplomat. This is our house as a country. We can exclude anyone. If you are excluded from any country, be happy. God gave us a beautiful country. I would not weep if I was banned from the entire world. But because you crave so much to go to America--- People crave so much. We are making our children think other countries are heaven. I think we are a let down to the younger generation.

Mr. Deputy Speaker, Sir, I wish to strongly oppose this Motion. It is misguided and wrong priority. It is an embarrassment to the Second Republic.

**Mr. Ruto:** On a point of order, Mr. Deputy Speaker, Sir. Now that there is statement in this House that *Wikileaks* make correct statements, the same statements attributed to the American Ambassador say that 60 Members of Parliament are in their payroll. Is it true one of them is Ms. Karua?

*(Applause)*

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to impute improper motive on a Member and purport to try and gag persons who want to speak either way? He should apologise and withdraw forthwith.

**Mr. Deputy Speaker:** Order! Mr. Ruto, you are out of order. You cannot impute improper motives on an hon. Member of Parliament without a substantive Motion. Could you withdraw and apologise?

**Mr. Ruto:** Mr. Deputy Speaker, Sir, it is madam Karua who confirmed that these things are true.

**Mr. Deputy Speaker:** Could you substantiate your claims?

**Mr. Ruto:** Mr. Deputy Speaker, Sir, they are not exactly as visible as you would want. However, on the *Wikileaks* which Ms. Karua has confirmed to be true, it is stated that some Members of Parliament call themselves Parliament Caucus on Reforms--- I was just asking Ms. Karua whether she was one of them because she confirmed this to be true.

*(Several hon. Members stood up in their places)*

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. Mr. Ruto is a Member?

**Mr. Ruto:** Mr. Deputy Speaker, Sir, I am willing to withdraw and apologise if---

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! You will get your appropriate moment, and speak to the House!

**Mr. Ruto:** Mr. Deputy Speaker, Sir, if Ms. Karua tells me that she was not one of them, I am willing to withdraw, because she had confirmed that this is true. So, I want to withdraw and apologise.

**Mr. Deputy Speaker:** Fair enough!

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for this House to be allowed to degenerate into something less than dignified, when an hon. Member stands here to insinuate that I am in the payroll of the Americans? He, himself, is a Member of the Reform Caucus. I am not a member of that Caucus. As a matter of fact, I have said that the way we are behaving, we are like the greatest auction house in Africa, and we know that this Motion may as well have been sponsored by those who are afraid of certain things, including some sections of the "Ocampo Six".

**Mr. Mututho:** On a point of order, Mr. Deputy Speaker, Sir. Hon. Karua has made a very serious allegation, that this Motion may have been sponsored by some people. Can she now substantiate her allegations or be forced to withdraw and apologise?

**Mr. Deputy Speaker:** Order! Order! Hon. Members, we are in an august House. Indeed, there are rules. First of all, no hon. Member can impute improper motive on a fellow hon. Member without moving a substantive Motion, even if one has the facts.

Be that as it may, hon. Ruto has withdrawn the remarks he made and apologised. Hon. Karua you went ahead and did a similar thing. Whether you say "maybe" or "maybe not", as long as you refer to hon. Members and say that the "Ocampo Six" could have sponsored the Motion, that is, in itself, imputing improper motive on hon. Members. So, could you, please, withdraw and apologise?

**Ms. Karua:** Mr. Deputy Speaker, Sir, I said "it may be". I did not say "it is". The HANSARD can be referred to. I think under our Standing Orders and the law, I am entitled to that. I am appealing to you to reconsider your position, because I should not be

forced to withdraw. I also said that the way we are behaving, we may end up being the greatest auction house in Africa. Am I also going to be asked to withdraw that one?

**Mr. Deputy Speaker:** Order! Order! Hon. Martha Karua, you cannot expect the rules of the House to be applied selectively. Hon. Ruto said “Can she confirm whether---“ That is another way of saying “maybe” or “maybe not”, and the Chair took exception to that statement. You cannot say the same thing and hope to get away with it. Can you apologise and withdraw?

**Ms. Karua:** Mr. Deputy Speaker, Sir, the dictates of my conscience will not allow me to do that.

**Hon. Members:** Out! Out!

**Mr. Deputy Speaker:** Order! Order! Under the circumstances, the Chair has no otherwise. Hon. Martha Karua, you will spend the rest of the day outside the Chamber.

*(Ms. Karua withdrew from the Chamber)*

*(Several hon. Members stood up in their places)*

**Mr. Deputy Speaker:** Order! Order! Hon. Ongoro has the Floor!

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

**Mr. Deputy Speaker:** What is your point of order, hon. Koech?

**Mr. Koech:** Mr. Deputy Speaker, Sir, reading the mood of the House, would I be in order to request that the Mover be now called upon to respond?

**Hon. Members:** No! No!

**Mr. Deputy Speaker:** Order! Order, hon. Members! Hon. Ongoro has the Floor. Proceed, hon. Ongoro!

**The Assistant Minister for Nairobi Metropolitan Development** (Mrs. Ongoro): Thank you, Mr. Deputy Speaker, Sir. I stand to support this Motion. It is indeed a very bad day for us to see how we are debating such an important issue and trying to bring it down to the level of something that can just be wished away. Kenya is independent. Forty seven years ago we got our Independence but it looks like some countries have not actually accepted that we are indeed an independent nation. I wish to reply to hon. Ms. Karua and it is sad that she has walked out. She has stated that this matter was supposed to be handled by our Ministry of Foreign Affairs.

We have our new Constitution, and I want to refer you, hon. Members, to Article 1 (2) and (3) that says that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution. That power that belongs to the people of Kenya has been delegated to us, as Members of Parliament. Article 94(4) states that one of our roles is to represent the will of the people and exercise their sovereignty. Article 95(2) states that we should deliberate and resolve issues of concern to the people.

Hon. Members, this is an issue of concern to the people of Kenya and we are here debating it rightly. We cannot leave it to the Ministry of Foreign Affairs when an ambassador traverses our country at will; coming to Kasarani Constituency, going to Nyanza and everywhere and meeting with the youth in every constituency and giving them money without even our elected Members of Parliament knowing. This, according to us, is the highest level of indiscipline and disrespect. We need to make a bold statement as a nation in this House that we do not need such representatives in our

country. They should respect us and work with the elected leaders or they let us govern ourselves in peace.

I beg to support this Motion.

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. We promulgated a new Constitution that gives freedom of expression. I have a human rights background, and I believe we are becoming intolerant.

I oppose this Motion.

**Mr. Shakeel:** I will speak very briefly. First of all, I do not think this Motion is in the right order. I oppose it on that basis. We as Opposition had Smith Hempstone, we called him the rogue ambassador, but he brought us multi-partyism. Whether the conduct of this man that we are discussing is good or bad, I think it is for us to look in perspective. At this moment in time, I am a member of the Committee on Finance, Planning and Trade. I heard that we were banned from going to the US but it turned out not to be true. So, I think most of this is becoming rumour-mongering and most of it is actually taking doublespeak to an extra portion.

So I oppose the Motion.

**Mr. Mungatana:** Thank you, Mr. Deputy Speaker, Sir. I want us to debate this Motion and its merit and then make a very informed decision. In my own humble opinion to this House, it is a matter that deals with diplomacy and the duties of ambassadors. We do not need to tackle this matter through emotions. We need to persuade each other whether indeed this Motion is in keeping with what we need to agree on, that this man needs to go or whether indeed he is doing his duty and then we make a reasonable decision.

From what I have read and I have known, first of all, diplomacy is the art of practice of conducting international relations between states. It involves negotiating alliances, treaties and agreements between states. That brings me to the first point I want to make; that really is it the duty of this Parliament or is it a state duty? That is a point we need to look at. I want to reiterate the fact that the Minister for Foreign Affairs, for us, is the lead actor in terms of negotiating and signing treaties and in terms of any international relations---

## ADJOURNMENT

**Mr. Deputy Speaker:** Order! Hon. Mungatana! You have eight minutes. Hon. Members, it is now time for interruption of business. The House, therefore, stands adjourned until this afternoon at 2.30 p.m.

The House rose at 12.30 p.m.